

ORDINANCE NO. 2019 - 61

INTRODUCED BY MAYOR AND COUNCIL AS A WHOLE

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH JAMES VACCARINA FOR THE PURCHASE AND SALE OF PROPERTY LOCATED AT 24098 BROADWAY AVE., PERMANENT PARCEL NUMBER 795-19-035.

WHEREAS, the Village Oakwood and James Vaccarina deem it advantageous to each of them for Oakwood to take ownership of and market for commercial uses certain property owned by James Vaccarina, which property is located at 24098 Broadway Avenue in the Village and bears Permanent Parcel Number 795-19-035 on the records of the Cuyahoga County Fiscal Officer (hereinafter "Property"); and,

WHEREAS, Oakwood and Vaccarina have agreed in principle to the terms of the purchase and sale of the Property as set forth in the document attached hereto and incorporated herein by reference and marked Exhibit "A";

NOW THEREFORE, BE IT RESOLVED by the Council of the Village of Oakwood, County of Cuyahoga, and State of Ohio that:

SECTION 1. The Mayor be and is hereby authorized to enter into the Agreement of Purchase and Sale, a copy which is attached hereto and expressly made a part hereof by reference and marked Exhibit "A".

SECTION 2. This ordinance shall take effect at the earliest time allowed by law.

PASSED: Sept 24, 2019
[Signature]
Debra L. Hladky, Clerk of Council

[Signature]
Johnnie A. Warren, President of Council

Presented to the Mayor Sept 25, 2019

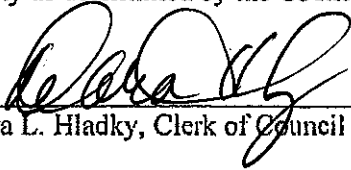
Approved: Sept 25, 2019
[Signature]
Mayor, Gary V. Gottschalk

I, Debra L. Hladky, Clerk of Council of the Village of Oakwood, County of Cuyahoga and State of Ohio, do hereby certify that the foregoing Ordinance No. 2019 - 61 was duly and regularly passed by this Council at the meeting held on the 25 day of Sept, 2019.

[Signature]
Debra L. Hladky, Clerk of Council

POSTING CERTIFICATE

I, Debra L. Hladky, Clerk of Council of the Village of Oakwood, County of Cuyahoga and State of Ohio, do hereby certify that Ordinance No. 2019 -61 was duly posted on the 25 day of Sept, 2019, and will remain posted for a period of fifteen (15) days thereafter in the Council Chambers and in not less than five (5) of the most public places in the municipality as determined by the Council of the said Village.



Debra L. Hladky, Clerk of Council

DATED: 9-25-2019

EXHIBIT "A"

AGREEMENT OF PURCHASE AND SALE

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AGREEMENT OF PURCHASE AND SALE

This Agreement of Purchase and Sale ("Agreement") is made effective the 25th day of Sept., 2019, by and between James Vaccarina (the "Seller"), and Oakwood Village, Ohio (the "Purchaser").

WHEREAS, the Seller is the owner of certain real property identified in the records of the Cuyahoga County, Ohio Fiscal Officer as Parcel Identification No. 795-19-035, which real property is more particularly described in Exhibit 1 attached hereto (the "Property"); and

WHEREAS, the Seller wishes to sell and the Purchaser wishes to buy the Property upon certain terms described hereinafter;

NOW, THEREFORE, the Purchaser and the Seller agree as follows:

1. Recitals. The recitals are hereby incorporated by reference as though fully set forth and rewritten herein, and the affirmative statements made in the recitals are hereby ratified and confirmed.

2. Property. The Purchaser agrees to buy and the Seller agrees to sell, for the consideration provided for in Article 3 and upon the terms and subject to the conditions set forth in this Agreement, the Property together with all structures, fixtures and improvements thereon and all easements, rights, privileges, hereditaments and appurtenances belonging thereunto.

3. Consideration for Sale. The purchase price to be paid by the Purchaser to the Seller for the Property shall be the sum of One and 00/100 Dollar (\$1.00) as well as the mutual promises contained hereinafter and other good and valuable consideration. The purchase price shall be paid by Purchaser at Closing in cash, bank or cashier's check, or wire transfer, after taking into consideration any deposit and adjustments for closing costs and pro-rations as specified herein. Any deposit made by the Purchaser shall be refunded to Purchaser if this Agreement is terminated in accordance with Articles 4 or 6 herein or if the Closing fails to occur as a result of the Seller's default. Seller shall retain the deposit if the Agreement is terminated for any other reason.

4. Due Diligence. Purchaser shall have a period of forty-five (45) days from the effective date of this Agreement to obtain approvals of such governmental and quasi-governmental authorities and to conduct and obtain such tests, surveys, studies, reports and inspections in order to determine in its reasonable discretion if the Property is suitable for the Purchaser's acquisition (the "Due Diligence Period"). The cost of obtaining such approvals and of conducting and obtaining such tests, surveys, studies, reports and inspections and in determining the suitability of the Property shall be the sole responsibility of the Purchaser. The Seller shall provide to the Purchaser reasonable access to the Property so that the Purchaser may conduct its due diligence. If any tests, surveys, studies, reports and inspections disclose any condition unacceptable to the Purchaser, then the Purchaser shall deliver written notice to the Seller, and Seller, at its sole option, may remedy the condition to which the Purchaser has objected. In the event that the Seller is unwilling or unable to cure any objection made by the Purchaser within forty five (45) days after receipt of the Purchaser's notice, the Purchaser may, by written notice to the Seller, either (i) terminate this Agreement, at which time the parties shall be released from all further obligations under this Agreement, or (ii) waive such condition and proceed to purchase the Property. If the Purchaser has not notified the Seller of any unacceptable condition during the Due Diligence Period, then

any such condition shall be deemed to be waived by the Purchaser. The Purchaser must substantially restore the Property to its original condition after the tests, surveys, studies and inspections are conducted.

5. Title Company and Escrow Agent. Guardian Title, with an address of 1120 Chester Ave, Cleveland, OH 44114, is hereby designated as the Title Company and escrow agent in connection with this transaction. An executed copy of this Agreement shall be deposited with the Title Company by Seller, and this Agreement shall serve as the escrow instructions.

6. Status of Title to Property. Purchaser shall procure an Owner's policy of title insurance for the Property for not less than \$65,000.00. Within twenty eight (28) days following the date of this Agreement, the Purchaser shall, at its sole cost, procure a title commitment for the Property prepared by the Title Company and provide a copy to the Seller along with any recorded documents referenced in the commitment. Purchaser shall also procure and deliver to the Seller a survey and legal description of the Property, certified to Purchaser and the Title Company in form and substance sufficient to permit the Title Company to issue the title policy with the so-called "Survey Exceptions" removed from such policy together with such other certification of the surveyor as may be required by Purchaser. The survey shall satisfy the most recent "Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys". The survey shall include a metes and bounds description of the Property which, upon approval by the Title Company, Purchaser and the Cuyahoga County Ohio Tax Map Department shall be deemed to constitute the legal description of the Property. The Purchaser shall notify the Seller of its objection to any matter shown in the commitment and survey not later than the expiration of the Due Diligence Period. If the Seller is unable or unwilling to remove any such objections prior to the Closing, then Purchaser's sole remedy shall be either to (a) terminate this Agreement, at which time the parties shall be released from all further obligations under this Agreement, or (b) waive the objections and accept such title as the Seller is able to convey without abatement of the purchase price. If Purchaser has not notified the Seller of any objections during the Due Diligence Period, then any such condition shall be deemed to be waived by Purchaser.

At the Closing, the Seller shall furnish the Purchaser and the Title Company with a seller's affidavit as to mechanic's and materialmen's liens, persons in possession of the Property, and similar title matters required by the Title Company. The Purchaser shall update the title commitment for the Property to the date of Closing. If such update shows any exceptions not previously shown on the title commitment for the Property, then the Purchaser shall have the right to object to any such additional exception. If the Purchaser does so object to such additional exception, then the Seller shall either (a) cure or remove the additional exception prior to Closing or (b) notify the Purchaser that the Seller is unable or unwilling to cure or remove the exception. If the Seller notifies the Purchaser that the Seller is unwilling or unable to remove such additional exceptions, or if the Seller otherwise fails to cure such additional exceptions prior to the Closing, then the Purchaser may either terminate this Agreement or waive the title objection and proceed with the Closing on the purchase of the Property.

7. Property Condition. Within ten (10) days following the date of this Agreement, Seller shall deliver to Purchaser such of the following as are in the possession of Seller related to the Property: environmental and EPA reports, wetlands reports, existing building drawings, site improvement drawings and utility tie in locations. The Seller makes no representation, covenant or warranty whatsoever, express or implied, regarding: (i) the Property, including, without limitation, the Property's compliance with the requirements of any law, rule, specification or contract pertaining thereto; (ii) any reports, drawings, documents or other information provided by the Seller related to the Property; (iii) the applicable zoning requirements; (iv) the propriety of any proposed uses or the continuation of uses thereof, former or present; (v) the title thereto and the condition thereof; (vi) the legal description of the Property and the boundary lines; or (vii) the physical or sub-surface condition thereof.

8. Personal Property. At any time prior to the Closing, the Seller reserves the right to remove from the Property, and thereby not include in the conveyance thereof, any and all movable equipment, furniture, draperies, carpeting (including padding), playground equipment, and other personalty and fixtures, whether affixed to the Property or the structures located on the Property or otherwise. If the Seller fails to remove any such item prior to the Closing date, those items remaining on the Property shall be included as part of the Property sold and conveyed to the purchaser. The Seller waives any right to thereafter remove those items from the Property, and the purchaser agrees to accept them.

9. Taxes, Assessments and Utilities. Seller shall promptly pay when due all real property taxes on the Property for all years prior to the year of Closing. Real property taxes shall be prorated at Closing based on the net general taxes for the current year, if known, otherwise on the basis of the net general taxes for the preceding year at the rate of one hundred percent (100%) thereof, which proration shall be final. Seller shall pay at Closing the prorated amount of all special assessments affecting the Property then due and payable as of Closing. The Seller will pay utility charges relating to the Property up to, but not including, the date of the Closing.

10. Closing. The closing for the purchase of the Property shall be completed not later than forty-five (45) days following the expiration of the Due Diligence Period or on such earlier date as both parties agree (the "Closing"). The Seller shall, at the Closing, convey title to the Property to the Purchaser by quitclaim deed.

11. (Deliveries at Closing.

A. At Closing, the Seller shall deliver the following documents and instruments: (1) the Seller's duly signed quitclaim deed conveying the Property to the Purchaser; and (2) such items and documents as may be necessary for the Title Company to complete the Closing.

B. At Closing, the Purchaser shall deliver the following documents and instruments: (1) the purchase price and all other costs listed in this Agreement to be paid by Purchaser; and (2) such items and documents as may be necessary for the Title Company to complete the Closing.

C. The Purchaser shall be responsible for the following costs:

- a) the fee for filing the deed for record;
- b) the entire escrow fee;
- c) the cost of the title exam and the cost of an Owner's Fee Policy of title insurance;
- d) the county transfer tax and the state conveyance fee; and
- e) other routine costs normally charged to both purchasers and sellers in this county.

12. Notices. Notices required hereunder shall be in writing and shall be deemed to have been given from the time of receipt by the addressee if delivered in person or sent by facsimile or courier or as of the third business day after deposit in the United States mail, postage prepaid for registered or certified mail. Notices shall be directed to the Seller and the Purchaser at the following addresses:

To the Seller: James Vaccarina
11135 Heath Rd.
Chesterland, OH 44026

With a copy to: Gerald J. Patronite
2778 SOM Ctr. Rd. Ste. 201
Willoughby Hills, Ohio 44094-9152

To the Purchaser: Village of Oakwood, Ohio
24800 Broadway Avenue
Oakwood Village, Ohio 44146
Attention: The Honorable Gary V. Gottschalk, Mayor

With a copy to: Village of Oakwood, Ohio
34305 Solon Rd., Ste. 100
Cleveland, OH 44139
Attention: James A. Climer, Director of Law

13. Entire Agreement. All understandings and agreements made heretofore between the Seller and the Purchaser are merged into this Agreement, including any Exhibits hereto, which fully and completely expresses the agreement between the parties and the same is entered into after full investigation, neither party relying upon any statement, representation, agreement or understanding, oral or written, not set forth in this Agreement or an addendum hereto signed by the parties.

14. Broker. The parties hereby represent to one another that neither of them has dealt with any real estate brokers. The parties hereby agree to be responsible for claims made by any real estate broker, agent or finder who brought about and/or participated in the sale and purchase of the Property on its behalf.

15. Default.

A. If the Seller fails to proceed to Closing by reason of default, Purchaser shall have the right to terminate this Agreement by notifying the Seller of such termination and to pursue additional remedies at law or equity that may be available to the Purchaser.

B. If Purchaser fails to proceed to Closing by reason of default, the Seller shall have the right to terminate this Agreement by notifying Purchaser of such termination and to pursue additional remedies at law or equity that may be available to the Seller.

16. Benefit. This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, successors, personal and legal representative and assigns.

17. Law. This Agreement shall be governed by the laws of the State of Ohio. Any legal proceedings related to this Agreement shall be brought in the Court of Common Pleas in the County where the Property is located, Ohio, except when the U.S. District Court for that County is determined to have exclusive jurisdiction.

18. Calculation of Time. If any time period under this Agreement expires on a day which is not a Business Day, the time period shall be extended to the next day that is a Business Day. As used herein, a "Business Day" is any day other than a Saturday, Sunday or legal holiday observed by the State of Ohio.

19. Risk of Condemnation or Casualty Pending Closing. All risk of loss to the Property shall remain upon Seller until the conclusion of the Closing. If, prior to Closing, either (a) condemnation or eminent domain proceedings shall be commenced by any public authority, other than the Village of Oakwood, Ohio, against the Property, or any part thereof, or if Seller shall receive notice of any pending or threatened condemnation or eminent domain proceedings; or (b) the Property or any part of the Property shall be damaged by fire or other casualty, then, in either such event, Seller shall give Purchaser immediate written notice thereof accompanied by reasonable supporting documentation. After any such notice is received by Purchaser, Purchaser shall have the option to: (i) accept the Property and proceed to Closing subject to the proceedings or casualty (as applicable), whereupon any awards or insurance proceeds (as applicable) shall be paid to Purchaser, and Seller hereby assigns to Purchaser all of Seller's right, title, and interest in and to any such awards or insurance proceeds (as applicable); or (ii) terminate this Agreement and receive a full refund of the deposit, whereupon the parties shall have no rights, duties, or obligations hereunder, except those specifically stated herein to survive termination of this Agreement.

20. Taxes and Assessments. Purchaser shall pay any taxes and assessments that accrue during the period in which Purchaser holds title to the Property.

21. Sale of Property to Third Party.

A. Within 14 days following the Closing, the Purchaser shall offer the Property for sale to interested third party developers. Upon sale of the Property, Seller shall receive all proceeds of the sale less the sums payable by Seller as set forth hereinabove but, in no event, shall the net proceeds paid to Seller be less than Sixty-five thousand and 00/100 Dollars (\$65,000.00), triple net, absent Seller's prior written consent. Other than the foregoing, Purchaser will not directly or indirectly sell, lease, transfer or convey the Property or any portion thereof; grant any rights, easements, covenants, mortgages, encumbrances or liens with respect to the Property; or enter into any agreements which would materially and adversely affect the Property or the title thereto without first obtaining Seller's consent with respect thereto, which consent will not be unreasonably withheld.

B. While it holds title to the Property, Purchaser may, at its own expense, demolish the existing building, canopy, paved areas and other structures or improvements and grade the areas where the demolition has occurred so as to match the contours of the remainder of the Property. It is agreed that demolition of the foregoing structures will enhance the value of the Property and that Purchaser shall not be liable to Seller for any damages as a result of any such demolition. Purchaser shall not otherwise change the contours of the Property without prior written consent from the Seller.

C. If, at the end of eighteen (18) months following the Closing, the Property remains unsold by the Purchaser, the Seller may, at its option, enter and terminate the estate conveyed to the Purchaser and Purchaser shall re-convey the Property to Seller by limited warranty deed warranting that Purchaser has not caused or suffered any encumbrances to be placed on the Property during the term of its ownership. The costs of such conveyance shall be borne by the Parties as set forth in Paragraph 11 C hereinabove.

D. The deed of conveyance from the Seller to the Purchaser shall contain language expressing the requirements of this Paragraph 20.

22. Purchaser's Use, Alterations and Duties During its Ownership.

A. Prior to any re-conveyance of the Property by Purchaser to Seller, Purchaser shall demolish all buildings and structures on the Premises in a good and workmanlike manner in accordance with all state, local and county regulations.

B. Upon any re-conveyance to Seller, the Property shall be properly graded and "seeded," and free from standing water, surface rocks, and debris. Any subsurface foundation materials shall be removed and utility conduits and lines shall be cut and capped at the right of way boundary. All public utilities "tie-in" points shall be accessible for "routine tap-ins at the street" and their location shall be clearly field-marked. The Property's "topography" shall remain flat, without swales and embankments and other alterations which would impede or materially add to the cost of any future construction. Any imported soil shall be free from any new subsurface or surface "manmade material" (debris)"

C. No proprietary use maybe conducted from the Property during Purchaser's ownership such as, but not limited to, commercial storage or leasing, temporary or seasonal private sales, advertising for proprietary purposes such as billboards, and the like. Purchaser may, however, advertise the property as "for sale" and plant flowers or shrubbery.

23. Legal Status.

A. Purchaser shall not perform any act, whether directly or indirectly, to change the existing commercial zoning or use classification of the Property unless such change is approved in advance in writing by Seller which shall not be unreasonably withheld.

B. During Village of Oakwood's ownership, Seller Vaccarina's ownership and use rights as of the date of this Agreement shall be deemed preserved, tolled, and suspended as a matter of law, and be "an estoppel" against Purchaser, as if "grandfathered," at law and in equity.

C. Purchaser shall not encumber the Property with any new easements, reservations, restrictions, covenants or liens during its ownership without the prior written consent of Seller.

24. Purchaser's Due Diligence Reports.

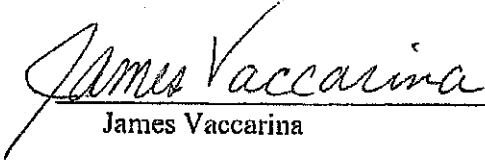
In the event the Property is re-conveyed to Seller, upon Seller's request he shall receive from Purchaser copies of any and all reports and documentation such as soil analyses, surveys, zoning applications, site plans, utility information and any related information obtained or compiled by Purchaser concerning the Property. This provision constitutes consideration payable by Purchaser to Seller as an inducement to Seller's entering into this Agreement. Seller has a propriety interest in "the Reports" if the Property is re-conveyed to Seller (i. e., if Purchaser does not sell to a third party).

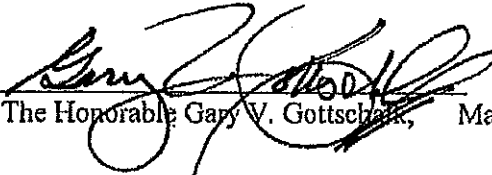
25. Interpretation.

This Agreement shall be construed as "interpretation neutral" as if drafted by both parties in the event of any ambiguity in any term or provision.

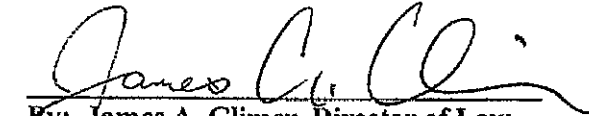
The parties on the effective date hereinabove set forth have signed this Agreement in duplicate, intending that each be deemed an original.

VILLAGE OF OAKWOOD, OHIO


James Vaccarina

By: 
The Honorable Gary V. Gottschalk, Mayor

Approved as to Form only:


By: James A. Climer, Director of Law
Village of Oakwood, Ohio

795-19-035 9/21/2017 2:54:00 P

VACCARINA, JAMES

Sale: \$ 41,260.00 Fiduciary Deed

Conv. \$ 166.20 LUC: 4520 Ex:

Recpt: F-09212017-1 Surety Title Agency, Inc.

829380

CUYAHOGA COUNTY FISCAL OFFICER

CUYAHOGA COUNTY
OFFICE OF FISCAL OFFICER - 2
DEED 9/21/2017 2:59:12 PM
201709210643

Fiduciary's Deed

Statutory Form Ohio Revised Code Section 5302.09

KNOW ALL MEN BY THESE PRESENTS THAT FRANK VACCARINA, Executor of the Estate of PAUL VACCARINA in the Cuyahoga County Probate Court, by the power conferred by the Last Will and Testament, and every other power, for full consideration paid, grants with fiduciary covenants to JAMES VACCARINA; whose tax mailing address is 11135 Heath Road, Chesterland, Ohio 44026, the following Real Property, located at 24098 Broadway Avenue, Oakwood Village, Ohio 44146:

Situated in the Village of Oakwood, County of Cuyahoga and State of Ohio:

Being Sublot No. 21-A in the Bedford Farm Homes Subdivision No. 1, being a part of Original Bedford Township Lot Nos. 88 and 89 as shown by the recorded plat in Volume 129, Pages 7 and 8 of Cuyahoga County Map Records, and bounded and described as follows: Beginning at an iron pin in the southwesterly line of Broadway (100 feet wide), which line bears North 43° 20' 30" West along the southwesterly line of Broadway, and which pin is located a distance of 175.04 feet from the southeasterly corner of Sublot No. 21-A; thence North 43° 20' 30" West along the Southwesterly line of Broadway a distance of 197.32 feet to an iron pin (and which iron pin is the point of intersection of the Easterly line of Macedonia Road (60 feet wide) with the southwesterly line of Broadway (100 feet wide); thence South 0° 15' 0" East along the Easterly line of Macedonia Road a distance of 189.49 feet to an iron pin; thence Northeasterly a distance of N 71° 08' 20" E., 142.24 feet in a straight line to the place of beginning per survey dated 6/30/55 by Bauer Survey Co., by S. A. Bauer, Registered Surveyor No. 53, be the same more or less, together with all rights and appurtenances whatsoever thereunto belonging and all buildings and improvements thereon erected or installed.

Permanent Parcel No. 795-19-035

Surety Title Agency, Inc.
Order No.: 17-309T
Escrow No.: 17-309T

Executed this 22 day of August, 2017.

GRANTOR:

Frank A. Vaccarina

FRANK VACCARINA, Executor of the
Estate of PAUL VACCARINA

STATE OF OHIO)
) ss.
CUYAHOGA COUNTY)

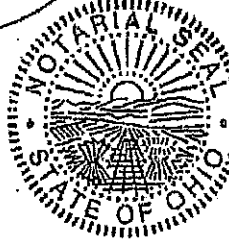
The foregoing instrument was acknowledged before me this 22 day of August 2016, by FRANK VACCARINA, Executor of the Estate of PAUL VACCARINA. 247

(SEAL)

Joseph K. Rosalina

NOTARY PUBLIC

This Instrument Prepared By:
Joseph K. Rosalina, Esq.
RUSSO, ROSALINA & CO., L.P.A.
6656 Ridge Road
Parma, OH 44129
440-843-8400



JOSEPH K. ROSALINA
Attorney At Law
NOTARY PUBLIC
STATE OF OHIO
My Commission Has
No Expiration Date
Section 147.03 O.R.C.