

ORDINANCE NO. 2019 - 56  
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ORDINANCE NO. 2019 - 56

INTRODUCED BY MAYOR AND COUNCIL AS A WHOLE

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO PURCHASE AGREEMENTS ON BEHALF OF THE VILLAGE OF OAKWOOD WITH INA GROUP, LLC, GEOFFREY MISNIK AND 7299 DIVISION STREET LLC FOR THE ACQUISITION OF RIGHT-OF-WAY AND UTILITIES EASEMENTS FOR THE DIVISION STREET SPECIAL ASSESSMENT PROJECT**

**WHEREAS**, in order to construct the improvements for the Division Street Special Assessment Project, it was necessary for the Village of Oakwood to acquire certain right-of-way and utility easements for such project; and

**WHEREAS**, the costs for such acquisition were included in the project costs which amounts were assessed against the benefitted property owners without cost to the Village of Oakwood; and

**WHEREAS**, Ordinance 2007-81, authorized the Mayor to enter into purchase agreements on behalf of the Village of Oakwood with Gregory J. & Geoffrey E. Misnik in the amount of \$15,466.00 plus closing costs and 7299 Division Street LLC in the amount of \$8,372.00 plus closing costs, for the acquisition of certain right-of-way and utility easements for the Division Street Special Assessment Project; and

**WHEREAS**, it was determined that the purchase agreements between the Village of Oakwood and Gregory J. & Geoffrey E. Misnik and the purchase agreements between the Village of Oakwood and 7299 Division Street LLC were not consummated and the plat for the Division Street Extension Project remains unfiled at this time; and

**WHEREAS**, the property formerly owned by Gregory J. & Geoffrey E. Misnik is now owned by INA Group LLC; and

**WHEREAS**, Geoffrey Misnik owns an equitable interest in the foregoing property of INA Group, LLC by reason of a certain land installment contract recorded as Document Number 201803160263 in the land records of the Cuyahoga County Fiscal officer; and

**WHEREAS**, the Village of Oakwood, 7299 Division Street LLC, and INA Group LLC and Geoffrey have expressed the desire to complete the aforementioned utility easement and right of way purchases so that the filing of the plat for the Division Street Extension Project can be completed.

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

**SECTION 1.** Resolution 2007-81 is rescinded.

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**SECTION 2.** The Mayor be and is hereby authorized to enter into purchase agreements on behalf of the Village of Oakwood with INA Group LLC and Geoffrey Misnik in the amount of \$15,466.00 plus closing costs and 7299 Division Street LLC in the amount of \$8,372.00 plus closing costs, for the acquisition of certain right-of-way and utility easements for the Division Street Special Assessment Project, copies of which are attached hereto, expressly made a part hereof by reference and marked Exhibit "A" and "B".

**SECTION 2.** Council hereby appropriates sufficient funds to effectuate the provisions contained in Section 2 hereof. The Director of Finance be and is hereby authorized and directed to issue vouchers in the amounts and for the purposes as expressed in Section 2 hereof, said amounts having been previously charged to the Division Street Special Assessment Project Fund.

**SECTION 3.** This Ordinance shall take effect at the earliest time permitted by law.

PASSED: August 27, 2019

Debra L. Hladky  
Debra L. Hladky, Clerk of Council

Johnnie Warren  
Johnnie Warren, President of Council

Presented to the Mayor August 28, 2019

Approved: September 12, 2019  
Gary W. Gottschalk  
Mayor, Gary W. 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 - 56 was duly and regularly passed by this Council at the meeting held on the 27 day of August, 2019.

Debra L. Hladky  
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. 2019-56 was duly posted on the 13 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  
Debra L. Hladky, Clerk of Council

DATED: Sept 13, 2019

**ACQUISITION AGREEMENT**

**THIS AGREEMENT** made and entered into by and between INA Group L.L.C. and Geoffrey Misnik, (hereinafter referred to as "Grantors"), and the Village of Oakwood, an Ohio Municipal Corporation, hereinafter referred to as "Grantee".

**WITNESSETH:**

**WHEREAS**, Grantor INA Group L.L.C. owns legal title to and Grantor Geoffrey Misnik owns an equitable interest in certain lands which are located contiguous to Division Street, within the Village of Oakwood, Ohio; and

**WHEREAS**, Grantors are desirous of Dedicating a portion of their land, and Grantee is desirous of acquiring a portion of said property known as Permanent Parcel No. 795-48-018 from Grantors which property is to be added to the existing Division Street right-of-way and included therein an area to be used for a utility easement:

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, agreements and undertakings hereinafter set forth, the parties hereto agree as follows:

**INCORPORATION OF RECITALS**

The recitals hereinabove contained in the "**WHEREAS**" clauses are incorporated herein and made a part of this Agreement as though fully rewritten herein.

**DEDICATION OF PROPERTY**

Grantors agree to Dedicate and the Grantee agrees to the Dedication of a 15,425 square feet portion of Grantors' property (hereinafter "Property"), said portion as described and depicted in the dedication plat (hereinafter "Dedication Plat" or "Plat") as depicted in Exhibit A, a copy of which is attached hereto, expressly made a part hereof by reference. The Property being Dedicated hereunder shall include the land, all appurtenant rights, privileges and easements and all improvements located thereupon.

**COMPENSATION**

The Grantee hereby offers the sum of Fifteen Thousand Four Hundred Sixty-Six Dollars (\$15,466.00), for said Dedication with easements which is the subject matter of this Agreement and which shall be paid as follows:

1. Fifteen Thousand Four Hundred Sixty-Six Dollars (\$15,466.00) as and for payment of the total compensation at the time of closing as herein defined in the form of a check made payable to INA GROUP LLC.

**EXECUTION OF DEDICATION PLAT, TITLE GUARANTY**

The Grantors agree to Dedicate the right-of-way acquisition portion of the Property and the granting of the utility easement for the balance of the Property being acquired by their execution of the dedication plat as depicted in Exhibit A.

The Grantors shall furnish the Grantee a title guaranty policy or, if it cannot be obtained, a fee policy of title insurance in the amount of the compensation as evidence that the Dedication will be acquired by the Grantee hereunder in accordance with the aforesaid Dedication Plat.

**ENVIRONMENTAL HAZARDS**

Grantors state that to the best of their knowledge no environmental hazards exist on the subject Dedication and easement areas whether underground, above ground or relating to any installations located thereon unless noted and expressly made a part hereof by reference.

**CLOSING AND PRORATIONS**

All documents and funds called for by this Agreement shall be ready for exchange, deposit or recording on or before \_\_\_\_\_, 2019, which shall be known as the Closing Date and the date upon which the interests in such Acquisition shall transfer to Grantee.

This transaction shall be considered to be closed when the Property, which is the subject matter hereof, shall be Dedicated from the Grantors to the Grantee by the execution and filing of the Dedication Plat for record.

Possession of the property shall be immediate after the Dedication Plat recording.

The Grantors shall be charged with the following:

- a. The cost of any real estate transfer tax;
- b. The cost of evidence of assurance of title required hereunder.

The Grantee shall be charged with the following:

- a. All fees for the filing of the Dedication Plat.
- b. The costs of Escrow.

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The parties agree that all taxes, assessments, if any, shall be prorated as of the date of closing as follows:

1. The parties agree that the Grantee is acquiring 10.660% of Permanent Parcel No. 795-48-018. As such the Escrow Agent is directed to utilize this percentage for the relegation of property taxes and assessment between the portion being acquired by the Grantee and the balance of the Grantors' parcel of land. After such relegation, the pro-rata share of such taxes and assessments on the acquired portion of this land shall be calculated as of the Closing Date.

### **EVIDENCE OF TITLE**

Grantors shall order (and deliver copies thereof to Grantee) a commitment ("Commitment") issued by Land America Commercial Services, (the "Title Company") for the issuance of an ALTA Owner's Policy of Title Insurance in the amount of the compensation price (the "Policy") , which Commitment shall show title in Grantors free and clear of all liens and encumbrances except: (i) those created by or to be assumed by Grantee; (ii) those specifically set forth in this Agreement; (iii) zoning ordinances; (iv) general and special real estate taxes and assessments, if any, that are a lien on the date of Closing, but are not yet due and payable; and (v) legal highways.

### **ESCROW AGENT**

The parties hereto agree that Amrock Commercial Title Co. shall perform escrow services and act as Escrow Agent in accordance with the tenor of this Agreement and subject to the terms and conditions contained herein and subject further to the standard conditions of escrow not inconsistent with the terms contained in this Agreement.

### **DEFECTS OF TITLE**

Notwithstanding anything contained herein, if and in the event a defect is discovered in the title of the Grantors, then the Grantors shall have thirty (30) days after the notice of said defect to remove same and the date of the execution and delivery of the Dedication Plat, date of closing and completion of the other obligations herein contained shall be postponed accordingly. In the event that the said defect is not removed with the said thirty (30) day period so that title can be conveyed to Grantee in accordance with this Agreement, then Grantee shall have the right to take title in its present condition with no abatement of the compensation price or to cancel and rescind this Agreement and receive a return of any moneys deposited by Grantee into Escrow, with Grantors bearing all charges to that point. The above shall be the sole remedies of Grantee pertaining to defects of title.

### **REAL ESTATE BROKER**

Grantee and Grantors each represent and affirm that no real estate broker or salesman was instrumental in procuring this transaction or in submitting the name of the Grantors to Grantee, and there is, therefore no real estate commission due in regard to this transaction.

**NOTICES**

All notices required hereunder shall be deemed effective if placed in the mail, postage prepaid, addressed as follows:

**To Grantors:**

Renee Hudkins  
INA Group, LLC  
Director of Operations  
6333 Apples Way Suite 115  
Lincoln NE 68516

Geoffrey Misnik  
7270 Division Street  
Bedford, OH 44146-5406

**To Grantee:**

Gary V. Gottschalk  
Mayor, the Village of Oakwood  
24800 Broadway Avenue  
Oakwood Village, Ohio 44146

**With a Copy to:**

James A. Climer, Attorney at Law  
Mazanec, Raskin & Ryder Co., L.P.A.  
100 Franklin's Row  
34305 Solon Road  
Cleveland, OH 44139

Delivery shall be deemed complete on the earlier of actual receipt, duly receipted for, if personally delivered, or sent via facsimile, or two (2) postal delivery days after mailing, or one (1) business day after deposit with an overnight courier. The addresses to which notices and demands shall be delivered or sent may be changed from time to time, by notice served as hereinabove provided by either party upon the other party.

**AUTHORITY TO SIGN AND BIND PARTY**

Grantors hereby warrant that they have the authority to enter into all terms and conditions contained in this Agreement.

**BINDING EFFECT, INTERPRETATION AND MODIFICATION**

This Agreement shall be binding upon the parties hereto and upon their successors and assigns, as the case may be.

The parties hereto agree that this writing embodies all of their prior discussions and oral

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representations, and that none of same shall survive this Agreement unless incorporated herein. It is further agreed between the parties hereto that this Agreement shall survive the execution and the filing of the Dedication Plat for record in this matter.

This Agreement shall be interpreted in accordance with the laws of the State of Ohio.

This Agreement may be modified or altered only if said modification or alteration is in writing and signed by the parties who are the signatories hereto.

The captions set forth under each paragraph of this Agreement are for convenience and reference only in assisting in the reading of said Agreement, but are in no way meant to define, limit, abridge or assist in the interpretation and/or scope or intent of this Agreement, which in lieu thereof, must be read in its entirety.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in numerous counterparts, all of which shall be deemed an original counterpart, the day and year set forth below.

**WITNESSES:**

**GRANTOR: INA GROUP L.L.C.**

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
Date

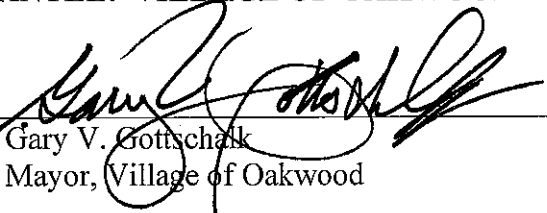
**GRANTOR: GEOFFREY MISNIK**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

**GRANTEE: VILLAGE OF OAKWOOD**

\_\_\_\_\_  
\_\_\_\_\_

By:   
Gary V. Gottschalk  
Mayor, Village of Oakwood

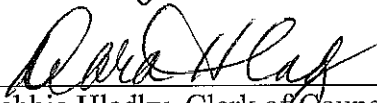
\_\_\_\_\_  
Date

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Approved:

\_\_\_\_\_  
Director of Law, Village of Oakwood

This Agreement was authorized by Resolution No. 2019-56-20 adopted by the Council of the Village of Oakwood on the 27 day of August, 2019.

  
\_\_\_\_\_  
Debbie Hladky, Clerk of Council



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**Exhibit A**

[Insert Copy of Dedication Plat]







**ACQUISITION AGREEMENT**

**THIS AGREEMENT** made and entered into by and between 7299 Division Street L.L.C., an Ohio limited liability company (hereinafter referred to as "Grantor"), and the Village of Oakwood, an Ohio Municipal Corporation, hereinafter referred to as "Grantee".

**WITNESSETH:**

**WHEREAS**, Grantor is the owner of certain lands which are located contiguous to Division Street, within the Village of Oakwood, Ohio; and

**WHEREAS**, Grantor is desirous of Dedicating a portion of their land, and Grantee is desirous of acquiring a portion of said property known as Permanent Parcel No. 795-48-020 from Grantor which property is to be added to the existing Division Street right-of-way and included therein an area to be used for a utility easement:

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, agreements and undertakings hereinafter set forth, the parties hereto agree as follows:

**INCORPORATION OF RECITALS**

The recitals hereinabove contained in the "**WHEREAS**" clauses are incorporated herein and made a part of this Agreement as though fully rewritten herein.

**DEDICATION OF PROPERTY**

Grantor agrees to Dedicate and the Grantee agrees to the Dedication of a 2,212 square feet portion of Grantor's property (hereinafter "Property"), said portion as described and depicted in the dedication plat (hereinafter "Dedication Plat" or "Plat") as depicted in Exhibit A, a copy of which is attached hereto, expressly made a part hereof by reference. The Property being Dedicated hereunder shall include the land, all appurtenant rights, privileges and easements and all improvements located thereupon.

**COMPENSATION**

The Grantee hereby offers the sum of Eight Thousand Three Hundred Seventy-Two Dollars (\$8,372.00), for said Dedication with easements which is the subject matter of this Agreement and which shall be paid as follows:

1. Eight Thousand Three Hundred Seventy-Two Dollars (\$8,372.00) as and for payment of the total compensation at the time of closing as herein defined in the form of a check made payable to Grantor.

**EXECUTION OF DEDICATION PLAT, TITLE GUARANTY**

The Grantor agrees to Dedicate the right-of-way acquisition portion of the Property and the granting of the utility easement for the balance of the Property being acquired by his execution of the dedication plat as depicted in Exhibit A.

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1. The parties agree that the Grantee is acquiring 1.635% of Permanent Parcel No. 795-48-020. As such the Escrow Agent is directed to utilize this percentage for the relegation of property taxes and assessment between the portion being acquired by the Grantee and the balance of the Grantor's parcel of land. After such relegation, the pro-rata share of such taxes and assessments on the acquired portion of this land shall be calculated as of the Closing Date.

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### **REAL ESTATE BROKER**

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**NOTICES**

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To Grantor:  
7299 Division Street LLC  
7280 Wright Avenue  
Oakwood Village, Ohio 44146

To Grantee:  
Gary V. Gottschalk  
Mayor, the Village of Oakwood  
24800 Broadway Avenue  
Oakwood Village, Ohio 44146

With a Copy to:  
James A. Climer, Attorney at Law  
Mazanec, Raskin & Ryder Co., L.P.A.  
100 Franklin's Row  
34305 Solon Road  
Cleveland, OH 44139

Delivery shall be deemed complete on the earlier of actual receipt, duly receipted for, if personally delivered, or sent via facsimile, or two (2) postal delivery days after mailing, or one (1) business day after deposit with an overnight courier. The addresses to which notices and demands shall be delivered or sent may be changed from time to time, by notice served as hereinabove provided by either party upon the other party.

**AUTHORITY TO SIGN AND BIND PARTY**

Grantor hereby warrants that it has the authority to enter into all terms and conditions contained in this Agreement.

**BINDING EFFECT, INTERPRETATION AND MODIFICATION**

This Agreement shall be binding upon the parties hereto and upon their successors and assigns, as the case may be.

The parties hereto agree that this writing embodies all of their prior discussions and oral representations, and that none of same shall survive this Agreement unless incorporated herein. It is further agreed between the parties hereto that this Agreement shall survive the execution and the filing of the Dedication Plat for record in this matter.

This Agreement shall be interpreted in accordance with the laws of the State of Ohio.



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This Agreement may be modified or altered only if said modification or alteration is in writing and signed by the parties who are the signatories hereto.

The captions set forth under each paragraph of this Agreement are for convenience and reference only in assisting in the reading of said Agreement, but are in no way meant to define, limit, abridge or assist in the interpretation and/or scope or intent of this Agreement, which in lieu thereof, must be read in its entirety.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in numerous counterparts, all of which shall be deemed an original counterpart, the day and year set forth below.


**WITNESSES:**

**GRANTOR: 7299 DIVISION STREET L.L.C.**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Member

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
\_\_\_\_\_

**GRANTEE: VILLAGE OF OAKWOOD**

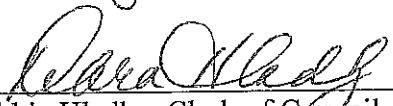
By:   
\_\_\_\_\_  
Gary V. Gottschalk  
Mayor, Village of Oakwood

\_\_\_\_\_  
Date

Approved:

\_\_\_\_\_  
Director of Law, Village of Oakwood

This Agreement was authorized by Resolution No. 2019-56-20 adopted by the Council of the Village of Oakwood on the 27 day of August, 2019.

  
\_\_\_\_\_  
Debbie Hladky, Clerk of Council

**Exhibit A**

[Insert Copy of Dedication Plat]





