

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2015-26

By Nick Haschka Sponsored By Mayor Cyril M. Kleem
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 362-01-012, 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 362-01-012, 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 Mayor 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 362-01-012, 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 for the year 2015 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.

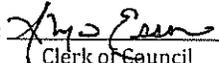
SECTION 3. That the various Directors and City Administrators are hereby authorized to take such further actions as necessary and appropriate to effectuate the purposes stated herein.

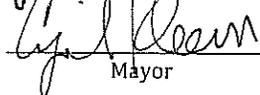
SECTION 4. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal actions were 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 in the area. 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: April 6, 2015


President of Council

ATTEST: 
Clerk of Council

APPROVED: April 13, 2015

Mayor

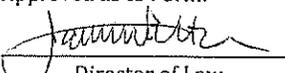
Approved as to Form:

Director of Law

Exhibit "A"
(3-3)

LAND INSTALLMENT CONTRACT

THIS LAND INSTALLMENT CONTRACT made this __ day of April, 2015, by and between A. L. Building Co. Ltd. hereinafter referred to as "Seller" and the City of Berea, an Ohio Municipal Corporation, hereinafter referred to as "Buyer."

WHEREAS, Seller is the fee owner of real property located at 822 Front Street in the City of Berea, County of Cuyahoga, State of Ohio, which is further described in Exhibit "A" attached hereto and incorporated herein, together with all improvements thereon.

WITNESSETH THAT:

1. PREMISES: Seller, for the consideration and upon and subject to the terms and conditions hereinafter set forth, hereby agrees to sell and convey to Buyer, and Buyer hereby agree to purchase, the real property described above and which is located in Berea, Ohio, in its present physical condition together with all hereditaments and appurtenances thereunto belonging, but subject to all legal highways, zoning ordinances, easements, right of ways, or leases, and all restrictions and conditions thereon now of record, if any.

2. CONDITION OF PROPERTY: This property is being purchased in its present physical condition "as-is". Buyer have not relied upon any representations, warranties or statements about the property, including but not limited to, its condition or use, unless otherwise disclosed by the Seller herein. Seller acknowledges that the property has been made available to Buyer, for their own personal inspection. There have been no representations or statements concerning the condition of the premises, the value of the premises, the improvements thereon, the use that can be made of the premises, the zoning ordinances, or anything concerning the same, other than what is included in this written offer to purchase.

3. PURCHASE PRICE AND PAYMENT: The total purchase price shall be Two Hundred Eighty-Four Thousand, Six Hundred Dollars (\$284,600.00) payable as follows:

- 3.1 In initial Installment Payment in the amount of Sixty-Six Thousand, Five Hundred Dollars (\$66,500.00) shall be made on April 17, 2015.
- 3.2 A second installment payment in the amount of Sixty-Six Thousand, Five Hundred Dollars (\$66,500.00) shall be made on April 1, 2016.
- 3.3 A third installment payment in the amount of Sixty-Six Thousand, Five Hundred Dollars (\$66,500.00) shall be made on April 1, 2017.
- 3.4 A fourth installment payment in the amount of Sixty-Six Thousand, Five Hundred Dollars (\$66,500.00) shall be made on April 1, 2018.
- 3.5 A final installment payment in the amount of Eighteen Thousand, Six Hundred Dollars (\$18,600.00) shall be made on or before August 1, 2018

Prepayment in full or part may be made by Buyer at any time without penalty.

3.3 All payments shall be paid to Seller at _____ Ohio, or to such person or place as Seller may direct from time to time by notice to Buyer.

4. REAL ESTATE TAXES: Seller shall pay all real estate taxes due and payable during the period of this Contract. At the time that the balance of the purchase price is paid in full and the Deed of transfer is recorded pursuant to Section 3 herein, then all real estate taxes due thereafter shall be paid by Buyer.

5. CLOSING: The closing of this Contract, and delivery into escrow of the deed as provided in Paragraph 8 herein, shall occur simultaneously with the execution of this Contract.

6. POSSESSION: Seller shall deliver possession of the property to Buyer on the day of title transfer as set forth hereinafter.

7. UTILITIES: Buyer shall pay for all utility charges for the property after the date possession of the property is delivered to Buyer. All utility charges are to be pro-rated between the Seller and the Buyer themselves.

8. DEED IN ESCROW: At closing, Seller shall deliver to Maximum Title and Escrow Company, Inc, as Escrow Agent, a general Warranty deed for the property. Said deed shall be held in escrow by the Escrow Agent until the entire purchase price has been paid in full. At the time that the entire purchase price has been paid in full the Escrow Agent shall record said general Warranty Deed and deliver it to Buyer. Title so conveyed shall be free, clear, unencumbered and marketable, in fact and of record, at the delivery of the deed, except for taxes as herein provided. There shall be no encroachments as of the date of closing and all easements and restrictions shall be acceptable to Buyer. Any costs related to this transaction shall be the responsibility of the Buyer.

9. USE OF PROPERTY: SELLER shall remain in possession of the subject property until such time as the deed transferring title to the BUYER is recorded and SELLER covenants to maintain the property in good condition and repair and agree not to commit or suffer any waste to the property and will comply with all statutes, ordinances, regulations and requirements of governmental authorities having jurisdiction of the property or any part thereof, and all covenants, restrictions and agreements of record which apply to the property or any part thereof. Nothing herein shall restrict the SELLER from renting or leasing the property to a tenant and collecting the rental payments during the time before title transfer.

10. RISK OF LOSS & INSURANCE: SELLER, at its expense, shall insure during the period of this Contract, the Property against fire and all other casualties normally included in fire and extended coverage insurance for the full replacement value of the Property subsequent to the execution date of this Contract. At the time that the balance of the purchase price is paid in full, pursuant to Section 3.2 herein, then BUYER, at its expense, shall assume responsibility for insurance on said Property.

11. INDEMNIFICATION: SELLER shall indemnify and hold BUYER free and harmless from any and all demands, loss or liability resulting from the injury to or death of any person or persons

due to the negligence or intentional misconduct of the SELLER or the condition of the property at any time or times prior to the date possession of the property is delivered to the Buyer pursuant to the recording of the deed of transfer.

12. **DEFAULT BY BUYER:** In the event that Buyer shall fail to pay within ten (10) days any of the sums Buyer agree to pay hereunder, then Seller may declare all sums due and owing under the terms hereof, immediately due and payable and proceed to foreclosure and judicial sale of the property as provided by law.

13. **BROKERAGE:** Both BUYER and SELLER represents and warrants that neither has dealt with any realtor, broker, consultant or like agent who might be entitled to any compensation in connection with the transaction contemplated hereby and agree to indemnify and hold harmless each other from and against all claims, losses, liabilities and expenses arising out of any claim by any realtors, brokers, consultants or like agents who may make any claim related to this transaction.

14. **ENTIRE AGREEMENT AND MODIFICATIONS:** This Contract, including all exhibits attached hereto and hereby incorporated herein by reference, contains all of the terms and conditions agreed upon by the parties hereto, there being no oral conditions representations, warranties or agreements. Any subsequent conditions, representations, warranties or agreements shall not be valid and binding upon the parties unless in writing and signed by both parties.

15. **NOTICES:** All notices or communications shall be given or made in writing and shall be deemed to be served when delivered personally or when deposited in the U.S. Mail, registered or certified, return receipt requested, postage prepaid, addressed to the appropriate party at their address as hereinabove provided, or at such address, as either party may direct from time to time by notice to the other party.

16. **ASSIGNMENT:** Seller shall not assign or hypothecate this Contract, in whole or in part, nor mortgage, transfer or convey the property to anyone except Buyer. Buyer shall not assign this Contract, in whole or in part, nor lease the property or any part thereof without Seller's prior written consent, which shall not be unreasonably withheld.

17. **HEADINGS:** The headings of the paragraphs of this Contract are for convenience only and shall not affect the meaning or construction of the contents of this Contract.

18. **SUCCESSORS AND ASSIGNS:** This Contract shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

19. **GOVERNING LAW:** This Contract shall be governed by and interpreted under and construed in accordance with the laws of the State of Ohio.

20. **RECORDING:** The Seller shall record this Contract as provided by Ohio Revised Code Section 5313.02(A)(14).

21. **COMPLIANCE WITH OHIO LAW:** The parties hereto agree to fully comply with all terms and provisions of Ohio Revised Code Section 5313.01, et. seq., and all applicable provisions of said statute, to the extent not inconsistent with the terms hereof, and such statutory provisions are hereby incorporated by reference.

22. MULTIPLE COPIES: This Agreement shall be executed in triplicate, each of which shall be an original of this Agreement, but all of which taken together shall constitute one and the same.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

Seller

City of Berea, Buyer, by: Cyril Kleem

WITNESSESTOSELLER SIGNATURE:
SIGNATURE:

WITNESSES TO BUYER

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Before me, a Notary Public, in and for said County and State, personally appeared A.L. Building Co. Ltd. Seller by _____ who acknowledged that (s)he did sign the foregoing instrument and the same is his/her own voluntary act and deed and the voluntary act of A.L. Building Co. Ltd.

In Testimony Whereof, I have hereunto set my hand and official seal, at _____ Ohio this _
_____ day April, 2015.

Notary Public

STATE OF OHIO)
)SS:
COUNTY OF CUYAHOGA)

Before me, a Notary Public, in and for said County and State, personally appeared Cyril M. Kleem who acknowledged that he did sign the foregoing instrument and the same is his own voluntary act and deed and the voluntary act and deed of the City of Berea.

In Testimony Whereof, I have hereunto set my hand and official seal, at _____ Ohio this ___ day of April, 2015.

Notary Public

This Document was prepared by:
James N. Walters III
Attorney at Law
OH S. Ct Reg. No. 0023298
Director of Law
City of Berea
11 Berea Commons
Berea, OH 44017

EXHIBIT A

LEGAL DESCRIPTION

↳ Forthcoming