

**CITY OF OBERLIN, OHIO**

**ORDINANCE No. 21- 43 AC CMS**

AN ORDINANCE TO APPROVE AN AGREEMENT FOR THE PURCHASE OF 5 ACRES, MORE OR LESS, OF VACANT LAND LOCATED AT 14800 STATE ROUTE 58 SOUTH, OBERLIN, OHIO AS AN EMERGENCY MEASURE

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio:

SECTION 1: The Agreement made by and between Elizabeth Burgess and John Machnauer and the City Manager, on behalf of the City of Oberlin, for the purchase of 5 acres of land, more or less, being Lorain County Auditor's Permanent Parcel No. 14-00-015-000-002 located at 14800 State Route 58 South for One Hundred Forty Thousand Dollars (\$140,000) in substantially the form attached hereto as **Exhibit A** is hereby approved and the City Manager is authorized to execute any and all other documents or instruments and to take such other actions as necessary or convenient to discharge the City's obligations under said Agreement.

SECTION 2: It is hereby found and determined that all formal action of this Council concerning or related to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio or to provide for the usual daily operation of a municipal department, to wit: to satisfy the purchase agreement contingency requiring Council approval to enable sufficient time to conduct due diligence inspections as provided in said agreement and provided that it is elevated to emergency status by the affirmative vote of at least five members of Council and receives the affirmative vote of at least five members of Council upon final passage, it shall go into full force and effect from and immediately after its passage; otherwise, it shall take effect at the earliest period allowed by law.

PASSED: 1<sup>st</sup> Reading: July 6, 2021  
2<sup>nd</sup> Reading: \_\_\_\_\_  
3<sup>rd</sup> Reading: \_\_\_\_\_

ATTEST:

  
\_\_\_\_\_  
BELINDA B. ANDERSON, MMC  
CLERK OF COUNCIL

  
\_\_\_\_\_  
LINDA SLOCUM  
PRESIDENT OF COUNCIL

POSTED: 07/07/2021

EFFECTIVE DATE: 07/06/2021

# **REAL ESTATE PURCHASE AGREEMENT**

(14800 State Route 58, Oberlin OH 44074)

**THIS REAL ESTATE PURCHASE AGREEMENT** ("Agreement") is made and entered into as of the 6 day of June, 2021, ("Effective Date") by and between **ELIZABETH J. BURGESS** and **JOHN A. MACHNAUER**, (collectively "Seller"), and the **CITY OF OBERLIN**, an Ohio Chartered Municipal Corporation and Political Subdivision of the State of Ohio, ("Buyer").

In consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

1. **Purchase And Sale:** Upon and subject to the terms and conditions hereinafter set forth, Seller agrees to sell and Buyer agrees to buy the real estate ("Premises") consisting of one (1) parcel containing approximately 5 acres in the City of Oberlin having an address of 14800 State Route 58, Oberlin, Ohio being Lorain County Auditor's Permanent Parcel No. 14-00-015-000-002 described on **Exhibit A** attached hereto and made a part hereof, together with all right, title and interest of Seller in and to any land lying in the right of way of any street in front of or adjoining the Premises to the center line thereof.

2. **Purchase Price.** The purchase price for the Premises (the "Purchase Price") shall be One Hundred Forty Thousand Dollars (\$140,000.00) which amount shall be payable at closing in accordance with the terms of this Agreement.

3. **Contingencies.**

3.1 Buyer shall have a period of one hundred and twenty (120) days following the Effective Date (the "First Due Diligence Period"), to, in its sole discretion, investigate and evaluate the Premises and obtain such approvals, as Buyer may deem necessary to develop or use the Premises in accordance with Buyer's intention to construct thereon an electric distribution substation. Such investigations may include but not be limited to a boundary survey, a determination that the condition, soils, environmental conditions, wetland status, utilities, drainage, access, applicable zoning regulations and any and all other matters for which Buyer deems inspections to be necessary are satisfactory to Buyer for its intended use of the Premises. Seller shall cooperate with and provide any and all information in its possession to Buyer and Buyer's agents with regard to Buyer's inspections of the Property, including, but not limited to, surveys, Phase I and Phase II or other environmental inspection reports that Seller may have. Approvals may include, but not be limited to, a rezoning of the Premises or the obtaining of such approvals as may be necessary to enable Buyer's intended use of the Premises, ("Approvals").

If Buyer, in its sole discretion, determines that the Premises is not suitable for Buyer's purposes for any reason, then Buyer may terminate this Agreement by notifying Seller of such election not later than the expiration of the First Due Diligence Period, and in such event both parties hereto shall be relieved of all further obligations hereunder. Buyer shall have the right to extend the First Due Diligence Period for up to an additional ninety (90) days (the "Second Due Diligence Period") for the purpose of obtaining Approvals by notifying Seller of its election prior to the expiration of the First Due Diligence Period. If Buyer is unable to obtain such Approvals, then Buyer may terminate this Agreement by notifying Seller of such election not later than the expiration of the Second Due Diligence Period, and in such event both parties hereto shall be relieved of all further obligations hereunder. Seller shall fully cooperate in any and all Approval proceedings and shall execute all documents and take all such other actions as owner of the Premises or on Buyer's behalf as may be necessary for obtaining the Approvals. As used herein, Approvals shall mean that any Approvals are final and not subject to referendum or to further appeal, that no referendum has been filed or, if filed, that the referendum has been resolved in a manner permitting such Approvals, that no litigation has been threatened or instituted to prevent such Approvals or, if instituted, that a final determination (including all appeals) of such litigation has been made permitting such Approvals.

3.2 During the period that this Agreement is in effect, and until the transfer of title, Buyer and Buyer's agents shall have the right of ingress and egress over and through the Premises for the purposes of inspections, surveys, engineering and/or architectural drawings, and other such observations as are desired by Buyer. Buyer shall promptly repair any damage to the Property resulting from its inspections.

3.3 In addition to the foregoing contingencies, Buyer's obligations to perform pursuant to this Agreement are contingent upon the approval of the Oberlin City Council, by ordinance, and upon Buyer's satisfaction with the condition of title as provided in Paragraph 7 below.

4. **Closing:** The deed and all other finds and documents pertaining to the purchase of the Premises shall be deposited in escrow with Fidelity National Title Company, 5340 Meadow Lane Court, Sheffield Village, Ohio 44035, as escrow agent ("Escrow Agent"), within three (3) business days prior to the closing date as defined herein. Closing of this transaction shall take place, provided all the terms and conditions of this Agreement have been satisfied as provided for in this Agreement. The term "closing" means the date upon which the funds shall be transferred and the deed of title to the Premises is recorded.

5. **Escrow Instructions:** This Agreement shall serve as escrow instructions, subject to Escrow Agent's standard conditions of acceptance, with Buyer's indemnity provisions deleted, and otherwise not contrary to any of the terms hereof. Escrow Agent is hereby authorized to close the transaction and to make all prorations and allocations which, in accordance with this Agreement, are to be made between the parties hereto.

6. **Deed of Conveyance:** Seller shall deposit in escrow a general warranty deed, (prepared by Buyer), conveying to Buyer the absolute fee simple ownership of the Premises, free and clear of all liens, conditions, easements, claims, restrictions and encumbrances whatsoever,

except real estate taxes and assessments not then due and payable and those easements and restrictions of record disclosed in the Commitment (hereinafter defined) or the Survey and which are acceptable to Buyer. Prior to depositing the deed in escrow, Seller shall deliver to Buyer a true copy thereof for Buyer's approval. Escrow Agent is not authorized to file the deed for record until Buyer has approved the deed in writing. The obligation to obtain any governmental approvals of the deed shall be solely that of Seller.

7. **Evidence of Title & Title Insurance:** Seller shall furnish to Buyer a fee policy of title insurance ("Title Policy") issued by Fidelity National Title Company ("Title Company") in an amount equal to the aforesaid purchase price, assuring that title to the Premises is in the condition required by Section 6 hereof, with, at Buyer's option, all so-called "survey exceptions" and/or "mechanic's lien" exceptions deleted. In the event Buyer shall desire coverage beyond that contained in the fee policy of title insurance, then Buyer shall be responsible for the cost of such additional coverage. The Title Policy shall identify, by recording information, all covenants, conditions, restrictions and easements of record encumbering the Premises (a general exception for covenants, conditions, restrictions and easements of record, or similar language, shall not be acceptable). Buyer shall obtain a commitment ("Commitment") for the Title Policy from Title Company, including the exact language of all covenants, conditions, restrictions and easements of record. Buyer shall have fifteen (15) business days after Buyer's receipt of the Commitment to advise Seller that Buyer either accepts the condition of title as disclosed therein [except for monetary liens (which Seller shall be obligated to discharge at or prior to closing)] or that the condition of title is unacceptable to Buyer for any reason in Buyer's sole discretion. If Buyer notifies Seller that the condition of title is unacceptable, then Seller shall have thirty (30) days after such notice from Buyer to remedy such defects or remove any condition to which Buyer may object. If Seller fails to remedy or remove such conditions within such period, then (i) Buyer may elect to terminate this Agreement or (ii) Buyer may accept such title as Seller is able to convey without reduction of the purchase price. Without the advance written consent of Buyer, the Title Policy may not contain any exception to title not disclosed in the Commitment. Prior to the Closing, Seller shall furnish to Title Company such affidavits as Title Company may require in order to delete all mechanic's lien exceptions from the Title Policy.

8. **Apportionment of Taxes:** On the closing date, all real estate taxes and assessments shall be apportioned as of the date of transfer of title according to the calendar year, using the last available County Treasurer's tax duplicate for the purpose of closing the escrow. When the actual amount of such taxes becomes known, the parties shall adjust such proration outside of escrow.

9. **Possession:** Full and exclusive possession of the Premises shall be delivered by Seller to Buyer upon transfer of title.

10. **Closing:** Escrow Agent shall cause title to the Premises to be searched by Title Company, and if and when Title Company will issue the Title Policy in the form required herein and Escrow Agent has received all funds and documents to be deposited hereunder, Escrow Agent shall cause the deed to be filed for record and the funds to be disbursed in accordance with this Agreement.

11. **Seller's Representations and Warranties:** Seller hereby warrants and represents that: (i) Seller is the owner of the Premises in fee simple; (ii) Seller has full right and authority to convey the Premises to Buyer; (iii) there are no gas wells or other wells (whether or not capped) on or about the Premises; (iv) to Seller's knowledge, neither improvements made to nor the activities conducted on the Premises have violated any laws or governmental regulations pertaining to wetlands; (v) to Seller's knowledge, there are no hazardous, toxic or dangerous wastes, materials or substances in, on or about the Premises; and (vi) Seller has not engaged in or permitted any disposal or dumping of any hazardous, toxic or dangerous waste, material or substance on or about the Premises, nor engaged in or permitted the illegal or unauthorized storage of any hazardous, toxic or dangerous waste, material or substance on or about the Premises. In the event that any hazardous, toxic or dangerous waste, material or substance is found on the Premises and is required by the state or federal Environmental Protection Agency or any other governmental agency or authority to be removed from the Premises or treated, then at Buyer's option, Seller shall promptly cause such waste, material or substance to be removed or treated at Seller's sole cost and expense or Buyer may cause such waste, material or substance to be removed or treated and the cost of such removal or treatment shall be payable by Seller to Buyer upon demand. The foregoing Representations shall survive the closing and shall not be deemed to have been merged into the deed of conveyance.

12. **Brokers:** Each party represents to the other that there is no broker or other person entitled to a commission or similar fee in connection with this transaction.

13. **Notice:** Any notification provided for herein must be in writing and shall be deemed to have been given when mailed, postage prepaid, by registered or certified mail, addressed as follows:

To Seller: Elizabeth J. Burgess  
John A. Machnauer  
128 Shipherd Circle  
Oberlin, OH 44074

To Buyer: City of Oberlin  
C/o Rob Hillard, City Manager  
69 S. Main Street  
Oberlin OH 44074

14. **Costs of Closing:** Escrow Agent shall charge Seller with transfer taxes, any amounts due Buyer on account of prorations, one-half of the escrow fee, the cost of discharging all mortgages and other monetary liens encumbering the Premises, the cost of the title examination, the Commitment, and one-half of the premium of the Title Policy. Escrow Agent shall charge Buyer with recording fees, one-half of the escrow fee, and one-half of the premium of the Title Policy.

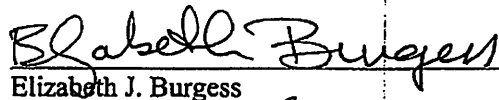
15. **Status of Seller:** Seller hereby certifies that Seller is not a "nonresident alien", "foreign corporation", "foreign partnership", "foreign trust" or "foreign estate" within the meaning of the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

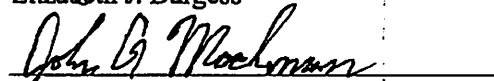
16. **Parties:** The terms "Buyer" and "Seller" shall include all parties designated and their respective successors and assigns, and wherever the singular is used, it shall include the plural, and wherever the masculine gender is used, it shall include the neuter and feminine as the context requires. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective assigns, heirs, personal representatives, or nominees.

17. **Entire Agreement:** This Agreement contains the entire agreement between Seller and Buyer and the parties hereto are not bound by any agreements, understandings or conditions except those stipulated herein.

**IN WITNESS WHEREOF**, the parties hereto have affixed their hands as of the date first set forth above.

**SELLER:**

  
Elizabeth J. Burgess

  
John A. Machnauer

**BUYER:**

City of Oberlin

By:   
Robert Hillard, City Manager