

REAL ESTATE PURCHASE CONTRACT

The undersigned Buyer offers to purchase from the Seller, the following described real estate including, without limitation, all improvements, fixtures, oil and gas rights, appurtenant rights, privileges, and easements located in the County of Pickaway, and the State of Ohio, being approximately twenty (20) acres of real estate more or less, and further described in the attached **Exhibit A** (the "Property"), on the terms and conditions set forth below.

RECITALS

WHEREAS, Buyer is a municipal government as provided for under Ohio law;

WHEREAS, Buyer desires to acquire the Property for public purposes, including but not limited to providing green space and recreational facilities for its citizens; and

WHEREAS, Seller believes the Property, at its highest and best use, has a fair market value in excess of its purchase price hereunder; and

WHEREAS, Buyer cannot or will not pay Seller a price which reflects the Sellers' opinion as to the fair market value of the Property; and

WHEREAS, Buyer has the legal right to acquire the Property through eminent domain; and

WHEREAS, Seller and Buyer both desire to avoid a condemnation proceeding with respect to the Property; and

WHEREAS, Seller has determined it is willing to make a charitable contribution to Buyer, through a "bargain sale" of the Property.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto intending to be legally bound, covenant and agree as follows:

1. **PRICE AND TERMS:** The purchase price of the Property shall be three hundred thousand dollars (\$300,000) (the "Purchase Price"), payable in cash at closing.

2. **CONTINGENCIES and ADDITIONAL TERMS:**

The Recitals set forth above are incorporated herein by reference.

The obligations under this contract remains subject to the approval of the Buyer's City Council and Mayor and all other governmental approvals, on or before September 30, 2018. If this condition is not satisfied or waived on or before September 30, 2018, this contract will terminate and the parties shall have no further rights or obligations hereunder.

The Buyer is purchasing the Property subject to the rights of Seller's current tenant, AEP/Ohio Power, under its yard storage use agreement ("Use Agreement") for approximately five acres of the Property, the term of which runs through December 31, 2019, a copy of which has been provided to Buyer. The Seller will retain and receive any and all remaining payments under the Use Agreement along with the ancillary rights thereunder as to any agreed upon excess gravel remaining on the Property (gravel in excess of that left by AEP/Ohio Power that is necessary for a parking lot for future use by the Buyer).

3. **AS IS, WHERE IS:** The Buyer is purchasing the Property entirely on an as is, where is basis.

4. **DAMAGE OR DESTRUCTION OF PROPERTY:** Risk of physical loss to the Property and improvements, if any, shall be borne by Seller until closing, provided that if any Property covered by this contract shall be substantially damaged or destroyed before this transaction is closed, Buyer may (a) proceed with the transaction and be entitled to all insurance money, if any, payable to Seller under all policies covering the Property, or (b) rescind the contract and thereby release all parties from liability hereunder by giving written notice to Seller and Broker within ten (10) days after Buyer has written notice of such damage or destruction. Failure by Buyer to so notify Seller and Broker shall constitute an election to proceed with the transaction.

5. **EVIDENCE OF TITLE:** Buyer shall furnish and pay for an owner's title insurance commitment and policy in the amount of the Purchase Price. The title evidence shall be certified to within thirty (3) days prior to closing with endorsement not before 8:00 a.m. on the business day prior to the date of closing, all in accordance with the standards of the Columbus Bar Association, and shall show in Seller marketable title in fee simple free and clear of all liens and encumbrances except: (a) those created by or assumed by Buyer; (b) those specifically set forth in this contract; (c) zoning ordinances; (d) legal highway; and (e) covenants, restrictions, conditions and easements of record that do not unreasonably interfere with present lawful use, (or Buyer's intended use which is for recreational purposes) ("Permitted Exceptions"). If title to all or part of real estate is unmarketable, as determined by Ohio law with reference to the Ohio State Bar Association's Standards of Title Examination, or is subject to liens, encumbrances, easements, conditions, restrictions or encroachments other than those excepted in this contract, Seller shall, within thirty (30) days after a written notice thereof, remedy or remove any such defect, lien, encumbrance, easement, condition, restriction or encroachment or obtain title insurance without exception thereof. In the event Seller is unable to remedy to insure against the defect within the thirty (30) day period, the Buyer may declare this contract null and void. At closing, Seller shall sign an affidavit with respect to off-record title matters in accordance with the community custom.

6. **DEED:** Seller shall convey to Buyer a good and marketable title in fee simple to the Property by transferable and recordable warranty deed signed by all parties necessary,

including all parties required by the Commitment, free and clear of all dower, mortgages, liens and monetary encumbrances, except the Permitted Exceptions.

7. **TAXES AND ASSESSMENTS:** At closing, Seller shall pay or credit on the Purchase Price all delinquent taxes, including penalty and interest, all assessments that are a lien on the date of contract for years prior to the year of closing, if applicable. At closing, Seller shall also pay or credit on the Purchase Price all other unpaid real estate taxes that are a lien for years prior to closing and a portion of such taxes for years prior to closing, prorated through date of closing and based on a 365-day year and, if undetermined, on most recent available tax rate and valuation, giving effect to applicable exemptions, recently voted millage, change in valuation, etc., whether or not certified. Such proration shall be final. With regard to further assessments, Seller warrants that, as of the acceptance hereof, no improvements or services to the site or area have been installed or furnished that would result in the costs being assessed against the Property, and no written notification has been received by Seller from public authority or owner's association of future improvements that would result in costs being assessed against the Property. Buyer shall pay any CAUV recapture resulting from the closing of this transaction.

8. **BUYER'S EXAMINATION:** BUYER IS RELYING SOLELY UPON BUYER'S OWN EXAMINATION OF THE PROPERTY AND INSPECTIONS HEREIN REQUIRED, IF ANY, FOR ITS PHYSICAL CONDITION, CHARACTER, AND SUITABILITY FOR BUYER'S INTENDED USE AND IS NOT RELYING UPON ANY REPRESENTATIONS BY THE SELLER EXCEPT FOR THOSE MADE BY SELLER DIRECTLY TO THE BUYER IN WRITING.

9. **CLOSING COSTS:** At closing, Seller shall pay transfer taxes and deed preparation. Except as otherwise provided for herein, all Closing costs of this transaction shall be borne by the Buyer.

10. **CLOSING:** This contract shall be performed and this transaction closed on or before October 31, 2018 unless the parties agree in writing to an extension. Subject to the terms of the Use Agreement, the Buyer is entitled to possession at closing unless otherwise specified.

11. **IRC 1031/1033 LIKE KIND EXCHANGE:** If requested by Seller, Buyer will cooperate in effectuating the transaction contemplated by this Contract as a like kind exchange through a qualified intermediary in accordance with Section 1031 and/or pursuant to the provisions of 1033 of the Internal Revenue Code, as amended; provided, however, Buyer shall have no obligation to incur any costs in connection therewith or to accept title to any exchange property. Any and all necessary documentation to facilitate any such like kind exchange shall be prepared by or on behalf of Seller, at Seller's expense. Any documentation that requires Buyer's signature shall be subject to its reasonable approval.

12. **NO MERGER:** All warranties, representations and covenants contained herein shall survive the closing of the purchase and sale of the Property, and shall not be deemed to have merged with the deed of conveyance in this transaction.

13. **SUCCESSORS AND ASSIGNS:** The terms of this Contract shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

14. **CONSTRUCTION OF CONTRACT:** This Contract shall be construed and enforced in accordance with the laws of the State of Ohio, being the State where the Property is located and where this Contract has been drawn, executed and is to be performed. Whenever the singular number is used herein, the same shall include the plural where appropriate, and the words of any gender shall include any other genders where appropriate. Time is of the essence in all provisions of this Contract. Captions contained herein are inserted only for the purpose of convenient reference, and in no way define, limit or describe the scope of this Contract or any part hereof.

15. **ENTIRE AGREEMENT:** This Contract embodies the entire agreement between Seller and Buyer and shall not be modified, changed or altered in any respect, except in writing, executed in the same manner as this Contract by Buyer and Seller.

16. **DUPLICATE ORIGINALS:** This Contract may be executed in one or more counterparts, each of which shall be deemed a duplicate original and all of them shall constitute one and the same Contract; provided, that, it shall only be necessary to produce one duplicate of such Contract for proof.

17. **DRAINAGE/TILE LINES:** Buyer agrees that it shall either repair any and all drainage tiles and/or water ways that are damaged or impeded in connection with its development or use of the Property.

18. **ADDITIONAL DOCUMENTS:** The parties agree to execute any and all additional documents and/or instruments necessary to carry out the terms of this Contract or as may be reasonably required by any closing agent or title company. The costs of such additional documentation shall be borne by the party on whose behalf the documents are prepared.

19. **SEVERABILITY:** In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provisions of this Contract, and this Contract shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

20. **BROKER ACKNOWLEDGEMENT:** Seller and Buyer acknowledge that there are no real estate Broker(s) or agents involved in this transaction and will indemnify the other party hereto for any party claiming a fee on this transaction as a result of their actions.

[SIGNATURES ON NEXT PAGE]

BUYER:

THE CITY OF CIRCLEVILLE

By: Deborah R. McLean

Title: MAYOR, CITY OF CIRCLEVILLE

Buyer hereby makes the foregoing offer this ____ day of February, 2019.

SELLERS:

CARLY RHOADS NEFF, BRENT RHOADS AND BRETT RHOADS, AS TRUSTEES, OF
THE IRREVOCABLE TRUST AGREEMENT OF LUROSE RHOADS u/t/d DECEMBER 2nd,
2002, AS AMENDED

Carly Rhoads Neff
Carly Rhoads Neff, Trustee

Brent Rhoads
Brent Rhoads, Trustee

Brett Rhoads
Brett Rhoads, Trustee

Sellers agree to and accepts the foregoing offer this ____ day of February, 2019.

EXHIBIT A

Legal Description