

ORDINANCE O-2019-20

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

WHEREAS, upon the passage of Ordinance 2019-13 the Council of the Village of Windham has previously authorized Village Administrator to advertise for sale of a vacant parcel of property located at the intersection of Maple Grove Road and North Main Street and known as LS 51-R 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, the initial advertising for of the property for sale has been determined to be insufficient, and a second advertisement for sale has been undertaken; and

WHEREAS, Dearborn Land Investment, LLC, an Ohio limited liability company submitted a bid of \$77,000.00 in response to the second advertisement, which bid was accompanied by the required down payment; and

WHEREAS, Dearborn Land Investment, LLC has informed the Village that to undertake the necessary due diligence a purchase agreement must be approved at this time.

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 the advertisement for bids the offer of Dearborn Land Investment, LLC in the amount of \$77,000.00 for the property located at the intersection of Maple Grove Road and North Main Street and known as LS 51-R in the Village of Windham, Ohio is determined to be 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: 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 Four: This 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 specifically necessary to assist Dearborn Land Investment, LLC in achieving economic development of land in the Village of Windham.

Passed in Council as an emergency on November 12, 2019.

Vote of Council: Ayes: 5
 Nays: 0

ATTEST:



Fiscal Officer, Cheree Taylor

APPROVED:



Mayor, Scott Garrett

APPROVED AS TO FORM:



Village Solicitor, Thomas Reitz

REAL ESTATE PURCHASE AGREEMENT

This Agreement is made as of the Acceptance Date (defined in Paragraph 2) by and between VILLAGE OF WINDHAM, a municipality ("Seller"), and DEARBORN LAND INVESTMENT, LLC, an Ohio limited liability company, or its nominee or assignee ("Buyer").

1. Property. Seller owns and desires to sell to Buyer, and Buyer desires to purchase from Seller, the 1.53± acres of real property located on N. Main Street, Village of Windham, Portage County, Ohio, and identified by Tax Parcel Number 41-057-10-00-095-001, as depicted on Exhibit "A" and known as Lot SL 51-R, attached hereto and made a part hereof, together with all improvements now located on or in such real property and all rights, privileges, and easements appurtenant to such real property, and all of Seller's rights of ingress and egress to from and the Lot SL 51-R across any adjacent streets, alleys and rights of way owned by the Seller (collectively, the "Property"), on the terms and conditions contained in this Agreement.

2. Purchase Price. The purchase price for the Property shall be \$77,000. Earnest money of \$2,500 (the "First Deposit") will be deposited with the Village of Windham Fiscal Officer upon Buyer's execution of this Agreement and shall be applied to the purchase price. Subsequent deposits as described herein shall be paid to First American Title Insurance Company, Skylight Office Tower, 1660 West Second Street, Suite 700, Cleveland, Ohio 44113, Phone: (216) 802-3502, Facsimile Number: (714) 481-2529, Email: rgroetsch@firstam.com, Attn: Rebecca S. Groetsch (the "Escrow Agent"). For purposes of this Agreement, if Seller approves this Agreement, the "Acceptance Date" shall be November 15, 2019. If Seller rejects the Agreement, Seller shall notify Buyer, and Seller shall return the First Deposit to Buyer within ten (10) days after Seller's disapproval of this Agreement, and the Agreement shall be terminated.

3. Title Defects.

(a) Buyer will order a commitment for an owner's policy of title insurance during the First Review Period (defined in Paragraph 5) with respect to the Property (the "Commitment"). The Commitment shall be in a form satisfactory to Buyer and shall commit to insure good and marketable title in fee simple, free and clear of all liens, encumbrances, easements, conditions or restrictions, except those that are acceptable to Buyer ("Permitted Exception(s)").

(b) If an exception to title not acceptable to Buyer appears on the Commitment, Buyer shall give Seller notice of the exception within thirty (30) days after receipt of both the Commitment and a current survey of the Property. Seller shall have a reasonable period, not to exceed thirty (30) days after notice from Buyer (the "Cure Period"), to remove the exception. If Seller cannot do so within the Cure Period, then Buyer shall have the right (but not the obligation) to either (i) accept title to the Property subject to the exception, which shall then become a Permitted Exception, without reduction in the purchase price; or (ii) cancel and terminate this Agreement and receive a refund of all sums deposited pursuant to this Agreement. For purposes of clarification, in no event shall an exception that has been removed from the Commitment thereafter be deemed a Permitted Exception hereunder. Seller shall be required to remove at Closing (hereinafter defined) those exceptions that can be removed by paying an ascertainable sum of money such as mortgages, land contracts, liens, unpaid taxes, and special assessments.

4. Conveyance. Seller shall convey the Property to Buyer or its nominee by General Warranty Deed (the "Deed"), in recordable form, subject only to the Permitted Exceptions.

5. Closing. The closing of the purchase of the Property (the "Closing") shall be through escrow with Escrow Agent and shall occur within thirty (30) days after Buyer's delivery of a written closing notice to Seller and Escrow Agent. If the Closing Conditions (defined in Paragraph 7) have not been satisfied in Buyer's sole discretion by the end of the fourth (4th) calendar month following the Acceptance Date ("First Review Period"), Buyer may extend such Review Period for one (1) additional Review Period of four (4) calendar months (the "Second Review Period") by delivering written notice of such election to Seller and Escrow Agent and simultaneously delivering to Escrow Agent an additional earnest money deposit of \$2,500 for

such extension (the "Second Deposit"), which sum shall be applicable to the purchase price and, except in the event of Seller's default, or Buyer's determination that item (e) of Paragraph 7 cannot be satisfied, shall become nonrefundable upon the expiration of the associated Review Period. (The First Review Period and Second Review Period are sometimes hereinafter referred to collectively as the "Review Period". The First Deposit and Second Deposit are sometimes hereinafter referred to collectively as the "Deposits".) Buyer shall be entitled to further extend the Closing for one (1) period of one month by notifying Seller and Escrow Agent and simultaneously delivering to Escrow Agent an additional Deposit of \$500 for such extension, which sum shall be nonrefundable and applicable to the purchase price. If Buyer elects, prior to the expiration of the First Review Period, not to proceed under the Agreement, Buyer shall be entitled to terminate the Agreement, for any reason or for no reason, in which event the First Deposit shall be returned to Buyer by the Village of Windham Fiscal Officer.

6. Survey and Investigations. After the Acceptance Date, Buyer and its designated agents may enter the Property, at reasonable times, for the purpose of making surveys, inspecting the physical condition of the Property, and making soil and environmental tests or borings, provided that such operations are solely at Buyer's expense and do not damage the Property. Seller agrees to cooperate with Buyer in its investigations and in its efforts to satisfy any contingencies with respect to its development of the Project, including the execution of related documentation. Within ten (10) days after the Acceptance Date, Seller shall deliver to Buyer, without charge, copies of all information in its possession relating to the Property, including, without limitation, any leases encumbering the Property; surveys; utility location information; soil and engineering studies or reports; environmental or hazardous waste audits; notices of violation or noncompliance with any environmental or hazardous substance requirements; and any other reports, studies, site plans and development information pertaining to the Property.

7. Conditions. Notwithstanding anything to the contrary contained in this Agreement, if the following items (collectively, the "Closing Conditions") have not been satisfied in favor of and to Buyer's complete satisfaction, as determined by Buyer at any time prior to the Closing, Buyer shall be entitled to terminate this Agreement, whereupon all refundable monies deposited by Buyer pursuant to this Agreement shall be returned to Buyer and monies rendered non-refundable shall be remitted to Seller. Said return and/or release shall be initiated by Buyer's written notice to Seller and Escrow Agent in accordance with Paragraph 15 and, within seven (7) days thereafter, Escrow Agent shall disburse the Deposits pursuant to the previous sentence and the parties hereto shall thereafter be released from any and all obligations under this Agreement. The Closing Conditions are: (a) approval of the Property by any prospective tenant and/or assignee of Buyer (the "Project"); (b) obtaining financing for the Project upon terms and conditions acceptable to Buyer in Buyer's sole and absolute discretion; (c) acquiring all final, non-appealable, zoning, traffic, DOT Permits and any other land use designations, approvals and permits as are necessary or required by any governmental or quasi-governmental entities for Buyer's intended use of the Property, all as determined in Buyer's sole discretion, including the subdivision or lot split of Seller's parcel if required to create the Property; (d) availability and adequacy of utilities, either public or private; (e) absence of wetlands, hazardous wastes, or other adverse environmental or physical conditions; (f) annexation of the Property, if necessary; (g) approval from applicable governmental authorities of full access to N. Main Street from the Project; and (h) acquiring any necessary easements.

Notwithstanding anything to the contrary contained in this Agreement, with respect to item (e) contained in this Paragraph 7, in no event shall the Deposits be deemed nonrefundable until such time Buyer has completed all of its environmental investigations as necessary to determine if such Closing Condition has been satisfied, in its sole discretion.

8. Covenants of Seller.

(a) Seller, at its sole expense, shall deliver possession of the Property to Buyer at Closing, free from any rights of possession of anyone whomsoever.

(b) From and after the Acceptance Date, Seller shall not: (i) suffer or permit any third party to adversely affect Seller's title to or interest in the Property, and will not suffer or permit to be created any exceptions to the title of the Property other than the Permitted Exceptions; or (ii) enter into any contracts or agreements pertaining to the Property.

9. Representations and Warranties of Seller. In order to induce Buyer to enter into this Agreement, Seller represents and warrants to Buyer that: (a) fee simple ownership of the Property is vested solely in Seller and no other person or entity has any right, title, or interest in or to the Property; (b) no proceedings of any type (including condemnation or similar proceedings), to Seller's knowledge, are being contemplated against the Property or any part thereof; (c) except for the Leases, the Property is not subject to any leases (written or oral), unrecorded easements, options to purchase, rights of first purchase or refusal, or any other agreement or contract to use, lease, or purchase the Property; and (d) to the best of Seller's knowledge: (i) no hazardous substances have been stored or used on the Property, and (ii) there are presently no hazardous substances in, on, or under the Property. All representations and warranties contained in this Paragraph 9 or elsewhere in this Agreement shall be deemed remade as of Closing and shall survive Closing.

10. Provisions with Respect to Closing. On or before the date of Closing: (a) Seller shall deliver to Escrow Agent (i) the Deed, (ii) all necessary executed state, county and municipal real estate transfer declarations (if any), (iii) a "Seller's Affidavit", as required by the title insurer, (iv) a "Non-Foreign Seller Affidavit", in compliance with Section 1445 of the Internal Revenue Code, and (v), in the event Seller is a business entity, Seller's formation documents, incumbency certificate, and evidence of authority to consummate this Agreement; and (b) Buyer shall deliver to Escrow Agent the purchase price, less the Deposits and any other deductions permitted by this Agreement. Provided that both parties have timely delivered to Escrow Agent the foregoing items, the time provided for Closing in Paragraph 5 shall automatically extend for such time as the Escrow Agent reasonably needs to complete the Closing process (e.g., filing of deeds or other documents, obtaining governmental approval of legal descriptions, etc.).

11. Adjustments at Closing. Adjustments to the purchase price between Seller and Buyer shall be made by Escrow Agent for the following items, prorated on a per diem basis as of 11:59 p.m. of the day preceding the date of Closing: (a) real estate taxes and other state or city taxes, charges and assessments, not yet due and payable, on the basis of the calendar year for which the same are levied or assessed (if the rate of any such taxes, charges or assessments shall not be fixed before the date of the Closing, the adjustment thereof at the Closing shall be calculated in accordance with local custom) and there shall be no later re-prorations; and (b) water and sewer rents, fees, and charges with respect to the Property. Seller shall pay in full, by deduction from the purchase price, any assessments, either general or special, whether material or immaterial, for improvements completed prior to Closing, the amount of any stamp tax, state, county, or local transfer tax, and similar fees imposed upon the conveyance of real property by applicable law, any land use change tax or assessment, any rollback tax or other assessment due pursuant to any agricultural property tax recoupment program, the cost of an owner's policy of title insurance in the amount of the purchase price with respect to the Property, and one-half (1/2) of the escrow fee. All other fees, recording costs, charges or expenses incidental to the sale and transfer of the Property to Buyer, except as otherwise expressly provided herein, shall be paid according to the custom of real estate transactions consummated in the county in which the Property is located, as determined by Escrow Agent. All bills for utility services to the Property shall also be paid in full by Seller as of the Closing, and all such utility services shall be transferred by Seller into Buyer's name.

12. Waiver. The exercise (or failure to exercise) of any one of Buyer's rights or remedies under this Agreement shall not be deemed to be in lieu of, or a waiver of, any other right or remedy contained herein or provided by law, except to the extent inconsistent herewith.

13. Remedies.

(a) If Seller defaults in any of its obligations under this Agreement, then provided Buyer is not in default hereunder (and provided Buyer has notified Seller of the specific nature of the default and allowed Seller a ten (10) day period to cure such default (the "Remedy Period")), Buyer may either: (i) declare this Agreement terminated, in which event all the Deposits shall be returned to Buyer and thereafter all rights and obligations of the parties hereunder shall be terminated; or (ii) enforce specific performance of Seller's obligations under this Agreement.

(b) If Buyer defaults in any of its obligations under this Agreement, then provided Seller is not in default hereunder (and provided Seller has notified Buyer of the specific nature of the default and allowed Buyer the Remedy Period), Seller may declare this Agreement

terminated, in which event the Deposits shall be forfeited to Seller as liquidated damages and as Seller's sole and exclusive remedy, and all other rights and obligations of the parties hereunder shall be terminated.

14. Commissions. Seller represents that it has not dealt with any brokers and hereby agrees to indemnify and hold Buyer harmless with respect to any claim, including the cost of counsel fees, made by any real estate broker claiming entitlement to a commission on behalf of services alleged to have been performed on behalf of the Seller. Buyer represents that it has not dealt with any brokers and hereby agrees to indemnify and hold Seller harmless with respect to any claim, including the cost of counsel fees, made by any real estate broker claiming entitlement to a commission on behalf of services alleged to have been performed on behalf of the Buyer.

15. Notices. All notices, requests, waivers, and other communications under this Agreement shall be in writing and shall be deemed properly served upon delivery (a) by hand; (b) by sender to the applicable carrier if sent postage prepaid by United States Registered or Certified Mail, Return Receipt Requested; (c) by sender to a nationally recognized overnight express mail courier; or (d) by electronic transmission to the following email addresses or facsimile numbers (with notification of receipt):

(a) If intended for Buyer: to Dearborn Land Investment, LLC, 14600 Detroit Avenue, Suite 1500, Lakewood, Ohio 44107, Email: cofftermatt@zarembagroup.com, Facsimile Number: (216) 227-1786, Attn: Carrie Offtermatt, Real Estate Transaction Manager, with a copy to Escrow Agent;

(b) If intended for Seller: to Village of Windham, c/o Deborah Blewitt, Village Administrator, 9621 E. Center St., Windham, OH 44288, Email: administrator@windhamvillage.com, and to Thomas Reitz, Village Solicitor, 215 East Garfield Road, Suite 230, Aurora OH, 44202, Email treitz@rpsohiolaw.com, Facsimile Number: 330 562-9540 with a copy to Escrow Agent;

or to such other addresses or facsimile numbers as Seller or Buyer shall have given notice of to the other as herein provided.

16. Time Periods. Any time period provided for herein which shall end on a weekend or legal holiday shall extend to 5:00 p.m. of the next business day.

17. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

18. Assignment. Seller hereby agrees that Buyer may, at any time after the date hereof, assign or otherwise transfer all of Buyer's right, title and interest in and to this Agreement.

19. Married Seller. If Seller is married, Seller's spouse shall also sign this Agreement and join in the conveyance.

20. Escrow Agreement. Escrow Agent joins herein for the purpose of agreeing to serve as Escrow Agent, subject to the provisions of this Agreement. By signing this Agreement, Seller and Buyer agree that:

(a) in performing any of its duties hereunder, Escrow Agent shall not be liable for any loss, costs or damage which it may incur as a result of serving as Escrow Agent, except to the extent arising out of its willful default or gross negligence;

(b) Seller and Buyer shall each indemnify and hold harmless Escrow Agent against any and all losses, claims, damages, liabilities and expenses, including, without limitation, reasonable attorneys' fees and disbursements, which may be incurred by Escrow Agent in connection with its serving as Escrow Agent hereunder, except to the extent resulting from Escrow Agent's willful default or gross negligence in performing its obligations hereunder;

(c) in the event of dispute between any of the parties hereto, sufficient in the discretion of Escrow Agent to justify its doing so, Escrow Agent shall be entitled to tender into the registry or custody of any court of competent jurisdiction all money or property held by it under the terms of

this Agreement and to file such legal pleadings as it deems appropriate and upon receipt of said money or property by such court, Escrow Agent shall be discharged from any and all further responsibility with respect to this Agreement. Escrow Agent shall be entitled to withdraw from the Escrow Fund its reasonable costs of filing such pleadings;

(d) the parties agree and acknowledge that the Escrow Agent has no liability in connection with Deposit in the event of failure or insolvency of the financial institution in which the Deposit is deposited; and

(e) in its capacity as Escrow Agent, Escrow Agent shall not be responsible for the genuineness or validity of any security, instrument, document or item deposited with it, and shall have no responsibility other than to faithfully follow the instructions contained herein, and it is fully protected in acting in accordance with any written instrument given to it hereunder by any of the parties hereto and believed by Escrow Agent to have been signed by the proper person. Escrow Agent may assume that any person purporting to give any notice hereunder and representing that they have authority to do so has been duly authorized to do so.

21. Original Agreement. The parties hereby agree that a facsimile or electronic mail copy of this Agreement may be transmitted by either party and deemed an original for purposes hereof.

22. Like Kind Exchange. Each party agrees to cooperate with the other, at the requesting party's election (and at the requesting party's cost), in effecting a tax-deferred, like-kind exchange with respect to the Property, pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended.

IN WITNESS WHEREOF, the parties have executed this Agreement.

WITNESSES:

SELLER:

VILLAGE OF WINDHAM

By: _____

Its: Mayor _____

By: _____

Its: Fiscal Officer _____

Federal Employer Identification Number

Date: _____

BUYER:

DEARBORN LAND INVESTMENT, LLC,
an Ohio limited liability company

By: _____

Al Sulin
Vice President

Date: 10-23-2019

Susan K. Albers
Susan K. Albers

Doris E. Ardo
Doris E. Ardo

ESCROW ACKNOWLEDGEMENT
(with respect to Paragraph 20 hereof only):

FIRST AMERICAN TITLE INSURANCE
COMPANY

By: _____
Rebecca S. Groetsch

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EXHIBIT A

