

ORDINANCE NO. 55-13

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A PURCHASE AND SALE AGREEMENT WITH THE MARY ANN BERTHOLD REVOCABLE LIVING TRUST FOR APPROXIMATELY 18.5 ACRES OF REAL ESTATE LOCATED AT 4149 CASE ROAD, AVON, OHIO AND DECLARING AN EMERGENCY

WHEREAS, considering the rapid growth of the City and the need to acquire additional lands for public use, the Mayor seeks authorization from Council to enter into a Purchase Agreement with The Mary Ann Berthold Revocable Living Trust for the acquisition of 18.5 acres of land located behind 4149 Case Road and adjacent to Veterans Memorial Park in the City of Avon, Ohio; and

WHEREAS, Council has had an opportunity to meet with the Mayor and discuss the purchase of the subject property, including the terms of the transaction as set forth in the proposed Purchase and Sale Agreement; and

WHEREAS, Council deems it to be in the best interests of the health, safety and welfare of the Community that the City acquire the land being offered for sale behind 4149 Case Road and adjacent to Veterans Memorial Park for use as additional parkland.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, COUNTY OF LORAIN AND STATE OF OHIO:

Section 1 - That the Mayor is hereby authorized to enter into a Purchase and Sale Agreement with The Mary Ann Berthold Revocable Living Trust for the acquisition of 18.5 acres of land located behind 4149 Case Road and adjacent to Veterans Memorial Park in the City of Avon, Ohio. Said Agreement is incorporated herein and marked as "Exhibit A".

Section 2 - Council hereby authorizes payment to be made pursuant to directives of the Finance Director from the Park Development Fund No. 251 in an amount equal to that set forth in the Purchase Agreement. The Finance Director is hereby authorized to transfer funds from the Recreation Income Tax Fund No. 240 to the Park Development Fund No. 251 in said amount. Further, the Finance Director is authorized to increase the appropriation by a reasonable amount to cover engineering, title and legal fees associated with this project.

Section 3 - That it is found and determined that all formal actions of the Council of the City of Avon concerning and relating to the adoption of this Ordinance were taken in an open meeting of the Council of the City of Avon and that all deliberations of this City's Council and any of its committees that resulted in those formal actions were in meetings open to the public, or otherwise in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4 - That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, safety and welfare of the citizens

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of the City of Avon, the immediate emergency being the necessity for the City to acquire additional land for public use; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: April 15, 2013 DATE SIGNED: April 15, 2013

By: Daniel S. Zegarac
Daniel S. Zegarac, Council President

DATE APPROVED BY THE MAYOR: April 15, 2013

James A. Smith
James A. Smith, Mayor

APPROVED AS TO FORM:

John A. Gasior
John A. Gasior, Law Director

ATTEST:

Ellen R. Young
Ellen R. Young
Clerk of Council

Posted: April 17, 2013
In Five Places as
Provided by Council

Prepared By:

John A. Gasior, Esq.
Law Director, City of Avon

PURCHASE AGREEMENT

This PURCHASE AGREEMENT (the 'Agreement') is made at Avon, Ohio, by and between the Mary Ann Berthold Revocable Living Trust, dated August 17, 2009 hereafter the "Trust" and/or the 'Seller' through Russell T. McLaughlin, its Successor Trustee ("Trustee"), and THE CITY OF AVON, OHIO, an Ohio municipal corporation, herein referred to as the 'Buyer' (all of whom are being collectively herein referred to as the 'Parties'), upon the following terms, provisions and conditions:

1. DESCRIPTION OF PROPERTY

Seller agrees to sell and convey to the Buyer and the Buyer agrees to purchase from Seller at the price and upon all the terms, provisions and conditions herein contained real property consisting of approximately 18.5 Acres of land labeled "Consolidation Parcel" on the attached Exhibit A" which is attached hereto and incorporated herein. The real property is currently in two parcels, bearing permanent parcels number 04-00-001-103-018 and 04-00-001-103-041. The property being sold and purchased shall be all of Parcel A (pp #04-00-001-103-041) as shown on "Exhibit A" together with approximately 11.3 Acres of land to be split from the property bearing permanent parcel number 04-00-001-103-018 the "split parcel", then consolidated with Parcel A to form the Consolidation Parcel. The sale and purchase shall include all rights, privileges and easements, if any, pertaining to said property. Once it becomes available, a legal description for the real property being sold and purchased shall be attached hereto and labeled "Exhibit B".

2. PRICE and TERMS OF PAYMENT

The total purchase price to be paid by the Buyer to the Seller for the property described in Paragraph 1 above shall be the sum of THREE HUNDRED SEVENTY THOUSAND DOLLARS (\$370,000.00), payable as follows:

- 1) the sum of FIVE THOUSAND DOLLARS (\$5,000.00) representing the Buyer's earnest money deposit shall be deposited into escrow with Miller Home Title, as escrow agent for the Parties;
- 2) upon the date of execution of this Agreement by the Buyer and credited toward the total purchase price at closing, and the sum of THREE HUNDRED SIXTY-FIVE THOUSAND DOLLARS (\$365,000.00), representing the balance of the purchase price due the Seller shall be deposited into escrow by the Buyer not less than three days prior to the closing date at the direction of the escrow agent.

3. CONDITIONS PRECEDENT

This Agreement and the obligation of the Buyer to complete and close this Agreement is subject to the satisfaction of the following conditions precedent prior to the closing date:

- a) receipt of a survey for the property described in Paragraph 1 acceptable to the Buyer and Seller. It shall be the obligation of the Buyer to order and pay the cost of the survey.
- b) receipt of an environmental site assessment report for the property described in Paragraph 1 acceptable to the Buyer in the event the Buyer conducts same. It shall be the obligation of the Buyer to order and pay the cost of an environmental site assessment report and to provide a copy to Seller.
- c) passage of an ordinance by Avon City Council authorizing the purchase of the property described in Paragraph 1 above at the price and upon all of the terms, provisions and conditions set forth in this Agreement.
- d) receipt by the Buyer of such municipal approvals from the City of Avon as may be required for the Buyer's intended use of the property, and
- e) receipt of a title commitment for the property acceptable to the Buyer. It shall be the Buyer's obligation to order a title commitment.

In the event any of the conditions precedent set forth in (a) through (e) above are not satisfied prior to the closing date, the Buyer may, upon written notice to the Seller, terminate this Agreement and upon such termination the Parties shall be mutually released from any further obligations of performance under the terms of this Agreement and the escrow agent shall return the earnest money deposit to the Buyer.

4. DEPOSIT OF FUNDS AND DOCUMENTS/APPOINTMENT OF ESCROW AGENT

All funds and documents necessary to complete this transaction shall be deposited into escrow within three (3) days prior to closing with Miller Home Title 5326 Detroit Rd Sheffield Village, OH 44035, which shall serve as escrow agent for this transaction.

The escrow agent shall serve subject to its standard conditions of acceptance of escrow.

5. TITLE EXAMINATION

The Buyer shall order a title examination of the real property described in paragraph 1 of this Agreement through Miller Home Title. Miller Home Title shall, within 10 days of receipt of the order, prepare and furnish to the Buyer and the Seller its written Title Commitment showing the results of its title examination of the property.

In the event the Buyer objects to any defects appearing in the title commitment as a result of the title examination, the Buyer shall notify the Seller and Miller Home Title of any such objections and the Seller shall have 60 days to cure any defects in title to the satisfaction of the Buyer. In the event the Seller fail or refuse to cure any defects in title objected to by the Buyer, the Buyer may, at its option, either: (a) accept title to the property subject to the defects which will be deemed as a waiver of the objections to title made by the Buyer, or (b) terminate this Agreement upon written notice to the Seller, and, upon such termination, the Parties shall be

mutually released from any further obligations of performance under this Agreement and the escrow agent shall return the earnest money deposit to the Buyer.

6. EVIDENCE OF TITLE

At closing, Seller shall deposit a fiduciary's deed into escrow conveying to the Buyer a good and marketable title with fiduciary covenants and subject to zoning ordinances, easements, if any, restrictions and conditions of record and taxes and assessments for the current half of the taxable year and thereafter.

7. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to the Buyer as follows:

- a) that the Seller is a Trust created by Mary Ann Berthold, and the undersigned is the Successor Trustee of the Trust, following the death of Mary Ann Berthold. The undersigned Trustee has no knowledge and makes no representations or warranties concerning the condition of the real property being sold and purchased. It is understood that the Buyer shall conduct its own inspection of the property and shall rely solely upon its own due diligence in determining the condition of the property and its fitness for the use intended by the Buyer.
- b) the aforementioned Trust is the fee simple owner of the property described in Exhibits A and B, that there are no leases affecting the property or tenants in possession of the property,
- c) the Trustee has not received notice of any pending or threatened condemnation proceedings or proposed taking of part of all of the property by any governmental authority,
- d) that, to the best of the undersigned Trustee's knowledge, no notice has been received from any governmental authority that the property is in violation of any laws, ordinances, statutes, rules or regulations pertaining to the property or any part thereof,
- e) that the undersigned Trustee has not been notified of and has no knowledge of any underground storage tanks, asbestos, environmental contamination or other environmentally hazardous waste which would require remediation under Federal and/or State laws, and

- f) that, to the best of Trustee's knowledge, there are no legal actions or proceedings which would inhibit the delay or closing of this transaction in accordance with the terms and provisions of this Agreement.

8. TITLE INSURANCE

At closing, Miller Home Title shall issue to the Buyer an Owner's Fee policy of title insurance in the full amount of the purchase price as evidence that the Buyer has received good and marketable title to the property free and clear of all liens and encumbrances whatsoever except zoning ordinances, easements, if any, restrictions and conditions of record and taxes and assessments, both general and special, for the current half of the taxable year and thereafter.

9. CLOSING COSTS

At closing, the escrow agent shall prorate all real estate taxes and assessments between the Parties as of the date of closing based on the figures appearing on the latest available tax duplicate which shall be reflected on the HUD-1 Settlement Statement to be prepared by the escrow agent. The HUD-1 Settlement Statement shall also reflect a summary of the costs to the Parties for closing this transaction, which shall be as follows:

TO THE SELLER:

- a) one half the cost of the title examination, title commitment and premium charge for an Owner's Fee Policy of title insurance in the amount of the purchase price,
- b) one-half of the escrow fee for services of the escrow agent,
- c) the amount due the Buyer for proration of the real estate taxes and assessments

TO THE BUYER:

- a) one half the cost of the title examination, title commitment and premium charge for an Owner's Fee Policy of title insurance in the amount of the purchase price,
- b) one-half of the escrow fee for services of the escrow agent,
- c) the recording fee for the warranty deed.
- d) the attorney fees for preparation of the Purchase Agreement and the warranty deed
- e) the cost of the survey, split and consolidation of the properties to Bramhall Engineering

10. CLOSING DATE

The closing date shall be within three (3) days from the date that the Buyer notifies the escrow agent that all of the conditions precedent stated in Paragraph 3 have been satisfied and provided that the escrow agent is in receipt of all funds and documents required to close this transaction, but not later than July 1, 2013 unless the Closing Date is extended by mutual agreement of the parties. If closing does not occur on or before that date, either party may terminate this agreement. At closing, the escrow agent shall record the warranty deed transferring title to the property to the Buyer with the Lorain County Recorder.

11. DEFAULT

In the event either party defaults in the performance of its obligations under this Agreement and this transaction fails to close, the non-defaulting party shall have all rights and remedies at law or in equity to proceed against the defaulting party for specific performance of this Agreement and damages resulting from the breach of this Agreement by the defaulting party.

12. GOVERNING LAW

This Agreement and all of its terms and provision shall be construed in accordance with and governed by the applicable laws of the State of Ohio .

13. BINDING EFFECT

This Agreement and all of its terms and provisions shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns.

(The remainder of this page is left intentionally blank)

IN WITNESS WHEREOF, the Seller and Buyer have signed this Agreement on the dates and in the presences of the witness set forth below.

In the presence of:

[Signature]
WITNESS

Mary Ann Berthold Revocable Lvg. Trust
[Signature]
Russell T. McLaughlin, Successor Trustee

William Berthold
NAME PRINTED

Date signed: _____

Charlene Camp
WITNESS

Charlene Camp
NAME PRINTED

THE CITY OF AVON

[Signature]
WITNESS

[Signature]
JAMES A. SMITH, MAYOR

John A. Gasior
NAME PRINTED

Date signed: 4/15/2013

Daniel S. Zegarac
WITNESS

DANIEL S. ZEGARAC
NAME PRINTED

Prepared by:
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