

RESOLUTION APPROVING THE REAL ESTATE SALE AGREEMENT BY AND BETWEEN ASHTABULA COUNTY AND ASHTABULA CITY THROUGH ASHTABULA CITY COUNCIL FOR THE PURCHASE OF PROPERTY AT 4717 MAIN AVENUE, ASHTABULA CITY

WHEREAS, the Ashtabula County Board of Commissioners desire to purchase a building located at 4717 Main Avenue, Ashtabula, Ohio 44004; and

WHEREAS, a purchase agreement has been presented for the approval of the Board, to-wit:

Property Location: 4717 Main Avenue, Ashtabula, Ohio 44004

Buyer: Ashtabula County Board of Commissioners, 25 W. Jefferson St., Jefferson, OH 44047

Sellers: Ashtabula City by and through Ashtabula City Council, 4717 Main Avenue, Ashtabula, OH 44004

Purchase Price: \$1,100,000.00 (One Million One Hundred Thousand Dollars) as follows: \$700,000 at execution of agreement and \$400,000 at closing

Term: closing November 30, 2023

THEREFORE, BE IT RESOLVED, By the Board of Commissioners of Ashtabula County, Ohio that the purchase agreement as noted above, is hereby approved with the copy of said Agreement now on file in this office.

BE IT FURTHER RESOLVED that the President of the Board, on behalf of the Board of Commissioners of Ashtabula County, is authorized to execute any and all necessary documents.

**ASHTABULA COUNTY COMMISSIONERS
CERTIFICATION PAGE**

Resolution No. 2023-274

May 16, 2023

RESOLUTION APPROVING THE REAL ESTATE SALE AGREEMENT BY AND BETWEEN ASHTABULA COUNTY AND ASHTABULA CITY THROUGH ASHTABULA CITY COUNCIL FOR THE PURCHASE OF PROPERTY AT 4717 MAIN AVENUE, ASHTABULA CITY

Upon the motion of J.P. Ducro IV, seconded by Casey R. Kozlowski.

VOTE:

**Casey R. Kozlowski
Kathryn L. Whittington
J.P. Ducro IV**

**Aye
Absent
Aye**

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon and duly passed by the Board of County Commissioners of Ashtabula County, Ohio, on the date noted above.



Lisa Hawkins, Clerk of the Board
Board of County Commissioners
Ashtabula County, Ohio

AGREEMENT

1. **THE PARTIES.** This Commercial Real Estate Purchase Agreement ("Agreement") made on May 16, 2023 ("Agreement Date"), between:

Ashtabula County, by and through the Ashtabula County Board of Commissioners ("Buyer") with a mailing address of 25 West Jefferson St., Jefferson, Ohio 44047, who agrees to buy, and Ashtabula City, by and through the Ashtabula City Council ("Seller") with a mailing address of 4717 Main Avenue, Ashtabula, Ohio 44004, who agrees to sell and convey real and personal property as described in Sections II & III. Buyer and Seller shall be collectively known as the "Parties."

2. **LEGAL DESCRIPTION.** The real property along with improvements and fixtures thereon and with all appurtenant rights, privileges, and easements is best described as: (check one)

Street Address: 4717 Main Avenue, Ashtabula, Ohio 44004

Tax Parcel Information (i.e., "Parcel ID" or "Tax Map & Lot"): 05-206-00-001-00 and 05-206-00-002-00

Zoning Classification as set forth in the local zoning ordinance: C-2 General Business

Water Service: AQUA Ohio

Sewer Service: Ashtabula City

Other Description:

Property is subject to the following leases:

Key Bank – to be assigned to Buyer

Cadence Care (previously, Homes for Kids) – to be assigned to Buyer

Property is subject to the following service contracts:

HVAC – Ziegler Heating Company

Elevator maintenance – ThyssenKrupp Elevator

Rugs/Mats - Cintas

3. **PERSONAL PROPERTY.** It is possible for certain items of personal property to be so integrated into the Property that they become fixtures and will be regarded as part of the Property and therefore included in a sale. In addition to the real property described herein, the Seller shall include all existing items permanently installed in the Property, free of liens, including plumbing; heating; HVAC equipment; and lighting fixtures.

The real property and any personal property shall be collectively known as the "Property".

4. **PURCHASE PRICE.** The Buyer agrees to purchase the Property by payment of \$1,100,000.00 (One Million One Hundred Thousand Dollars) as follows: \$700,000 at execution of agreement and \$400,000 at closing.

All Cash Offer. No loan or financing of any kind is required in order to purchase the Property.

5. **EARNEST MONEY DEPOSIT.** At the time of execution of this agreement, the Buyer agrees to make a payment in the amount of \$700,000 as consideration ("Earnest Money"). The Earnest Money shall be applied to the Purchase Price. The deposit is not required to be placed in a separate trust or escrow account and will be immediately available to Seller.

Return of Deposit. Unless otherwise specified in this Agreement, in the event any condition of this Agreement is not met and the Buyer has fulfilled any required notice obligation in a timely manner regarding the condition having not been met, the Earnest Money shall be returned in accordance with Ohio law, less any money expended by Seller in good faith for the purchase and renovation of new office space for the City of Ashtabula.

6. **DUE DILIGENCE.** Buyer has been given the opportunity to inspect the Property (including fixtures and any personal property specifically listed herein) and agrees to purchase the Property in its present condition. Buyer's decision to purchase the Property is a result of Buyer's own inspections and determinations and not because of or in reliance on any representations made by Seller or any other party.

7. **SELLER'S DISCLOSURES.** In order to meet the Buyer's obligations during the Inspection Period, the Seller shall be required to provide the following documents and records, to the extent they are within the possession or control of the Seller, at the Seller's sole cost and expense:

1. site plan
2. survey
3. previous title searches
4. commitments and title policies
5. as-built drawings
6. soil reports
7. environmental reports
8. permits
9. Key Bank Lease dated February 13, 1995
10. the Key Bank First Amendment and Additional Space Agreement dated January 23, 1996
11. any other leases pertaining to the Property

Seller shall be required to provide the aforementioned disclosures within five (5) calendar days after the Effective Date of this Agreement.

8. **TITLE.** Merchantable title shall be conveyed by warranty deed, subject to conditions, zoning, restrictions, leases, and easements of record, if any, which do not interfere with or restrict the existing use of the Property.
9. **SURVEY.** The Parties agree that:
- a. The Ashtabula County Engineer's Office has indicated that a survey is not necessary for the transfer of parcel #05-206-00-002-00.
 - b. If a survey is required for the transfer of parcel #05-206-00-001-00, a new survey shall be requested and provided to the Buyer at the expense of the Seller on or before closing.

10. **CURE PERIOD.** Prior to any claim for default being made, either the Buyer or Seller will have an opportunity to cure any alleged default. If either Buyer or Seller fails to comply with any provision of this Agreement, the other party will deliver written notice to the non-complying party specifying such non-compliance. The non-complying party shall have five (5) calendar days after delivery of such notice to cure the non-compliance.

11. **CLOSING.** The purchase of the Property shall be closed on November 30, 2023, at ____:____ AM PM ("Closing"). Any extension of the Closing must be agreed upon, in writing, by Buyer and Seller. Buyer shall pay the balance of the purchase price (\$500,000) at closing. Real estate taxes, rents, dues, fees, and expenses relating to the Property for the year in which the sale is closed shall be paid by the Seller and prorated as of the Closing. Any costs attributed to the Closing of the Property shall be the responsibility of Buyer.

Possession is to be delivered by deed, existing keys and physical possession to a vacant Property, except that portion subject to the existing leases with Key Bank and Cadence Care. The Property shall be free of debris, with all structures broom-clean.

12. **ASSIGNABILITY.** This Agreement is not assignable.

13. **NOTICES.** All notices shall be in writing and may be delivered by email, certified mail (with return receipt), or personal delivery. Such notices shall be sent to the respective Parties' as follows:

Buyer:
Janet Discher
Ashtabula County Commissioners
25 West Jefferson Street
Jefferson, OH 44047
jldischer@ashtabulacounty.us

Seller:
James M. Timonere
City of Ashtabula
4717 Main Avenue
Ashtabula, Ohio 44004
jim@cityofashtabula.com

14. **CONVEYANCE.** Upon performance by the Buyer of the closing obligations specified herein, the Seller shall convey marketable title of the Property to the Buyer by the deed specified in this Agreement, including, but not limited to, oil, gas, and other mineral rights, subject only to building and use restrictions, easements, and restrictions of record, if any.

15. **ENVIRONMENTAL WARRANTY, DISCLOSURES AND INDEMNIFICATION.** To the best of Seller's knowledge, there are no areas of the Property where hazardous substances or hazardous wastes, as such terms are defined by applicable Federal, State, and Local statutes and regulations, have been disposed of, released, or found. No claim has been made against Seller with regard to hazardous substances or wastes as set forth herein, and Seller is not aware that any such claim is current or ever has been threatened. Seller shall inform Buyer, to the best of Seller's knowledge, of any hazardous materials or release of any such materials into the environment, and of the existence of any underground structures or utilities which are or may be present on the Property.

16. **SELLER'S WARRANTIES, REPRESENTATIONS AND COVENANTS.** As an inducement to Buyer to enter into this Agreement and to purchase the Property, Seller warrants, represents, and covenants to Buyer, as follows:

a.) **Authority.** Seller (i) is a lawfully constituted entity, duly organized, validly existing, and in good standing under the laws in the State of Ohio or another State; (ii) has the authority and power to enter into this Agreement and to execute the transactions contemplated herein; and (iii) upon execution hereof will be legally obligated to Buyer in accordance with the terms and provisions of this Agreement.

b.) **Title and Characteristics of Property.** Seller, as of the date of execution of this Agreement, owns the Property in fee simple and has marketable and good title of public record and, in fact, the Property at Closing shall have the title status as described in this Agreement.

c.) **Conflicts.** The execution and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Seller at the Closing, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated herein, are consistent with and not in violation of, and will not create any adverse condition under any contract, agreement or other instrument to which Seller is a party, or any judicial order or judgment of any nature by which Seller is bound. At Closing, all necessary and appropriate action will have been taken by Seller authorizing and approving the execution of and entry into this Agreement, the execution and delivery by Seller of the documents and instruments to be executed by Seller at Closing, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the purchase and sale of the Property as contemplated herein.

d.) **Condemnation.** The Seller has received no notice of, nor is Seller aware of, any pending, threatened or contemplated action by any governmental authority or agency having the power of eminent domain, which might result in any part of the Property being taken by condemnation or conveyed in lieu thereof.

e.) **Litigation.** There is no action, suit or proceeding pending or, to Seller's knowledge, threatened by or against or affecting Seller or the Property, which does or will involve or affect the Property or title thereto. Seller will, promptly upon receiving any such notice or learning of any such contemplated or threatened action, give Buyer written notice thereof.

f.) **Assessments and Taxes.** No assessments have been made against any portion of the Property which are unpaid, whether or not they have become liens, and Seller shall notify Buyer of any such assessments which are brought to Seller's attention after the execution of this Agreement. The Seller will pay or cause to be paid promptly all City, State, and County ad valorem taxes and similar taxes and assessments, all sewer and water charges, and all other governmental charges levied or imposed upon or assessed against the Property which are due on or prior to the Closing.

g.) **Boundaries.** (i) There is no dispute involving or concerning the location of the lines and corners of the Property; (ii) to Seller's knowledge there are no encroachments on the Property and no portion of the Property is located within any "Special Flood Hazard Area" designated by the United States Department of Housing and Urban Development and/or Federal Emergency Management Agency, or in any area similarly designated by any agency or other governmental authority; and (iii) no portion of the Property is located within a watershed area imposing restrictions upon the use of the Property or any part thereof.

h.) No Violations. The Seller has received no notice there are any violations of State or Federal laws, municipal or county ordinances, or other legal regulations or requirements with respect to the Property, including those violations referenced in Paragraph VII above. The Seller has received no notice (oral or written) that any municipality or governmental or quasi-governmental authority has determined that there are such violations. In the event Seller receives notice of any such violations affecting the Property prior to the Closing, Seller shall promptly notify Buyer thereof, and shall promptly and diligently defend any prosecution thereof and take any and all necessary actions to eliminate said violations.

i.) Prior Options. No prior options or rights of first refusal have been granted by Seller to any third parties to purchase or lease any interest in the Property, or any part thereof, which are effective as of the execution date.

j.) Mechanics and Materialmen. At Closing, Seller will not be indebted to any contractor, laborer, mechanic, materialmen, architect, or engineer for work, labor, or services performed or rendered, or for materials supplied or furnished, in connection with the Property for which any person could claim a lien against the Property.

- 17. BUYER'S WARRANTIES, REPRESENTATIONS AND COVENANTS.** Buyer: (i) is a lawfully constituted entity, duly organized, validly existing, and in good standing under the laws of Ohio; (ii) has the authority and power to enter into this Agreement and to execute the transactions contemplated herein; and (iii) upon execution hereof will be legally obligated to Seller in accordance with the terms and provisions of this Agreement.

a.) Conflicts. The execution and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Buyer at the Closing, and the performance by Buyer of Buyer's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full execution of the purchase and sale of the Property as contemplated herein, are consistent with and not in violation of, and will not create any adverse condition under any contract, agreement or other instrument to which Buyer is a party, or any judicial order or judgment of any nature by which Buyer is bound. At Closing, all necessary and appropriate action will have been taken by Buyer authorizing and approving the execution of and entry into this Agreement, the execution and delivery by Buyer of the documents and instruments to be executed by Buyer at Closing, and the performance by Buyer of Buyer's duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the purchase and sale of the Property as contemplated herein.

- 18. SELLER'S DEFAULT.** If the sale and purchase of the Property contemplated by this Agreement fails on account of Seller's default or failure to perform hereunder, Buyer may, at Buyer's option and as its sole remedy, elect to either: (i) specifically enforce the terms hereof; or (ii) demand and be entitled to an immediate refund of the Earnest Money, in which case this Agreement shall terminate in full.

- 19. BUYER'S DEFAULT.** If the sale and purchase of the Property contemplated by this Agreement fails on account of Buyer's default hereunder, Seller shall be entitled, as its sole and exclusive remedy hereunder, to receipt of the Earnest Money amount as full and complete liquidated damages for such default of Buyer. The Parties hereby acknowledge that it is impossible to estimate more precisely the damages which might be suffered by Seller upon Buyer's default of this Agreement or any duty arising in connection or relating herewith. Seller's entitlement to and receipt of the Earnest Money is intended not as a penalty, but as full and complete liquidated damages. The right to retain such sums as full liquidated damages is

Seller's sole and exclusive remedy in the event of default or failure to perform hereunder by Buyer, and Seller hereby waives and releases any right to (and hereby covenants that it shall not) sue Buyer for any claims, injury, or loss arising from or in connection with this Agreement, including without limitation: (i) for specific performance of this Agreement; or (ii) to recover any damages in excess of such liquidated damages.

- 20. ATTORNEYS' FEES.** In any claim or controversy arising out of or relating to this Agreement, each party shall be responsible for their own attorneys' fees, costs, and expenses.
- 21. DAMAGE TO THE PROPERTY.** If the property is damaged, by fire or other casualty, after the Effective Date and before the Closing, the Seller will bear the risk of loss and the Buyer may cancel this Agreement without liability and the Earnest Money shall be returned to the Buyer. Alternatively, the Buyer will have the option of purchasing the Property at the agreed-upon Purchase Price and the Seller will credit the deductible, if any, and transfer to the Buyer at Closing any insurance proceeds or Seller's claim to any insurance proceeds payable for the damage. The Seller will cooperate with and assist the Buyer in collecting any such proceeds. The Seller shall not settle any insurance claim for damage caused by casualty without the consent of the Buyer.
- 22. OPERATION OF PROPERTY DURING AGREEMENT PERIOD.** The Seller will continue to operate the Property and any business conducted on the Property in the manner operated prior to the Agreement and will take no action that would adversely impact the Property, tenants, lender, or business, if any.

Seller shall continue to pay all utilities and daily maintenance costs until closing.

If damage occurs prior to closing, Buyer and Seller shall meet as soon as possible to mutually determine, in good faith, whether and to what extent any expenditure is necessary to repair the damage, if and the manner in which any such repair will be conducted, and if and the manner in which the costs are to be paid.

- 23. CLOSING PROCEDURE.** Unless otherwise agreed or stated herein, the Closing shall be in accordance with the laws located in the State of Ohio.
- a.) Possession and Occupancy.** The Seller will deliver possession and occupancy of the Property to the Buyer in the following phases:
- June 30, 2023 : basement**
- November 30, 2023 : entire building**
- The Seller shall provide access to all locks, including keys, remote controls, and any security/access codes, necessary to operate all locks, mailboxes, and security systems.**
- b.) Documents.** The Seller will provide: the deed, the bill of sale, mechanic's lien affidavit, originals of those assignable service and maintenance contracts that will be assumed by the Buyer after the Closing, letters to each service contractor from the Seller advising each of them of the sale of the Property, and if applicable, the transfer of its contract, and any assignable warranties or guarantees

received or held by the Seller from any manufacturer, contractor, subcontractor, or material supplier in connection with the Property; assignments of leases and updated rent roll; and letters notifying tenants of the change in ownership/rental agent. Seller will deliver a resolution of its City Council authorizing the sale and delivery of the deed and certification by the appropriate party certifying the resolution and setting forth facts showing the conveyance conforms to legal requirements.

c.) Taxes and Prorations. The real estate taxes, personal property taxes on any tangible personal property, bond payments assumed by the Buyer, interest, rents (based on actual collected rents), association dues, insurance premiums acceptable to Buyer, and operating expenses will be prorated through the day before Closing. If the amount of taxes for the current year cannot be ascertained, rates for the previous year will be used with due allowance being made for improvements and exemptions. Any tax proration based on an estimate will, at the request of either party, be readjusted upon receipt of the current year's tax bill; this provision will survive the Closing.

24. **RECORDING.** Buyer and Seller agree that before the recording of the deed can take place, funds provided shall be in one (1) of the following forms: cash, interbank electronic transfer, money order, certified check or cashier's check drawn on a financial institution located in the State of Ohio, or any above combination that permits the Seller to convert the deposit to cash no later than the next business day.
25. **ACCEPTANCE.** Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement. Therefore, by the Seller's authorization below, they accept the above offer and agree to sell the Property on the above terms and conditions.
26. **BINDING EFFECT.** This Agreement shall be for the benefit of, and be binding upon, the Parties, their heirs, successors, and legal representatives.
27. **AMENDMENT.** No modification or amendment of this Agreement shall be binding unless signed by both Buyer and Seller.
28. **SEVERABILITY.** In the event any provision or part of this Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Agreement, will be inoperative.
29. **DISPUTE RESOLUTION.** Buyer and Seller agree that if any dispute or difference of any kind (a "Dispute") arises between the Parties in connection with, or arising out of, this Agreement, the Seller and Purchaser shall attempt to settle such Dispute in the first instance, through mediation. Costs related to mediation shall be equitably shared between or among the Parties. If the Parties are unable to resolve the Dispute through mediations, the Courts of Common Pleas of Ashtabula County shall retain exclusive jurisdiction to resolve the Dispute between the Parties to the extent in which the parties cannot resolve the Dispute through mediation.
30. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof. This Agreement may be signed in two or more counterparts, all of which shall constitute one and the same writing.

- 31. **GOVERNING LAW.** This Agreement shall be interpreted in accordance with the laws in the State of Ohio ("Governing Law").
- 32. **EFFECTIVE DATE AND OFFER EXPIRATION.** Effective Date. The "Effective Date" of this Agreement is the date on which the last one of the Parties has signed this Agreement. Calendar days will be computed without including Saturday, Sunday, or national legal holidays. Any time period ending on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. local time of the next business day. Time is of the essence in this Agreement.

This offer to purchase the Property as outlined in this Agreement shall be deemed revoked, and the Earnest Money shall be returned, unless this Agreement is signed by Seller and a copy of this Agreement is personally given to the Buyer by _____, 20____, at ____:____ AM PM.

IN WITNESS WHEREOF, the Parties have indicated their acceptance of the terms of this Agreement by their signatures below on the dates indicated.

FOR ASHTABULA COUNTY BOARD
OF COMMISSIONERS


Casey R. Kozlowski, Board President

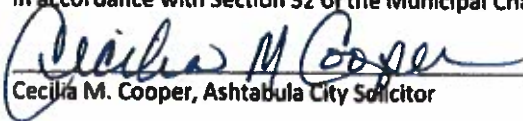
Date: 5-16-23

FOR CITY OF ASHTABULA


James M. Timonere, City Manager

Date: 5-17-2023

Approved as to legal form and correctness only this 17 day of May, 2023,
in accordance with Section 32 of the Municipal Charter of the City of Ashtabula, Ohio:


Cecilia M. Cooper, Ashtabula City Solicitor

Approved as to Legal Form Only:


Colleen M. O'Toole, Ashtabula County Prosecutor