

ORDINANCE O-2018-4

AUTHORIZING THE SALE OF MUNICIPAL PROPERTY CONTINGENT ON BID RESULTS AND DECLARING AN EMERGENCY

WHEREAS, upon the passage of Ordinance 2018-3 the Council of the Village of Windham has previously authorized Village Administrator to advertise for sale of a vacant parcel of property located generally near Brook Court, and identified as Parcel/Tax ID Numbers 41-057-10-00-054-000 and 41-057-10-00-054-053 in the Village of Windham, Ohio; and

WHEREAS, in advance of the decision to advertise for sale the property the Council of the Village of Windham determined the property was no longer needed for Municipal purposes; and

WHEREAS, although the time period for completion of the advertising has not yet been fully accomplished, Neighborhood Development Services has submitted a proposed purchase agreement which offers the minimum \$90,000.00 purchase price; and

WHEREAS, Neighborhood Development Services has informed the Village that to secure necessary financing a purchase agreement must be approved at this time; and

WHEREAS, the Village Solicitor has explained to Neighborhood Development Services that although a purchase agreement can be awarded by the Council now, the express terms of the purchase agreement will indicate that performance under the agreement is contingent upon the offer of Neighborhood Development Services being higher than all other bids received by the Village for purchase of the property.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Windham, two thirds or more of its members elected thereto concurring as follows:

Section One: In response to such request for bids the offer of Neighborhood Development Services in the amount of \$90,000.00 for the property known as near Brook Court and identified as Parcel/Tax ID Numbers 41-057-10-00-054-000 and 41-057-10-00-054-053 in the Village of Windham, Ohio is *at this time* the highest and best offer received.

Section Two: Fiscal Officer and the Mayor are hereby directed to execute a purchase agreement in substantial conformity with that attached hereto as Exhibit A and incorporated herein by reference.

Section Three: The purchase agreement attached hereto as Exhibit A and incorporated herein by reference is expressly contingent upon the offer of \$90,000.00 remaining the highest and best offer for the property at the conclusion of the deadline for submitting bids, which is March 5, 2018.

Section Four: It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of the Council and any committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including §121.22 of the Revised Code of the State of Ohio.

Section Five: Ordinance is declared an emergency measure becoming effective immediately upon its passage by Council to advance the safety, general health and welfare of the Village and to assist Neighborhood Development Services in achieving economic development of land in the Village of Windham.

Passed in Council as an emergency on February 13, 2018.

Vote of Council: Ayes: 5
 Nays: 0

ATTEST:

APPROVED:

Fiscal Officer, Cheree Taylor

Mayor, Deborah Blewitt

APPROVED AS TO FORM:

Village Solicitor, Thomas Reitz

CONTRACT FOR PURCHASE OF REAL ESTATE

Neighborhood Development Services, Inc. (the “Purchaser”), with an address of 120 E. Main Street, Ravenna, Ohio 44266, hereby agrees to purchase from Village of Windham (the “Seller”), with an address of 9083 North Main Street, Windham, Ohio, 44288, that certain real estate owned by Seller, located generally near Brook Court, and identified as Parcel/Tax ID number(s) 41-057-10-00-054-000, 41-057-10-00-054-053, in the Village of Windham, Portage County, Ohio, consisting of 4.19 +/- acres and generally described and/or depicted on EXHIBIT A attached hereto and incorporated herein, together with all buildings, improvements, and tangible personal property located thereon, all rights, privileges and appurtenances thereto, and Seller’s interest in and to any and all leases and rents (collectively referred to as the “Real Estate”) subject to and upon the following terms and conditions (the “Contract”):

1. Purchase Price. The purchase price (the “Purchase Price”) for the Real Estate, subject to all adjustments and credits hereinafter provided, shall be \$90,000.00. The Purchase Price, less all Earnest Money (as hereinafter defined), shall be paid by wire transfer of readily available funds at Closing.

2. Earnest Money Deposit. Within five (5) business days after date that this Contract is executed by both Purchaser and Seller (the “Acceptance Date”), Purchaser shall deposit with a Title Company designated by Purchaser (the “Title Company”), \$0.00 as an earnest money deposit (the “Earnest Money”). All Earnest Money shall at all times be applicable to the purchase price for the duration of this Contract. The Earnest Money shall be refundable to the Purchaser throughout the Inspection Period, at any time if Seller breaches or defaults hereunder or as otherwise set forth in this Contract. Certain portions of the Earnest Money shall become nonrefundable only as follows:

- a) As of the actual Application due date to the Ohio Housing Finance Agency (“OHFA”), \$N/A of the Earnest Money shall become nonrefundable to the Purchaser.
- b) Within fourteen (14) calendar days after the actual Award Date from OHFA, should Purchaser’s development accept an award from OHFA, then an additional \$N/A of the Earnest Money shall become nonrefundable to the Purchaser.

3. Closing Date. Subject to all other terms and conditions set forth in this Contract, the transaction shall schedule to close in the office of the Title Company or such other place as the parties may mutually agree upon in writing, on or before the thirtieth (30th) day after the expiration of the Inspection Period, or any exercised Inspection Period extension. The exact date of closing (the “Closing Date”) shall be determined by a written notice from Purchaser to Seller at least seven (7) days prior to the closing.

4. Closing Documents. At Closing, Seller shall deliver: (a) a fully executed General Warranty Deed conveying to Purchaser marketable fee simple title to the Real Estate free of any and all liens, encumbrances, easements, restrictions, covenants or other title defects that unreasonably interfere with the Intended Use (as defined below), except the lien of non-delinquent Real Estate taxes, and other matters, if any, disclosed in the Title Commitment (as hereinafter defined) and approved by Purchaser as provided in Section 8.2; (b) a Seller’s Affidavit in form and substance satisfactory to Purchaser and the Title Company; (c) a non-foreign person affidavit in form and

substance satisfactory to Purchaser and the Title Company; and (d) all other documents and/or funds, if any, required by Purchaser.

5. Date of Possession. Possession of the Real Estate shall be delivered to Purchaser on the Closing Date, free and clear of all rights and claims of any other party to the possession, use or control of the Real Estate.

6. Taxes and Assessment; Closing Costs. Purchaser assumes and agrees to pay all assessments for governmental and private improvements becoming a lien after the Closing Date and its pro rata portion of the real estate taxes assessed for the calendar year in which closing occurs (based upon the number of days remaining in such calendar year after the Closing Date). Seller shall pay all assessments for governmental and private improvements not assumed by Purchaser and both installments of real estate taxes payable during the prior calendar year which remain unpaid and its pro rata portion of the real estate taxes assessed for the calendar year in which closing occurs (based upon the number of days in such calendar year prior to and including the Closing Date). The present tax rate and assessed values shall be used for the purposes of the pro-rations under this Section if the applicable tax rate and assessed values have not been set. Notwithstanding the foregoing, Seller is responsible for the payment of any and all current agricultural use valuation recoupment charges and/or deferred real estate taxes. Purchaser will pay the premium for the Title Policy in the amount of the Purchase Price and any fees in connection with preparation of the sale documents. Seller to pay for the Deed preparation. Purchaser will pay all costs associated with recording the Deed and financing documents (if any). The Earnest Money shall be credited against the Purchase Price at closing. Purchaser and Seller shall each pay their own attorney fees related to the closing of the transaction.

7. Intended Use. Purchaser's intended use of the Real Estate shall be a Rental Housing Community (apartments) as determined by Purchaser in its sole and reasonable discretion (the "Intended Use").

8. Conditions of Performance. Purchaser's obligations under this Contract are subject to the timely and complete satisfaction, in Purchaser's sole discretion, of the following conditions, unless waived in writing by Purchaser:

8.1 Survey. Purchaser, at its cost and expense, shall order a current survey of the Real Estate (the "Survey"), by a registered land surveyor designated by Purchaser. Seller shall provide to Purchaser, to the extent that they are in Seller's possession, any surveys and reports on the physical and environmental aspects of the Real Estate. The Survey shall be in form and substance acceptable to Purchaser in its sole discretion.

8.2 Title Insurance. Purchaser, at its cost and expense shall procure (a) a title insurance commitment for the Real Estate issued by the Title Company, in which commitment the Title Company shall agree to (i) insure for the full amount of the Purchase Price marketable fee simple title to the Real Estate in the name of Purchaser, free of all exceptions unless (including, without limitation, the standard exceptions), except only the lien of non-delinquent real estate taxes and assessments and such other matters that Purchaser may approve as hereinafter provided, and (ii) issue such endorsements as Purchaser may reasonably request (the "Title Commitment"); and (b) copies of all documents and matters disclosed or referred to in the Title Commitment (the "Title Documents"). If any exception in the Title Commitment is unacceptable to Purchaser, Purchaser shall notify Seller in writing and Seller shall then have 30 days to cure such unacceptable exception. If Seller fails to

cure such exception with such 30 day period and provide evidence to Purchaser of such cure, then Purchaser shall have the right but not the obligation to terminate this Contract by written notice to the Seller and the Earnest Deposits shall be returned to Purchaser. Purchaser, at its cost and expense, shall obtain an owner's policy of title insurance issued by the Title Company, in the full amount of the Purchase Price and in conformity with the marked Title Commitment. Purchaser shall pay the cost of any mortgage title insurance.

8.3 Condition of Real Estate/Inspection Period. Purchaser, at its sole cost and expense shall have an inspection period, which shall commence upon the Acceptance Date of this Agreement. The Inspection Period shall expire on June 30, 2019 (the "Inspection Period"). Purchaser shall have determined, in its sole discretion, during the Inspection Period that: (a) the Real Estate (i) does not contain any subterranean or other defects or conditions which impair or adversely affect Purchaser's Intended Use or development of the Real Estate or require extraordinary or unusually costly development techniques or measures, and (ii) is in all other respects suitable and feasible for and will support and permit Purchaser's Intended Use and development; (b) the obtaining of all subdivision, platting, zoning, variances, vacations, releases, authorizations, permits and approvals and incentives, public and private, necessary for Purchaser's Intended Use and development ("Governmental Authorizations"), are satisfactory to Purchaser; (c) the Real Estate is free and clear of any and all asbestos, toxic or hazardous material or contaminant and/or the threat of contamination thereby; (d) all utilities necessary or appropriate for Purchaser's Intended Use and development of the Real Estate are available at the property lines in sufficient quantities, pressures and/or capacities for Purchaser's Intended Use and development, without hookup, tap in or other charges excepting only charges normally incurred and charged by the applicable public utilities; and (e) it is satisfied in all respects, and in Purchaser's sole discretion, with the Real Estate and the feasibility of its development. In the event Purchaser fails to give Seller written notice of its disapproval of the condition of the Real Estate prior to the expiration of the Inspection Period, Purchaser shall be deemed to have approved the condition of the Real Estate. Seller authorizes Purchaser to file for and obtain such Governmental Approvals and agrees to execute such applications, petitions, easements, covenants, agreements and instruments as in Purchaser's judgment may be necessary or appropriate to file for and obtain such Governmental Approvals and the parties agree that the closing of the transaction contemplated in this Contract is expressly contingent upon Purchaser's ability to receive the Governmental Approvals in final non-appealable form.

8.4 Inspection Period Extensions. Purchaser may extend the Inspection Period up to two (2) times for an additional sixty (60) days each by depositing \$0.00 in additional earnest money for each sixty (60) day extension. In order to secure the initial extension, Purchaser would need to deposit an additional \$0.00 in earnest money on or before the expiration of the initial Inspection Period. In order to secure the second sixty (60) day extension, Purchaser would need to deposit another \$0.00 on or before the sixtieth (60th) day following the expiration of the initial Inspection Period. All additional earnest money shall be non-refundable to the Purchaser upon deposit, but will remain applicable to the Purchase Price.

8.5 Litigation and Representation. As of the Closing Date, no action or proceeding before a court or other governmental agency or officer shall be pending (and to the best of either Seller's or Purchaser's knowledge, no such action or proceeding shall be threatened) that might impair the value of the Real Estate or prevent Purchaser from undertaking and completing Purchaser's Intended Use and development of the Real Estate. As of the Closing Date, the representation and warranties set forth in Section 10 shall be true and accurate.

9. Nonperformance. In the event that one or more of the conditions set forth in Section 8 are not timely and completely satisfied, Purchaser, at its sole discretion, may grant additional time to Seller to remedy any defect or may cancel this Contract and all of its obligations hereunder by written notice to Seller, in which event (without limiting Purchaser's other rights or remedies for any breach of this Contract by Seller) all Earnest Money deposited to date, shall be immediately refunded to Purchaser. If pursuant to any provision of this Contract the Purchaser elects to grant Seller additional time to remedy a defect or meet a condition of the Contract, all time limits affecting the Purchaser shall be extended by the amount of time given the Seller.

10. Representations and Warranties. Seller hereby represents and warrants to and covenants and agrees with Purchaser (and shall be deemed to represent and warrant and covenant and agree on the Closing Date) that (a) there is no condemnation or similar proceeding which is pending or threatened against the Real Estate or any part thereof; (b) Seller has not received any notification from any governmental agency, authority or instrumentality of any pending or threatened assessments on or against the Real Estate for the cost of public improvements to be made with respect to the Real Estate or any part thereof; (c) after the Acceptance Date, Seller will not enter into any lease or other agreement affecting the Real Estate or the possession, use or control thereof or terminate, modify or amend any existing lease or other agreement without first obtaining the written consent of Purchaser; (d) after the Acceptance Date, Seller will not create, permit or suffer any lien or other encumbrance to attach to or affect the Real Estate and improvements thereon, if any, except for the lien of non-delinquent real estate taxes; (e) there are no underground fuel, chemical or other storage tanks or associated equipment located in the Real Estate, or the Real Estate has not been used for the treatment, storage or disposal of or otherwise contaminated by any hazardous or special wastes, substances, materials, constituents, pollutants or contaminants (as defined by federal, state or local laws, statutes, ordinances, rules or regulations); (f) Seller has fee simple, marketable, indefeasible and insurable right and title to the Real Estate; (g) to the best of Seller's knowledge, there has been no release nor is there currently any threatened release of any hazardous, special or other wastes, substances, materials, constituents, pollutants or contaminants (as defined by federal, state or local laws, statutes, ordinances, rules or regulations) on the Real Estate; (h) to the extent there are contracts or agreements affecting the Real Estate (including, for example, management or service agreements), Seller will: (i) cancel before closing all such contracts and agreements; (ii) pay all amounts due under, and settle all accounts with respect to, any such contracts and agreements; and (iii) deliver to Purchaser at closing evidence that any such contracts and agreements have been canceled and all such amounts and accounts have been paid and settled; (i) to the extent Seller is an entity, it is duly organized, validly existing and in good standing in its jurisdiction or organization; and (j) that this Contract has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms.

11. Damage and Condemnation. If at any time after the Acceptance Date (a) the Real Estate shall be condemned, damaged or destroyed, in whole or in part; or (b) any notice of condemnation shall be given, then Purchaser, at its sole option, may cancel the Contract or proceed with closing. If Purchaser elects to proceed with closing, then Purchaser may (a) apply the proceeds of any condemnation award or insurance policy to reduce the Purchase Price; or (b) accept an assignment of such proceeds. If Purchaser elects to cancel this Contract, as provided in this paragraph, all Earnest Money deposited shall be immediately refunded to Purchaser. Seller shall bear all risk of loss of any nature whatsoever to the Real Estate until closing.

12. Inspection. Purchaser, its employees, agents and independent contractors shall have the right to enter upon the Real Estate and conduct all tests and examinations which Purchaser deems

necessary at its sole cost and expense. Purchaser indemnifies Seller from any damages occasioned thereby. Purchaser shall restore Real Estate to the existing condition before said tests or examinations were conducted.

13. Notices. All notices, demands, instructions or requests to be given to either party hereunder shall be in writing and sent by: (a) facsimile transmission; (b) overnight delivery service; (c) personal delivery; or (c) registered or certified U.S. Mail, return receipt requested; and addressed to the first address above written. Any notice that is actually received shall be effective regardless of the manner in which it was sent or delivered.

14.1 Default by Seller. Seller agrees that money damages are not an adequate remedy for breach of this Contract by Seller, and, in addition to any other remedies available to Purchaser in the event of a breach by Seller, Purchaser shall be entitled to: (a) the remedy of specific performance to enforce the terms hereof; and/or (b) cancel this Contract and all of its obligations hereunder by written notice to Seller, in either of which events the Earnest Money shall be refunded immediately to Purchaser. In the event of any such breach, Purchaser shall be entitled to recover, in addition to all other remedies and damages, reasonable attorneys' fees and court costs incurred.

14.2 Default by Purchaser. In the event of a breach of this Contract by Purchaser, Seller may, as its sole remedy hereunder, rescind this Contract and retain the Earnest Money as liquidated damages.

15. Assignment/ Successors and Assigns. This Contract shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of both Purchaser and Seller. This Contract may not be assigned by Seller. Purchaser may assign this agreement to a related party without Seller consent.

16. Survival and Indemnity. All representations and warranties set forth in this Contract, shall survive the closing, and for a period of one (1) year after the Closing Date, Seller and Purchaser shall each indemnify and hold the other harmless from and against all costs and damages (including attorneys' fees and court costs) incurred as a result of any breach of any representation or warranty by Seller or Purchaser, respectively.

17. General. The terms and provisions of this Contract shall be governed and construed in accordance with the laws of the State of Ohio. The captions and section numbers shall not be considered in any way to affect the interpretation of this Contract. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, and personal representatives. This Contract is the final expression of the complete and exclusive agreement between Seller and Purchaser and supersedes all prior offers, negotiations and discussions. The term Contract, as used herein means the contract arising between the parties on the terms of this Offer after acceptance by Seller. This Contract may be executed in 2 or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same contract.

18. Authority. Except as expressly provided otherwise herein, each undersigned person signing on behalf of any party that is a corporation, partnership or other entity certifies that (a) he is fully empowered and duly authorized by any and all necessary action or consent required under any applicable articles of incorporation, by-laws, partnership agreement or other agreement to execute and deliver this Contract for and on behalf of said party; (b) that said party has full capacity, power

and authority to enter into and carry out its obligations under this Contract; and (c) that this Contract has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of such party, enforceable in accordance with its terms.

19. Contract Subject to Contingencies. Seller is an incorporated Village under the laws of the State of Ohio. As an Ohio Village the Seller can only sell real estate in compliance with the requirements set forth in Ohio Revised Code 721.03 and 7232.121 to the highest and best bidder after advertisement in compliance with law. Advertising in compliance with these requirements will be completed on March 2, 2018 and the deadline for submitting bids to purchase is March 5, 2018. Buyer has been informed and acknowledges that the Seller's obligation to sell under this Contract is contingent upon the Buyer being the successful high bidder at the conclusion of the required advertising period.

20. Duration of Offer. This Offer shall expire if written acceptance endorsed herein is not delivered to Purchaser on or before December 31, 2020.

21. Real Estate Brokerage Representation. Buyer and Seller both represent and warrant to one another that no real estate brokers or agents have been used or consulted in connection with the purchase and sale of the Real Estate except N/A, whose commission shall be paid by Seller. Each party covenants and agrees to defend, indemnify and save the other harmless from any actions, damages, fees, real estate commissions, costs and/or expenses (including reasonable attorneys' fees) relating to a breach or alleged breach of the foregoing representation and warranty.

[Remainder of page intentionally left blank.]

This Offer to Purchase Real Estate is hereby executed this ___ day of _____, 20__ as to Purchaser.

PURCHASER:

By: _____

Printed Name: _____

Title: _____

ACCEPTANCE OF OFFER

Seller hereby accepts the foregoing Offer to Purchase Real Estate on this ___ day of _____, 20__.

SELLER:

By: _____

Printed Name _____

By: _____

Printed Name _____

EXHIBIT A

Maple Grove III Limited Partnership, an Ohio limited partnership, the Grantor, for valuable consideration paid, grants, with General Warranty Covenants, to Village of Windham, the Grantee, whose tax mailing address is 9621 East Center Street, Windham, Ohio 44288, the following real property:

Situation in the Village of Windham, County of Portage and State of Ohio, and known as Being Lot 12 in Maple Grove Park No. 1 as recorded at Plat Book 30, Page 12, Portage County Records.

Prior Instrument Reference: Vol. 1136, Page 180

Tax Parcel No: 41-057-10-000-054-000

Situated in the Village of Windham, County of Portage and State of Ohio,
And further described as follows:

Parcel E

Known as being Sublot No. 11 in Maple Grove Park Plat No. 1 as recorded in Volume 30, Page 12 of the Portage County Records of Plats, to which reference is here made for a complete description of said lot

Parcel No. 41-057-10-00-053-000

Also known as: 9136 Maple Grove Road, Windham, OH 44288