

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2014-68

By Nick Haschka Sponsored By Mayor Cyril M. Gleason

AN ORDINANCE

AUTHORIZING, RATIFYING AND AFFIRMING THE CITY OF BEREA ENTERING INTO A REAL ESTATE PURCHASE AGREEMENT FOR THE PURCHASE OF REAL PROPERTY IDENTIFIED AS PERMANENT PARCEL NUMBER 362-02-010, APPROPRIATING FUNDS THEREFORE, AND DECLARING AN EMERGENCY.

WHEREAS, it is necessary and in the best interests of the City for the City to acquire a certain parcel of real estate located on Front Street to facilitate the redevelopment of property in that area; and

WHEREAS, the real property identified as permanent parcel number 362-02-010, which is located on Front Street, is for sale and the City desires to acquire such parcel in order to help facilitate future comprehensive and cohesive redevelopment of the entire North End gateway area of the City.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, State of Ohio:

SECTION 1. That the Director of Public Service and/or the City Engineer be and is hereby authorized to enter into a real estate purchase agreement for the purchase of the real property identified as permanent parcel number 362-02-010 in substantially the form of agreement attached hereto as Exhibit "A" and incorporated herein by reference, and the same is hereby ratified and affirmed.

SECTION 2. That the funds necessary to carry out the execution and performance on said purchase agreement are hereby set aside and appropriated from the Capital Improvement account, bearing Fund #400 for accounting purposes, and the Director of Finance, after approval by the Board of Control, is hereby authorized and directed to pay out such sums for the same.

SECTION 3. That the various Directors and City Administrators are hereby authorized to take such further actions as necessary and appropriate to effectuate the purposes stated herein.

SECTION 4. That it is 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 this Council and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 5. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of a municipal department, and for the further reason that the acquisition of the parcel which is the subject of this legislation will aid in the assembly of land in the area and facilitate redevelopment and that it is necessary to acquire the property in time to demolish and remove the structure on it and restore the land before the onset of the winter season. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: September 15, 2014

ATTEST: Alice Evans
Clerk of Council

APPROVED: September 15, 2014

Cyril M. Gleason
President of Council

Cyril M. Gleason
Mayor

Approved as to Form:

John M. Walsh
Director of Law



Kenneth A. Weber
216-299-2449 cell
440-234-1266 fax
fairtoall@gmail.com
www.KenWeber.com
400 West Bagley Road
Berea, Ohio 44017

**PURCHASE AGREEMENT
(COMMERCIAL)**

The undersigned Seller(s) and Buyers(s) agree to enter into a Purchase Agreement on the following terms and conditions for the sale of the real property listed below. BUYER AND SELLER ARE RESPONSIBLE FOR THEIR OWN ATTORNEY FEES INCURRED, IF ANY.

Real Property Permanent Parcel No(s):

Street Address: 362-02-010
768 Front St.
City, State, Zip Code: Berea, Ohio 44017

Chattels to be included: (attach additional pages if necessary) All Attached in + on Premises

Fixtures to be removed: (attach additional pages if necessary) None

Earnest Money Amount: \$ _____
Down Payment Amount: \$ 125,000
Financing Amount: \$ 125,000 to be paid by Jan 30, 2015
Sale Price: \$ 250,000

Lender and/or Source of Financing:

Name: _____
Address: N/A
Phone: _____

Additional terms and conditions of financing:

125,000 to be paid @ Closing + property transferred to buyer
balance of 125,000 to be paid to seller by Jan. 30, 2015

Seller(s) Name: Virgil Locotek Buyer(s) Name: City of Berea
 Address: 9328 Prospect, 44149 Address: Berea Commons.
 Phone: 441-238-0425 Phone: 441-826-5800
 Attorney Name: _____ Attorney Name: _____
 Address: _____ Address: _____
 Phone: _____ Phone: _____

CLOSING: All funds and documents necessary for the completion of this transaction shall be placed in escrow with the lending institution or Title Company on or before as soon as Council Approves and title shall be transferred on or about as soon as possible after Council Approval.

TITLE: SELLER shall convey a marketable title to BUYER by general warranty deed and/or fiduciary deed, if required, with dower rights released, free and clear of all liens and encumbrances whatsoever, except (a) those created by or assumed by BUYER; (b) such restrictions, conditions, easements (however created) and encroachments as do not materially adversely affect the use or value of the property; (c) those specifically set forth in this contract; (d) zoning ordinances, if any; (e) legal highways; and (f) taxes and assessments, both general and special, not yet due and payable. SELLER shall furnish an Owner's Fee Policy of Title Insurance from Maximum Title & Escrow (Title Company) in the amount of the purchase price with cost split equally between SELLER and BUYER and if the property is Torrenized, SELLER shall furnish an Owner's Duplicate Certificate of Title, and a United States Court Search and Tax Search. BUYER shall pay any additional costs incurred in connection with mortgage title insurance issued for the protection of BUYER'S lender. If BUYER desires a survey, BUYER shall pay the cost thereof. If title to all or part of the 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, with 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 or insure against the defect within the thirty (30) day period, the BUYER may declare this contract null and void.

CHARGES/ESCROW INSTRUCTIONS: SELLER shall pay the following costs through escrow: (a) real estate transfer tax, (b) title exam and one-half the cost of insuring premium for Owners Fee Policy of Title Insurance, (c) prorations due BUYER, (d) broker's commission, and (e) one half of the escrow fee.

SELLER shall pay directly all utility charges to the date of title transfer or date of possession whichever is later. The escrow agent shall withhold \$ 0 from the proceeds due SELLER for the SELLER'S final water and sewer bills. Tenant security deposits, if any, shall be credited in escrow to the BUYER. SELLER is responsible for their own attorney fees incurred in the preparation, review, approval and completion of this sale.

BUYER shall pay the following through escrow (a) one-half of the escrow fee (b) one-half the cost of insuring premiums for Owners Fee Policy of Title Insurance; (c) all recording fees for the deed and any mortgage. BUYER shall secure new insurance on the property.

LEASES AND DEPOSITS: If applicable, SELLER(s) agrees to provide BUYER(s) with a copy of all leases and written verification of all rental deposits held by SELLER(s). These documents will be attached as exhibits to the final Purchase Agreement prepared by attorneys for the parties. Rents and operating expenses shall be prorated and security deposits shall be transferred to Buyer, as of the date of closing.

INSPECTION CONTINGENCIES: This Purchase Agreement is contingent on the following selected inspections. SELLER shall cooperate in making the property reasonably available for such inspections(s). After receipt of each inspection report, BUYER shall have the right to elect between accepting the property in is "as is" present physical condition or to terminate this Agreement. BUYER shall make this election within 5 days after receipt of each inspection report. If BUYER is not, in good faith, satisfied with the condition of the property as disclosed by such inspection(s), BUYER may terminate this contract by delivering written notice of such termination to SELLER, along with a written copy of such inspection report(s), within the time period specified above, such notice and report(s) shall specify the unsatisfactory conditions. After each inspection BUYER agrees to restore the property to its condition prior to inspection. Further, BUYER agrees to indemnify and hold SELLER, Broker and its agents harmless for any and all damages caused by such inspection(s).

SOIL INSPECTION: BUYER shall have the right to hire a qualified professional soil consultant and/or engineer to inspect, examine and report on the soil condition of the property within _____ days after acceptance of the contract.

ENVIRONMENTAL INSPECTION: BUYER and BUYER'S lender shall have the right to hire qualified, professional environmental consultant to enter the premises to conduct, at the expense of the BUYER, an environmental site assessment within _____ days of acceptance of the contract. If such assessment is obtained and the consultant recommends further inspection to determine the extent of suspected contamination or recommends remedial action, the BUYER, at BUYER'S option, may notify the SELLER in writing, within the above specified period, that the contract is null and void.

PROPERTY INSPECTION: BUYER at BUYER'S expense shall have _____ days after acceptance of the contract to have the property and all improvements, fixtures and equipment inspected.

WATER POTABILITY: BUYER shall have the right to hire a qualified professional contractor or hydrologist to inspect, examine and report on the potability of the water for the property within _____ days after acceptance of the contract.

OTHER CONTINGENCIES: This purchase agreement is contingent on the following selected terms:

BUYER reviewing and approving of the Declarations, By-Laws and Regulations that encumber this property within _____ days after acceptance.

BUYER obtaining the necessary sewer permits to develop the land for its intended use within _____ days after acceptance.

BUYER obtaining a variance from the current zoning classification of _____ to _____ within _____ days after acceptance.

BUYER'S attorney review and approval within _____ days of acceptance.

SELLER'S attorney review and approval within _____ days of acceptance.

Other contingencies:

As requested by Buyer.

ENVIRONMENTAL MATTERS: CLINT WILLIAMS REALTY and its agents in this transaction have no expertise with respect to environmental matters. CLINT WILLIAMS REALTY will not investigate the physical condition of the property or the soil. CLINT WILLIAMS REALTY recommends that the BUYER retain the services of qualified inspectors to discover and reveal the condition of the property and soil.

BUYER(s) maintain full responsibility to determine the condition of the property, the stability of the soil and the existence of any environmental hazards and agree(s) to indemnify and hold CLINT WILLIAMS REALTY and its agents harmless for any and all claims, demands, causes of actions or damages, including but not limited to the direct payment of all legal fees incurred by CLINT WILLIAMS REALTY.

POSSESSION: Possession shall be given, subject to tenants' rights as tenants, upon closing.

RENTALS AND OTHER PRORATIONS AND SECURITY DEPOSITS: Rents and operating expenses shall be prorated and security deposits shall be transferred to BUYER, as of the date of closing.

OTHER TERMS AND CONDITIONS OF INSPECTIONS:

None.

BUYER'S EXAMINATION: BUYER IS RELYING SOLELY UPON HIS OWN EXAMINATION OF THE REAL ESTATE 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 BROKER(S), EXCEPT FOR THOSE MADE BY BROKER(S) DIRECTLY TO THE BUYER IN WRITING.

SELLER INDEMNITY: SELLER agrees to defend, indemnify and hold harmless Broker(s) and their agents and employees for any cost or liability that may be incurred by or imposed on Broker(s) for any breach by seller of any representation of warranty or for any misrepresentation or concealment of fact by SELLER in connection with the property.

COMMISSIONS: (Check appropriate boxes)

SELLER(S) agrees to pay CLINT WILLIAMS REALTY a commission of paper agreement % of the gross sales commission price of (\$ _____) at the time of title transfer from SELLER(S) proceeds of sale.

SELLER(S) agrees to pay _____ (cooperating broker) a commission of _____ % of the gross sales price (\$ _____) at the time of title transfer from SELLER(S) proceeds of sale.

BUYER(S) agrees to pay CLINT WILLIAMS REALTY a commission of _____ % of the gross sales price of (\$ _____) at the time of title transfer and irrevocably instructs escrow agent to pay this commission from SELLER(S) proceeds of sale.

BUYER(S) agrees to pay _____ (cooperating broker) the gross sales price of (\$ _____) at the time of title transfer

This document shall be used as irrevocable escrow instructions to authorize the escrow agent to pay the commission as instructed above.

Real estate taxes and assessments are subject to retroactive change by governmental authority. The real estate taxes for the property for the current tax year may change as a result of the transfer or as a result of a change in the tax rate.

ADDITIONAL TERMS AND CONDITIONS:

Approval of City Council by legislation to execute a purchase.

AGREED, ACKNOWLEDGED & APPROVED BY:

X _____
(BUYER) (DATE) (SELLER) (DATE)

(BUYER) (DATE) (SELLER) (DATE)

EXTENSION: BUYER and SELLER agree to extend the termination date to:

_____ Buyer's Initials	_____ Date	_____ Seller's Initials	_____ Date
_____ Buyer's Initials	_____ Date	_____ Seller's Initials	_____ Date



AGENCY DISCLOSURE STATEMENT



The real estate agent who is providing you with this form is required to do so by Ohio law. You will not be bound to pay the agent or the agent's brokerage by merely signing this form. Instead, the purpose of this form is to confirm that you have been advised of the role of the agent(s) in the transaction proposed below. (For purposes of this form, the term "seller" includes a landlord and the term "buyer" includes a tenant.)

Property Address: 768 Front St., Berea, Ohio 44017

Buyer(s): City of Berea

Seller(s): Virgil Socotch

I. TRANSACTION INVOLVING TWO AGENTS IN TWO DIFFERENT BROKERAGES

The buyer will be represented by _____, and _____.

AGENT(S)

BROKERAGE

The seller will be represented by _____, and _____.

AGENT(S)

BROKERAGE

II. TRANSACTION INVOLVING TWO AGENTS IN THE SAME BROKERAGE

If two agents in the real estate brokerage _____ represent both the buyer and the seller, check the following relationship that will apply:

- Agent(s) _____ work(s) for the buyer and Agent(s) _____ work(s) for the seller. Unless personally involved in the transaction, the broker and managers will be "dual agents", which is further explained on the back of this form. As dual agents they will maintain a neutral position in the transaction and they will protect all parties' confidential information.
- Every agent in the brokerage represents every "client" of the brokerage. Therefore, agents _____ and _____ will be working for both the buyer and seller as "dual agents". Dual agency is explained on the back of this form. As dual agents they will maintain a neutral position in the transaction and they will protect all parties' confidential information. Unless indicated below, neither the agent(s) nor the brokerage acting as a dual agent in this transaction has a personal, family or business relationship with either the buyer or seller. *If such a relationship does exist, explain:* _____

III. TRANSACTION INVOLVING ONLY ONE REAL ESTATE AGENT

Agent(s) Kenneth A. Weber and real estate brokerage Christ Wilkein Realty, Inc. will

- be "dual agents" representing both parties in this transaction in a neutral capacity. Dual agency is further explained on the back of this form. As dual agents they will maintain a neutral position in the transaction and they will protect all parties' confidential information. Unless indicated below, neither the agent(s) nor the brokerage acting as a dual agent in this transaction has a personal, family or business relationship with either the buyer or seller. *If such a relationship does exist, explain:* _____
- represent only the (check one) seller or buyer in this transaction as a client. The other party is not represented and agrees to represent his/her own best interest. Any information provided the agent may be disclosed to the agent's client.

CONSENT

I (we) consent to the above relationships as we enter into this real estate transaction. If there is a dual agency in this transaction, I (we) acknowledge reading the information regarding dual agency explained on the back of this form.

BUYER/TENANT _____ DATE _____

SELLER/LANDLORD _____ DATE _____

BUYER/TENANT _____ DATE _____

SELLER/LANDLORD _____ DATE _____

DUAL AGENCY

Ohio law permits a real estate agent and brokerage to represent both the seller and buyer in a real estate transaction as long as this is disclosed to both parties and they both agree. This is known as dual agency. As a dual agent, a real estate agent and brokerage represent two clients whose interests are, or at times could be, different or adverse. For this reason, the dual agent(s) may not be able to advocate on behalf of the client to the same extent the agent may have if the agent represented only one client.

As a dual agent, the agent(s) and brokerage shall:

- Treat both clients honestly;
- Disclose latent (not readily observable) material defects to the purchaser, if known by the agent(s) or brokerage;
- Provide information regarding lenders, inspectors and other professionals, if requested;
- Provide market information available from a property listing service or public records, if requested;
- Prepare and present all offers and counteroffers at the direction of the parties;
- Assist both parties in completing the steps necessary to fulfill the terms of any contract, if requested.

As a dual agent, the agent(s) and brokerage shall not:

- Disclose information that is confidential, or that would have an adverse effect on one party's position in the transaction, unless such disclosure is authorized by the client or required by law;
- Advocate or negotiate on behalf of either the buyer or seller;
- Suggest or recommend specific terms, including price, or disclose the terms or price a buyer is willing to offer or that a seller is willing to accept;
- Engage in conduct that is contrary to the instructions of either party and may not act in a biased manner on behalf of one party.

Compensation: Unless agreed otherwise, the brokerage will be compensated per the agency agreement.

Management Level Licensees: Generally the broker and managers in a brokerage also represent the interests of any buyer or seller represented by an agent affiliated with that brokerage. Therefore, if both buyer and seller are represented by agents in the same brokerage, the broker and manager are dual agents. There are two exceptions to this. The first is where the broker or manager is personally representing one of the parties. The second is where the broker or manager is selling or buying his own real estate. These exceptions only apply if there is another broker or manager to supervise the other agent involved in the transaction.

Responsibilities of the Parties: The duties of the agent and brokerage in a real estate transaction do not relieve the buyer and seller from the responsibility to protect their own interests. The buyer and seller are advised to carefully read all agreements to assure that they adequately express their understanding of the transaction. The agent and brokerage are qualified to advise on real estate matters. **IF LEGAL OR TAX ADVICE IS DESIRED, YOU SHOULD CONSULT THE APPROPRIATE PROFESSIONAL.**

Consent: By signing on the reverse side, you acknowledge that you have read and understand this form and are giving your voluntary, informed consent to the agency relationship disclosed. If you do not agree to the agent(s) and/or brokerage acting as a dual agent, you are not required to consent to this agreement and you may either request a separate agent in the brokerage to be appointed to represent your interests or you may terminate your agency relationship and obtain representation from another brokerage.

Any questions regarding the role or responsibilities of the brokerage or its agents should be directed to an attorney or to:

Ohio Department of Commerce
Division of Real Estate & Professional Licensing
77 S. High Street, 20th Floor
Columbus, OH 43215-6133
(614) 466-4100

