

**AMENDED ORDINANCE 116-08**

By: Mark Masser

An Ordinance to authorize the Mayor of Bexley, Ohio or his designated representative, to enter into a contract of sale for the property commonly known as the "Bexley Tree Nursery", and declaring an emergency.

WHEREAS, the Council of the City of Bexley has determined that the "Bexley Tree Nursery" be sold; and

WHEREAS, an offer has been made to purchase said property from the City of Bexley for the sum of \$350,000; and

WHEREAS, said offer is attached to this Ordinance as Amended Exhibit A;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

Section 1. That this Council hereby directs and authorizes the Mayor to execute a contract for the sale of the "Bexley Tree Farm"; as it appears in Amended Exhibit A, attached, subject to all conditions and contingences found therein; and

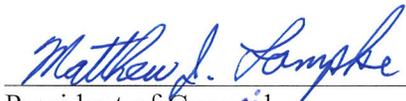
Section 2. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council; and

Section 3. That is Ordinance is hereby declared an emergency.

Passed 1-13, 2009

Attest:

  
Clerk of Council

  
President of Council

  
John M. Brennan, Mayor

First Reading 12-16-08  
Second Reading 1-6-09  
Third Reading 1-13-09

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "Agreement") is entered into as of the \_\_\_ day of \_\_\_\_\_, 2008, between THE CITY OF BEXLEY, an Ohio municipal corporation ("Seller") and Jubilee Brice LLC or its assignees, an Ohio limited liability company ("Buyer").

1. The Property. Seller hereby agrees to sell, convey and assign to Buyer, and Buyer hereby agrees to purchase, assume and accept from Seller, for the Purchase Price (as hereinafter defined) and on and subject to the terms and conditions herein set forth, the following: (a) the real property commonly known as the Bexley Tree Nursery and described as the 2.444+/- acre tract of land consisting of the unimproved Parkview Extension and extending from N. Parkview Avenue at Caroline Avenue north to the railroad right-of-way and from Alum Creek on the west to 2364 Caroline Avenue on the east, all in the City of Bexley, Ohio, as more particularly described in Exhibit A attached hereto and made a part hereof, (b) the triangular portion of right-of-way at the intersection of Carolina Avenue and Parkview Avenue as shown on Exhibit B attached hereto and made a part hereof, together with (c) all rights, privileges, easements and appurtenances belonging to any of the foregoing. (Collectively, (a) (b) and (c) above shall be referred to as the "Property.")

2. Purchase Price. The purchase price (the "Purchase Price") for the Property shall be Three Hundred Fifty Thousand Dollars (\$350,000.00), payable at Closing in cash, by cashier's or certified check or by wire transfer. Upon the execution of this Agreement by both Seller and Buyer, Buyer shall deposit \$25,000 (the "Earnest Money") with Seller. The Seller is authorized to deposit the Earnest Money in an interest bearing account. The Earnest Money shall be applied to the Purchase Price at Closing or returned to Buyer if this transaction does not close for reasons other than a default by Buyer.

3. Inspection by Buyer; Approvals. Buyer and Seller acknowledge all inspections and evaluations of the Property, other than with respect to condition of title, have been completed by Buyer prior to the execution of this Agreement. Other than as set forth in Section 4 with respect to condition of title and Section 8 with respect to the contingencies, Buyer's obligation to close is absolute, provided that the Property is in the same physical condition on the Closing Date (as defined below) as it is on the date of the execution of this Agreement by both parties.

4. Condition of Title. Within thirty (30) days after the execution of this Agreement by both parties, Buyer shall obtain and deliver to Seller an owner's title insurance commitment from a title company selected by the Buyer committing to insure in Buyer good and marketable title in the amount of the Purchase Price. The commitment shall be 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 the Buyer;

(b) zoning ordinances including the provisions of Chapter 1223 and 1264 of the Codified Ordinances of the City of Bexley; (c) legal right-of-ways; and (d) covenants, restrictions, conditions and easements of record which do not interfere with Buyer's use of the Property, in combination with Buyer's existing contiguous 3+ acres, for a single-family development consisting of twenty-four (24) condominium homes (the "Permitted Use"). Buyer shall pay any costs incurred in connection with the owner's title policy and any mortgagee's title insurance and for the cost of any endorsements it may require. If title to all or part of the Property is unmarketable, as determined by Ohio law with reference to the Ohio Bar Association's Standards of Title Examination, or is subject to liens, encumbrances, easements, conditions, restrictions or encroachments other than those set forth herein ("Title Defect"), then the Buyer shall notify Seller within 5 business days after the expiration of the initial thirty (30) day period and request that Seller cure any such Title Defect. If Seller elects not to or is not able to cure the Title Defect, Buyer shall determine prior to the Closing Date whether it will (i) terminate its obligations hereunder and have the Earnest Money returned; or (ii) waive such Title Defect and proceed to Closing without a reduction in the Purchase Price.

5. Condition of the Property. Other than as contained in any Seller's affidavits required for the purposes of title insurance to be delivered at Closing, Seller has not made, does not make and specifically negates and disclaims any representations, warranties or guaranties of any kind whatsoever, whether express or implied, oral or written, as to, concerning or with respect to the condition of the Property, it being the intent that the Property is being sold on an "AS-IS" basis. In making the decision to purchase the Property, Buyer has relied solely on its extensive inspections and reviews of the Property prior to the execution of this Agreement. Any representations or warranties as to merchantability or fitness for any particular purpose or use are hereby waived, except as expressly provided in this Agreement.

6. Closing. Unless this Agreement is terminated by Buyer pursuant to the terms hereof, the closing of the transaction contemplated by this Agreement (the "Closing") will occur within 30 days after the satisfaction of the contingencies set forth in Section 8 hereof (the "Closing Date"). At Buyer's option, the Closing will occur at the title company issuing title insurance for the Property, or at Seller's administrative offices, or such other address as Buyer and Seller agree. At Closing, Buyer shall deliver the Purchase Price and such other executed documents as shall be necessary as determined by Seller in Seller's reasonable discretion; and Seller shall deliver a limited warranty deed and such other executed documents as shall be necessary to transfer Title.

7. Expenses. Buyer shall be responsible for the payment of all costs associated with Buyer's purchase of the Property, including without limitation

inspection fees, title costs, recording charges, and expenses associated with obtaining necessary approvals ("Buyer's Expenses").

8. Buyer's Contingencies. Seller and Buyer acknowledge and agree that Buyer's obligations to consummate the transactions contemplated by this Agreement are contingent upon: (a) the existence of marketable title as set forth in Section 4 and (b) the passage of an ordinance approving this Contract (defined in Section 21) by City Council within twenty-one (21) days of Buyer's execution of this Agreement.

9. Conditions Precedent to Seller's Obligations to Close. Seller and Buyer acknowledge and agree that the Closing is contingent upon (a) Seller to maintain the property in its current condition and (b) Buyer causing the Dismissal with Prejudice of Franklin County Common Pleas Court Case Number 07-CVF-05-07006, Citizens Advocates for Parks, Plaintiff, Jay Schottenstein, Plaintiff, and the City of Bexley, Defendant.

10. Notices. Any notices, demands or other communications required or desired to be given by either party to the other pursuant to this Agreement shall be in writing and shall be either personally delivered, sent by nationally recognized overnight courier, sent by facsimile, or mailed through the United States Postal Service by registered or certified mail, postage prepaid, return receipt requested, to the parties at the following addresses:

**SELLER:**

2242 E. Main Street, Bexley, OH 43209

**BUYER:**

1800 Moler Road  
Columbus, Ohio 43207  
Attn. General Counsel

or such other address as any entity named above designates to the others in writing as aforesaid. Any notice given in a manner set forth above shall be deemed received as follows: (a) if personally delivered, the notice shall be deemed received on the date delivered, (b) if sent by nationally recognized overnight courier, the notice shall be deemed received on the first business day following the business day it is

sent, (c) if sent by facsimile, upon the sender's receipt of written telecopy confirmation and (d) if mailed through the United States Postal Service by registered or certified mail, postage prepaid, return receipt requested, the notice shall be deemed received upon execution of the return receipt.

11. Brokers. Seller and Buyer each hereby represents and warrants to the other that it has not dealt with any broker or finder in connection with the transaction contemplated hereby. Seller and Buyer each hereby agree to indemnify the other for any and all loss, cost, expense and liability (including attorneys' fees) incurred by reason of a claim for brokerage commission or finder's fee by any person or entity claiming to have been engaged by it. Notwithstanding anything in this Agreement to the contrary, this provision shall survive any termination of this Agreement.

12. Survival of Agreement. Unless expressly stated otherwise in this Agreement, the terms, conditions, and obligations of this Agreement shall survive the Closing for a period not to exceed one year.

13. Entire Agreement. This Agreement and all attachments hereto embody and constitute the entire understanding between the parties with respect to the transaction contemplated herein, and all prior or contemporaneous understandings, representations and statements, oral or written, are merged into this Agreement.

14. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto. This Agreement may not be assigned by Buyer without Seller's prior written consent, which shall not be unreasonably withheld or delayed.

15. Further Assurances. The parties each agree to do, execute, acknowledge and deliver all such further acts, instruments and assurances (including corporate resolutions) and to take all such further action before or after the Closing as shall be reasonably necessary to fully carry out the purpose and intent of this Agreement and to fully consummate and effect the transactions contemplated hereby.

16. Buyer's Representations. Buyer represents and warrants to Seller that:

(a) it has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder;

(b) this Agreement has been duly executed and delivered by the Buyer, and constitutes the valid and binding obligation of Buyer, enforceable against Buyer in accordance with the terms hereof;

(c) the execution, delivery and performance of this Agreement does not violate or breach the terms of any agreement to which Buyer is a party or by which it or its property may be bound;

(d) it has relevant experience and financial capacity to develop the Property to the Permitted Use and

(e) replacement of an entry fencing gate, grading and seeding of the property, keeping the grass in a mowed condition and keeping the property in full compliance with all Bexley City Codes and Ordinances.

17. Governing Law. This Agreement shall be construed under the laws of the State of Ohio.

18. Time of the Essence. Time is of the essence of this Agreement and of each provision hereof.

19. Seller's Authorization. Buyer understands, acknowledges and agrees that the execution and delivery of this Agreement by the Seller is to be made only after the passage and effectiveness of an ordinance by the Bexley City Council (the "Ordinance") approving this Agreement and the execution and delivery hereof by authorized city officials. Seller agrees to introduce and pass or defeat the Ordinance within twenty-one (21) days of Buyer's execution of this Agreement.

**SELLER: CITY OF BEXLEY**

By: John M Brennan

**BUYER: Jubilee Brice LLC**

By: Michael Schiff  
authorized signer

# Myers Surveying Company, Inc.

2740 East Main Street, Columbus 43209 (Bexley), Ohio  
 614-235-8677 FAX: 614-235-4559

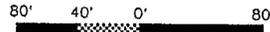
A Boundary Survey prepared for and certified to:

**City of Bexley**

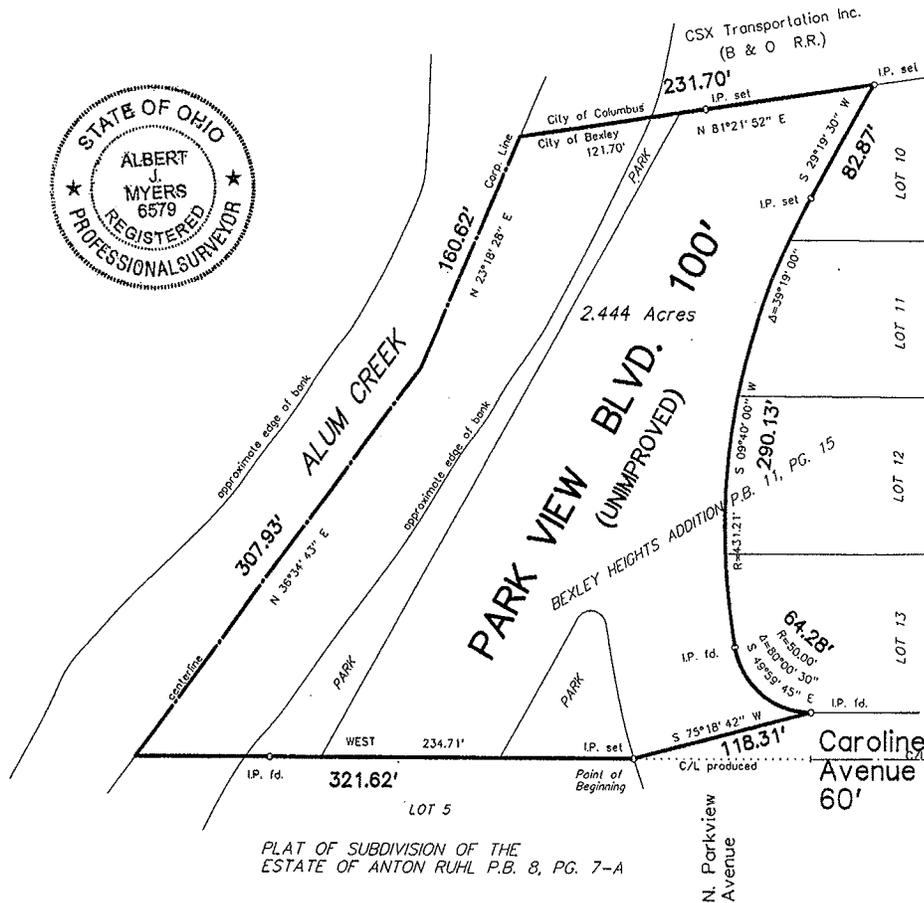
Legal Description: Situated in Ohio, County of Franklin, City of Bexley, Being "Park" areas and 100' right of way, Bexley Heights Addition, Plat book 11, Page 15

Applicant:

Posted Address: Parkview Avenue/Caroline, Bexley, Ohio



Scale: 1" = 80'  
 Date: 7-11-2003



PLAT OF SUBDIVISION OF THE ESTATE OF ANTON RUHL P.B. 8, PG. 7-A

We hereby certify that the foregoing Boundary Survey was prepared from actual field measurements in accordance with Chapter 4733-37 Ohio Administrative Code. Iron pins set are 30"x1" O.D. with an orange plastic plug inscribed "P.S. 6579", unless otherwise noted. Basis of bearing is the south line of Bexley Heights Addition held as WEST.

Myers Surveying Co., Inc.  
 By *Allen Myers*  
 Professional Surveyor

Myers Order No. - 57-06/11/03 | Rec. | Field *KSM* | DWG *AM* | Ltr. *AM* | Ck.

*2.4 acres - gross*  
*1.4 acres - net, buildable*

AMENDED EXHIBIT "A"  
**PURCHASE AGREEMENT**

THIS PURCHASE AGREEMENT (this "Agreement") is entered into as of the \_\_\_ day of \_\_\_\_\_, 2008, between THE CITY OF BEXLEY, an Ohio municipal corporation ("Seller") and Jubilee Brice LLC or its assignees, an Ohio limited liability company ("Buyer").

1. The Property. Seller hereby agrees to sell, convey and assign to Buyer, and Buyer hereby agrees to purchase, assume and accept from Seller, for the Purchase Price (as hereinafter defined) and on and subject to the terms and conditions herein set forth, the following: (a) the real property commonly known as the Bexley Tree Nursery and described as the 2.444+/- acre tract of land consisting of the unimproved Parkview Extension and extending from N. Parkview Avenue at Caroline Avenue north to the railroad right-of-way and from Alum Creek on the west to 2364 Caroline Avenue on the east, all in the City of Bexley, Ohio, as more particularly described in Exhibit A attached hereto and made a part hereof, (b) the triangular portion of right-of-way at the intersection of Carolina Avenue and Parkview Avenue as shown on Exhibit B attached hereto and made a part hereof, together with (c) all rights, privileges, easements and appurtenances belonging to any of the foregoing. (Collectively, (a) (b) and (c) above shall be referred to as the "Property.")

2. Purchase Price. The purchase price (the "Purchase Price") for the Property shall be Three Hundred Fifty Thousand Dollars (\$350,000.00), payable at Closing in cash, by cashier's or certified check or by wire transfer. Upon the execution of this Agreement by both Seller and Buyer, Buyer shall deposit \$25,000 (the "Earnest Money") with Seller. The Seller is authorized to deposit the Earnest Money in an interest bearing account. The Earnest Money shall be applied to the Purchase Price at Closing or returned to Buyer if this transaction does not close for reasons other than a default by Buyer.

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(b) zoning ordinances including the provisions of Chapter 1223 and 1264 of the Codified Ordinances of the City of Bexley; (c) legal right-of-ways; and (d) covenants, restrictions, conditions and easements of record which do not interfere with Buyer's use of the Property, in combination with Buyer's existing contiguous 3+ acres, for a single-family development consisting of twenty-four (24) condominium homes (the "Permitted Use"). Buyer shall pay any costs incurred in connection with the owner's title policy and any mortgagee's title insurance and for the cost of any endorsements it may require. If title to all or part of the Property is unmarketable, as determined by Ohio law with reference to the Ohio Bar Association's Standards of Title Examination, or is subject to liens, encumbrances, easements, conditions, restrictions or encroachments other than those set forth herein ("Title Defect"), then the Buyer shall notify Seller within 5 business days after the expiration of the initial thirty (30) day period and request that Seller cure any such Title Defect. If Seller elects not to or is not able to cure the Title Defect, Buyer shall determine prior to the Closing Date whether it will (i) terminate its obligations hereunder and have the Earnest Money returned; or (ii) waive such Title Defect and proceed to Closing without a reduction in the Purchase Price.

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12. Survival of Agreement. Unless expressly stated otherwise in this Agreement, the terms, conditions, and obligations of this Agreement shall survive the Closing for a period not to exceed one year.

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(a) it has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder;

(b) this Agreement has been duly executed and delivered by the Buyer, and constitutes the valid and binding obligation of Buyer, enforceable against Buyer in accordance with the terms hereof;

(c) the execution, delivery and performance of this Agreement does not violate or breach the terms of any agreement to which Buyer is a party or by which it or its property may be bound;

(d) it has relevant experience and financial capacity to develop the Property to the Permitted Use and

(e) replacement of an entry fencing gate, grading and seeding of the property, keeping the grass in a mowed condition and keeping the property in full compliance with all Bexley City Codes and Ordinances.

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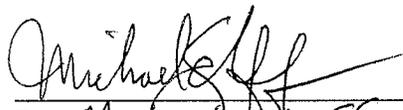
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19. Seller's Authorization. Buyer understands, acknowledges and agrees that the execution and delivery of this Agreement by the Seller is to be made only after the passage and effectiveness of an ordinance by the Bexley City Council (the "Ordinance") approving this Agreement and the execution and delivery hereof by authorized city officials. Seller agrees to introduce and pass or defeat the Ordinance within twenty-one (21) days of Buyer's execution of this Agreement.

**SELLER: CITY OF BEXLEY**

By: \_\_\_\_\_

**BUYER: Jubilee Brice LLC**

  
By: Michael Schiff  
authorized signer

# Myers Surveying Company, Inc.

2740 East Main Street, Columbus 43209 (Bexley), Ohio  
 614-235-8677 FAX: 614-235-4559

A Boundary Survey prepared for and certified to:  
**City of Bexley**

Legal Description: Situated in Ohio, County of Franklin, City of Bexley, Being "Park" areas and 100' right of way, Bexley Heights Addition, Plat book 11, Page 15

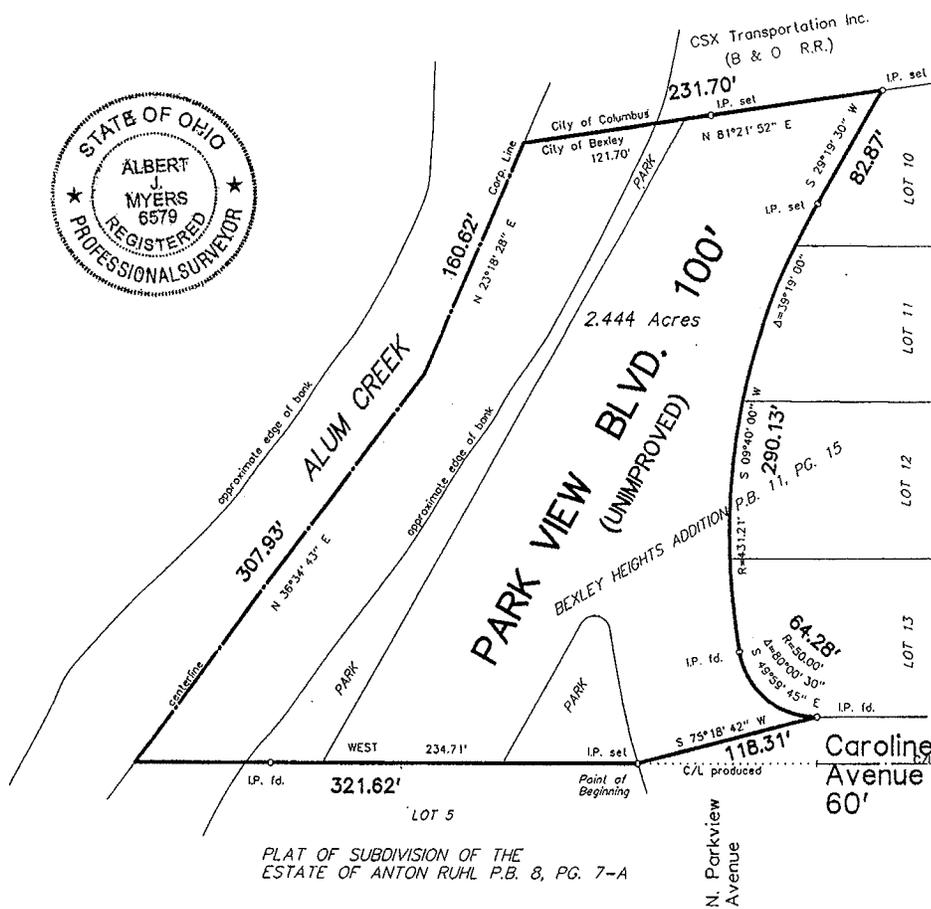
Applicant:

Posted Address: Parkview Avenue/Caroline, Bexley, Ohio

80' 40' 0' 80'

Scale: 1" = 80'

Date: 7-11-2003



We hereby certify that the foregoing Boundary Survey was prepared from actual field measurements in accordance with Chapter 4733-37 Ohio Administrative Code. Iron pins set are 30"x1" O.D. with an orange plastic plug inscribed "P.S. 6579", unless otherwise noted. Basis of bearing is the south line of Bexley Heights Addition held as WEST.

Myers Surveying Co., Inc.

By *Albert J. Myers*  
 Professional Surveyor

Myers Order No. - 57-06/11/03 | Rec. | Field *AS (M) [unclear]* | DWG *AS (M)* | Ltr. *AS (M)* | Ck.

*2.4 acres - gross*  
*1.4 acres - net, buildable*

EXHIBIT "A"

**PURCHASE AGREEMENT**

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4. Condition of Title. Within thirty (30) days after the execution of this Agreement by both parties, Buyer shall obtain and deliver to Seller an owner's title insurance commitment from a title company selected by the Buyer committing to insure in Buyer good and marketable title in the amount of the Purchase Price. The commitment shall be 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 the Buyer;

(b) the Declaration of Restrictions, a copy of which are attached hereto as Exhibit C; (c) zoning ordinances including the provisions of Chapter 1223 and 1264 of the Codified Ordinances of the City of Bexley; (d) legal right-of-ways; and (e) covenants, restrictions, conditions and easements of record which do not interfere with Buyer's use of the Property, in combination with Buyer's existing contiguous 3+ acres, for a single-family development consisting of twenty-four (24) condominium homes (the "Permitted Use"). Buyer shall pay any costs incurred in connection with the owner's title policy and any mortgagee's title insurance and for the cost of any endorsements it may require. If title to all or part of the Property is unmarketable, as determined by Ohio law with reference to the Ohio Bar Association's Standards of Title Examination, or is subject to liens, encumbrances, easements, conditions, restrictions or encroachments other than those set forth herein ("Title Defect"), then the Buyer shall notify Seller within 5 business days after the expiration of the initial thirty (30) day period and request that Seller cure any such Title Defect. If Seller elects not to or is not able to cure the Title Defect, Buyer shall determine prior to the Closing Date whether it will (i) terminate its obligations hereunder and have the Earnest Money returned; or (ii) waive such Title Defect and proceed to Closing without a reduction in the Purchase Price.

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7. Expenses. Buyer shall be responsible for the payment of all costs associated with Buyer's purchase of the Property, including without limitation

inspection fees, title costs, recording charges, and expenses associated with obtaining necessary approvals ("Buyer's Expenses").

8. Buyer's Contingencies. Seller and Buyer acknowledge and agree that Buyer's obligations to consummate the transactions contemplated by this Agreement are contingent upon: (a) the existence of marketable title as set forth in Section 4 and (b) the passage of an ordinance approving this Contract (defined in Section 21) by City Council within twenty-one (21) days of Buyer's execution of this Agreement.

9. Conditions Precedent to Seller's Obligations to Close. Seller and Buyer acknowledge and agree that Seller's obligations to consummate the transactions contemplated by this Agreement are conditioned only upon (a) Buyer maintaining the property in a clean condition, meaning removal of all trash and debris, replacement of an entry fencing gate, grading and seeding of the property, keeping the grass in a mowed condition and keeping the property in full compliance with all Bexley City Codes and Ordinances, and (b) Buyer causing the Dismissal with Prejudice of Franklin County Common Pleas Court Case Number 07-CVF-05-07006, Citizens Advocates for Parks, Plaintiff, Jay Schottenstein, Plaintiff, and the City of Bexley, Defendant.

10. Notices. Any notices, demands or other communications required or desired to be given by either party to the other pursuant to this Agreement shall be in writing and shall be either personally delivered, sent by nationally recognized overnight courier, sent by facsimile, or mailed through the United States Postal Service by registered or certified mail, postage prepaid, return receipt requested, to the parties at the following addresses:

**SELLER:**

2242 E. Main Street, Bexley, OH 43209

**BUYER:**

or such other address as any entity named above designates to the others in writing as aforesaid. Any notice given in a manner set forth above shall be deemed received as follows: (a) if personally delivered, the notice shall be deemed received on the date delivered, (b) if sent by nationally recognized overnight courier, the notice shall be deemed received on the first business day following the business day it is sent, (c) if sent by facsimile, upon the sender's receipt of written telecopy confirmation and (d) if mailed through the United States Postal Service by registered or certified mail, postage prepaid, return receipt requested, the notice shall be deemed received upon execution of the return receipt.

11. Brokers. Seller and Buyer each hereby represents and warrants to the other that it has not dealt with any broker or finder in connection with the transaction contemplated hereby. Seller and Buyer each hereby agree to indemnify the other for any and all loss, cost, expense and liability (including attorneys' fees) incurred by reason of a claim for brokerage commission or finder's fee by any person or entity claiming to have been engaged by it. Notwithstanding anything in this Agreement to the contrary, this provision shall survive any termination of this Agreement.

12. Survival of Agreement. Unless expressly stated otherwise in this Agreement, the terms, conditions, and obligations of this Agreement shall survive the Closing.

13. Entire Agreement. This Agreement and all attachments hereto embody and constitute the entire understanding between the parties with respect to the transaction contemplated herein, and all prior or contemporaneous understandings, representations and statements, oral or written, are merged into this Agreement.

14. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto. This Agreement may not be assigned by Buyer without Seller's prior written consent, which shall not be unreasonably withheld or delayed.

15. Further Assurances. The parties each agree to do, execute, acknowledge and deliver all such further acts, instruments and assurances (including corporate resolutions) and to take all such further action before or after the Closing as shall be reasonably necessary to fully carry out the purpose and intent of this Agreement and to fully consummate and effect the transactions contemplated hereby.

16. Buyer's Representations. Buyer represents and warrants to Seller that:

(a) it has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder;

(b) this Agreement has been duly executed and delivered by the Buyer, and constitutes the valid and binding obligation of Buyer, enforceable against Buyer in accordance with the terms hereof;

(c) the execution, delivery and performance of this Agreement does not violate or breach the terms of any agreement to which Buyer is a party or by which it or its property may be bound;

(d) it has relevant experience and financial capacity to develop the Property according to the Permitted Use.

17. Governing Law. This Agreement shall be construed under the laws of the State of Ohio.

18. Time of the Essence. Time is of the essence of this Agreement and of each provision hereof.

19. Seller's Authorization. Buyer understands, acknowledges and agrees that the execution and delivery of this Agreement by the Seller is to be made only after the passage and effectiveness of an ordinance by the Bexley City Council (the "Ordinance") approving this Agreement and the execution and delivery hereof by authorized city officials. Seller agrees to introduce and pass or defeat the Ordinance within twenty-one (21) days of Buyer's execution of this Agreement.

**SELLER: CITY OF BEXLEY**

\_\_\_\_\_  
By:

**BUYER:**

\_\_\_\_\_  
By: