

ORDINANCE NO. 2020-77

INTRODUCED BY MAYOR AND COUNCIL AS A WHOLE

**AN ORDINANCE AUTHORIZING THE MAYOR TO SELL TO PREMIER OAKWOOD LLC CERTAIN REAL PROPERTY CONSISTING OF APPROXIMATELY 23.29 ACRES OF LAND LOCATED ON MACEDONIA ROAD IN THE VILLAGE OF OAKWOOD BEARING PERMANENT PARCEL NUMBERS 795-28-001 AND 795-18-029 ON THE RECORDS OF THE CUYAHOGA COUNTY FISCAL OFFICER**

**WHEREAS**, Premier Commercial Realty, Inc. (hereinafter "Premier Commercial") sold to the Village certain real property consisting of approximately 23.29 acres of land located on Macedonia Road in the Village and bearing Permanent Parcel Numbers 795-28-001 and 795-18-029 on the records of the Cuyahoga County Fiscal Officer (hereinafter "Property") pursuant to a certain Agreement of Purchase and Sale attached hereto and incorporated herein as Exhibit "A" (hereinafter "Agreement"); and,

**WHEREAS**, Premier Commercial's repurchase of the Property under the foregoing Agreement is contingent on the Property being re-zoned to accommodate office and commercial development appropriate for Premier Commercial's development plan; and,

**WHEREAS**, the re-zoning referenced above and other contingencies for the re-sale of the Property to Premier Commercial have been fulfilled; and,

**WHEREAS**, Premier Commercial has indicated its intent to exercise its option to repurchase the Property under the terms of the Agreement and has agreed to pay the Village's carrying costs relating to the purchase and holding of the Property calculated to the date of the transfer of the Property to Premier Commercial; and,

**WHEREAS**, Premier Commercial has elected to assign its rights under the Agreement to Premier Oakwood LLC (hereinafter Premier Oakwood); and

**WHEREAS**, Premier Oakwood intends to develop said land in a manner deemed beneficial to the economic well-being of the Village and its residents; and,

**WHEREAS**, the sale of the foregoing property has been duly considered and recommended by the Planning Commission pursuant to Oakwood Charter Sec. 10.01;

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

**SECTION 1:** The Mayor be and hereby is authorized to execute on behalf of the Village all documents necessary to the sale of the Property to Premier

Oakwood pursuant to the terms of the Agreement and the payment of the purchase price set forth therein as well as the carrying costs of the Village calculated as of the date of the transfer of the Property to Premier Oakwood.

SECTION 2: This ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_

\_\_\_\_\_  
Johnnie A Warren, President of Council

\_\_\_\_\_  
Deborah L. Hladky, Clerk of Council

Presented to the  
Mayor \_\_\_\_\_

Approved: \_\_\_\_\_

\_\_\_\_\_  
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. 2020 -77 was duly and regularly passed by this Council at the meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
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. 2020 - 77 was duly posted on the \_\_\_\_ day of \_\_\_\_\_, 2020, 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: \_\_\_\_\_

# EXHIBIT "A"

## AGREEMENT OF PURCHASE AND SALE

This Agreement of Purchase and Sale (this "Agreement") is made as of the \_\_\_ day of July, 2018, (the "Effective Date"), by and between the VILLAGE OF OAKWOOD ("Seller") and PREMIER COMMERCIAL REALTY, LLC, an Ohio limited liability company or its nominee ("Buyer"), who, for the valuable consideration set forth below, agree as follows:

### RECITALS:

WHEREAS, Buyer had previously entered into that certain Agreement of Purchase and Sale with Svetlana Bugarcic and Michael Bugarcic (collectively, "Original Seller") on July 31, 2017, as amended on October 27, 2017 and on March 5, 2018 (as so amended, the "Prior Purchase Agreement");

WHEREAS, simultaneously with the parties entry into this Agreement, the parties shall enter into that certain Assignment and Assumption of Agreement of Purchase and Sale whereby Buyer, as the assignor, shall assign and transfer to Seller, as the assignee, all of Buyer's right, title and interest, in the Prior Purchase Agreement, and Seller shall assume all of Buyer's liabilities and obligations under the Prior Purchase Agreement;

WHEREAS, pursuant to this Agreement, subject to the terms and conditions hereof, Buyer shall have the obligation to purchase the Premises (as hereinafter defined) and Seller shall have the obligation to sell the Premises to Buyer;

WHEREAS, Seller agrees that it shall place the re-zoning by referendum of the Premises on the ballot of November, 2018 (the "Zoning Referendum");

WHEREAS, Buyer's entry into this Agreement is fully and entirely conditioned upon Seller simultaneously authorizing the Seller's execution and delivery of each of (A) an Ordinance authorizing the Assignment and Assumption of Agreement of Purchase and Sale, and (B) an Ordinance authorizing this Agreement.

#### 1. Agreement to Sell and Purchase.

(a) Subject to the terms and conditions hereinafter set forth, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase and take from Seller, in "AS IS - WHERE IS" condition with all faults, two parcels of land consisting of approximately twenty-two and 59/100 (22.59) acres of vacant land ("Parcel A") and seven-tenths (.70) acres of land ("Parcel B") (together, the "Premises"), to be owned by Seller, known under auditor's permanent parcel nos. 795-28-001 and 795-18-029, and located in the Village of Oakwood, County of Cuyahoga, and State of Ohio described on Exhibit A attached hereto and made a part hereof.

(b) Seller hereby acknowledges it may be the intent of the Buyer to effect an IRC Section 1031 tax deferred exchange, which will not delay the closing or cause

additional expense to the Seller. The Buyer's rights under this Agreement may be assigned to a qualified intermediary for the purpose of completing such an exchange. Seller agrees to cooperate with the Buyer and such qualified intermediary in a manner necessary to complete the exchange.

2. Purchase Price. The total purchase price for the Premises shall be One Million Five Thousand and 00/100 Dollars (\$1,005,000.00) (the "Purchase Price"), payable by Buyer. The Purchase Price is allocated \$995,000 to Parcel A and \$10,000 to Parcel B. Buyer shall deliver to Seller the Purchase Price as follows:

- (i) Pursuant to the Prior Purchase Agreement, Buyer delivered to the escrow agent for the Prior Purchase Agreement the sum of \$35,000.00 which Seller used for the purchase of the Premises. As a result of Seller receiving the \$35,000.00 benefit of the foregoing deposit, Buyer shall be irrevocably deemed to have made a \$35,000.00 earnest money deposit under this Agreement (the "Deposit"), which shall be handled in accordance with the terms hereof.
- (ii) On the Closing Date (as defined below), a sum payable by wire transfer or certified funds in an amount equal to the Purchase Price less the Deposit, any other deposits by Buyer and any interest earned thereon, subject to closing adjustments (if any), shall be payable to Seller through escrow at closing. Guardian Title, 7550 Lucerne Drive, Suite 310, Middleburg Heights, Ohio 44130, Phone: (216) 898-4925, shall act as escrow agent ("Escrow Agent").

3. Escrow. An executed copy of this Agreement shall be deposited with the Escrow Agent concurrently upon execution by all parties and shall serve as escrow instructions for the closing of this transaction. Escrow Agent may attach its Standard Conditions of Acceptance of Escrow hereto; provided, however, that this Agreement shall govern in the event of any inconsistency between this Agreement and such Standard Conditions of Acceptance of Escrow.

4. Due Diligence, Surveys, and Title Commitment.

(a) Seller grants to Buyer and its agents, licensees, employees, assigns, contractors, and subcontractors, until November 16, 2018, to conduct the Due Diligence as defined below (the "Due Diligence Period"), a license to enter the Premises and the full right of access to the Premises, upon reasonable prior notice to Seller, in order for Buyer, at its sole cost and expense, to inspect the Premises, undertake engineering studies and boundary surveys, and conduct such additional engineering and other investigations as Buyer shall deem necessary or desirable as due diligence to evaluate the Premises for Buyer's intended ownership, occupancy, and use thereof (the "Due Diligence"). Any issues not investigated or identified in writing to Seller by the conclusion of the Due

Diligence Period shall be waived and Buyer obligated to close. In the event Buyer has provided Seller with a written notice of cancellation by the end of the Due Diligence Period, then (1) Buyer shall be obligated to provide Seller with copies of all inspection reports, wetland studies, surveys and other documents pertaining to its inspection of the Premises; (2) this Agreement will be null and void and of no further effect to each party; and (3) the Deposit shall be promptly paid by Seller to Buyer. For avoidance of doubt, Section 4(e) acts independently of this Section 4(a).

(b) At any time prior to the expiration of the Due Diligence Period, if Buyer is not satisfied with the condition of the Premises, Buyer may elect to terminate this Agreement by delivering written notice of such termination to Seller. In the event Buyer so terminates this Agreement, Buyer shall return the Premises to its original condition prior to Buyer's inspection thereof and the Deposit shall be handled in accordance with Section 4(a), clause (3).

(c) Buyer shall indemnify and hold Seller harmless for any injury, damage or destruction to the Premises or any person (including, without limitation, death) or property caused by Buyer or Buyer's agents, licensees, employees, assigns, contractors, and subcontractors during the Due Diligence Period or at any time prior to Closing.

(d) Within thirty (30) days of the Effective Date, Buyer shall, at its sole cost and expense, cause the Title Company to issue and deliver to Buyer a title insurance commitment to issue the Title Policy (as hereinafter defined), together with legible copies of all documents referred to in Schedule B-Part 2 thereof (collectively, as endorsed from time to time, the "Title Commitment"). Within five (5) business days after Buyer's receipt of the Title Commitment, Buyer shall notify Seller and Escrow Agent of any conditions as to title to which Buyer objects (together herein called "Unpermitted Exceptions"), provided that Buyer agrees to accept the following exceptions to title (the "Permitted Exceptions") but not other standard exceptions set forth in an ALTA Title Insurance Policy (2006):

- (i) Zoning ordinances and regulations, if any;
- (ii) Real estate taxes which are a lien but which are not due and payable as of the Closing Date; and
- (iii) Exceptions to title that have been accepted or approved by Buyer as herein provided."

Notwithstanding the foregoing, Unpermitted Exceptions shall further be limited to those adverse matters of record which render the title unmarketable or uninsurable. All matters identified in the Title Commitment which are not objected to by Buyer shall be deemed Permitted Exceptions. In the event of receipt of the above-described notice of Unpermitted Exceptions, Seller shall have the right, but not the obligation except as to Mandatory Cure Items (as hereinafter defined), to cause the Unpermitted Exceptions to be remedied or cured, at the Seller's expense, within thirty (30) days after receipt of

Buyer's written notice, provided however, any Seller shall be obligated to cure all objections which attached to the Premises after the closing under the Prior Purchase Agreement ("Mandatory Cure Items"). If, within said thirty (30) day period, all such Unpermitted Exceptions have not been remedied or cured; or Seller has not agreed to remedy or remove the same on or before the Closing Date, except Seller must cure Mandatory Cure Items; or if the Title Company has notified Seller and Buyer that the Title Company is unable to issue the Title Policy without showing the Unpermitted Exceptions as exceptions to title, then Buyer shall have the option to:

- (1) close the purchase of the Premises on the terms of this Agreement subject to such Unpermitted Exceptions without reduction in Purchase Price, except Seller must cure Mandatory Cure Items; or
- (2) terminate this Agreement by delivery of written notice of such election to Seller, whereupon Buyer shall pay all charges then having accrued pursuant to this Agreement and the Seller shall pay the Deposit and any interest thereon, to Buyer and upon such delivery neither party shall have any further liability to the other.

(e) In the event that the Zoning Referendum does not pass, Buyer can terminate its obligation to currently purchase the Premises and Seller shall remit the Deposit to Buyer and Section 19 shall expressly survive any termination of this Agreement by Buyer.

5. Conditions to Closing.

(a) In addition to the conditions provided elsewhere in this Agreement, the obligation of Buyer to consummate the transaction contemplated by this Agreement shall be subject to satisfaction or waiver in writing, of each of the following:

- (i) Due diligence by Buyer and/or its agents, licensees, employees, agencies, contractors, and subcontractors pursuant to Section 4(a), shall have been performed to the satisfaction of Buyer, in its sole discretion, during the Due Diligence Period, and the Premises shall remain in the condition described in report(s) provided in conjunction with performance of such due diligence;
- (ii) The favorable result of the Zoning Referendum affecting the Premises; and
- (iii) The Title Company shall be in a position to issue to Buyer, dated as of the date and time of Closing, an ALTA Owner's Policy of Title Insurance (2006) in the amount of the Purchase Price, insuring that Buyer has good and marketable fee simple title to the Premises, subject only to Permitted Exceptions (the "Title Policy"), no later than seven (7) days prior to the Closing Date.

(b) In the event that any condition described in this Section 5 or elsewhere in this Agreement with respect to the performance of the parties is not satisfied or waived in writing by Buyer on or before the date on which it is required to be satisfied, Buyer shall have the right to postpone the Closing Date by notice to Seller and Escrow Agent; but in no event shall the Closing Date be postponed for a period of more than thirty (30) days.

6. Taxes and Assessments. As of the close of business on the Closing Date, the Escrow Agent shall prorate, and appropriately charge or credit the respective accounts of each of the Buyer and Seller, real estate taxes and assessments, both general and special, which are a lien but not yet due and payable as of the Closing Date and applicable to the Premises, using the rates and valuations shown on the latest available tax duplicates (the "Tax Proration"). Said Tax Proration shall be generally based upon the applicable taxes and assessments upon the Premises. Seller shall be responsible for payment of any assessments due for any road improvements. The Escrow Agent shall deliver the estimated Tax Proration to Buyer and Seller no less than three (3) business days prior to the Closing Date. Upon receipt thereof, Buyer and Seller shall each have the right to review and approve the Tax Proration, such approval not to be unreasonably withheld, delayed or denied within two (2) business days of its receipt thereof. If a party fails to reply to the estimated Tax Proration within said two (2) day period, then such failure shall be deemed to be an approval of the Tax Proration.

7. Closing Date. The transfer of title to the Premises hereunder by the filing of the deed for record (the "Closing") shall be on the date which is the later of thirty (30) days following satisfaction or waiver of all of the Conditions to Closing, pursuant to Section 5 above (subject to postponement, as permitted hereunder, the "Closing Date") or within thirty (30) days' written notice from Buyer or Seller and Escrow Agent that it is ready to close.

8. Deposits into Escrow.

(a) On or before the Closing Date, Seller shall deposit or cause to be deposited with Escrow Agent:

- (i) A good and sufficient general warranty deed (the "Deed") in recordable form acceptable to Buyer, conveying to Buyer good and indefeasible fee simple title to the Premises free and clear of all exceptions to title except Permitted Exceptions and such Unpermitted Exceptions as Buyer may agree, as provided in Paragraph 4(d)(1);
- (ii) Such funds and other instruments in recordable form or otherwise as may be reasonably required by Escrow Agent as a condition of the closing of the escrow.

(b) On or before the Closing Date, Buyer shall deposit or cause to be deposited with Escrow Agent:

- (i) The funds described in Section 2; and
- (ii) Such other funds and instruments in recordable form or otherwise as may be reasonably required by Escrow Agent as a condition of the closing of the escrow.

9. Actions by Escrow Agent. On the Closing Date, if all the funds and documents set forth in Section 7 have been delivered to Escrow Agent and, if all other conditions to Buyer's obligation to consummate the transaction contemplated by this Agreement have been fulfilled, the Escrow Agent shall:

- (i) cause the Deed to be filed for record in the Cuyahoga County, Ohio Records;
- (ii) charge or credit the respective accounts of the parties for real estate taxes and assessments, both general and special, which are a lien but not yet due and payable as of the Closing Date, pursuant to the Tax Proration;
- (iii) cause the issuance and delivery to Buyer of the Owner's Policy of Title Insurance;
- (iv) charge to the account of Buyer, (i) one-half of the escrow fee, (ii) the cost of recording any instruments except those required in order to clear title of all exceptions to title other than Permitted Exceptions, Mandatory Cure Items and such Unpermitted Exceptions as Buyer may agree to accept, pursuant to Paragraph 4(d)(1), (iii) one-half of all transfer taxes required by law to be paid at the time of the Closing, and (iv) the difference in cost between a Title Guarantee and the premium for the Owner's Policy of Title Insurance required hereunder;
- (v) charge to the account of Seller, (i) one-half of the escrow fee, (ii) the cost of recording any instruments required in order to clear title of all exceptions to title other than Permitted Exceptions and such Unpermitted Exceptions as Buyer may agree to accept, pursuant to Paragraph 4(d)(1), (iii) one-half of all transfer taxes required by law to be paid at the time of the Closing, (iv) the cost of the Title Commitment and Title Guarantee, and (v) any amounts due Buyer by reason of pro-rations;
- (vi) pay to or upon the order of Seller the balance of the Purchase Price after deducting all amounts herein required to be paid by or



charged to Seller, including the Deposit; provided, however, that, except as otherwise specifically provided herein to the contrary, in the event that this Agreement is terminated prior to the Closing Date (other than upon material default by either party, in which event the defaulting party shall pay the escrow fee, the cost of the title examination and the Title Commitment, other sums property chargeable by Escrow Agent) and (A) in the event that Seller is the defaulting party or the Zoning Referendum does not pass, Seller shall pay Buyer the Deposit and Escrow Agent shall return to the parties the respective funds and documents deposited in escrow by them, the parties shall be released from all obligations and liabilities otherwise thereafter accruing hereunder, provided however, Section 19 shall be unaffected by such termination, and (B) if Buyer is the defaulting party, Buyer shall pay to Escrow Agent its escrow fee, the cost, if any, of the title examination and the Title Commitment, and all other sums properly chargeable by Escrow Agent.

10. Possession. Seller shall deliver full and complete possession of the Premises to Buyer as of the Closing Date.

11. Notices. Unless otherwise expressly required or permitted by the terms of this Agreement, any notice, request, demand, or other communication in connection with this Agreement required or permitted to be given hereunder by the parties shall be in writing and shall be delivered (i) personally, (ii) by UPS, Federal Express or other commercial guaranteed overnight delivery service, (iii) or by certified mail, return receipt requested, to the parties at the addresses set forth below unless different addresses are given by one party by notice to the other in accordance herewith:

As to Buyer:

PREMIER COMMERCIAL REALTY, LLC  
5301 Grant Avenue, Suite 100  
Cleveland, Ohio 44109-6099  
Attn: Kevin Callahan

with a copy to:

Kadish, Hinkel & Weibel  
1360 East Ninth St., Suite 400  
Cleveland, Ohio 44114  
Attn: Kevin M. Hinkel, Esq.

As to Seller:

Village of Oakwood  
c/o Mazanec, Raskin & Ryder Co., LPA  
35305 Solon Rd., Ste. 100  
Cleveland, Ohio 44139  
Attn: James A. Climer

Notice shall be deemed given when received or refused at the addresses indicated above. Any party hereto may change the address to which notices are sent by a written notice given to the other parties to this Agreement in the manner set forth above and such change shall be effective upon receipt. The attorney for a party is hereby additionally authorized to provide any written notice to the other party on behalf of his client and such written notice from the attorney shall act as if executed and delivered by his client.

12. Real Estate Brokers. Buyer and Seller each hereby represent and warrant to the other that it or he has not engaged any broker, finder, consultant, or any other person or agent who would be entitled to any commission, finder's fee, or other compensation in connection with the execution of this Agreement or the consummation of the transaction contemplated hereby. The parties agree that, if any person asserts a claim to a finder's fee, brokerage commission, or other compensation on account of alleged employment as a finder, broker, or other consultant or agent in connection with the transaction embodied by this Agreement, the party whose actions caused such claim will indemnify and hold the other party harmless from and against any such claim and all costs, expenses, and liabilities incurred in connection with such claim or any action or proceeding brought on such claim, including, but not limited to, reasonable attorneys' and witness fees and court costs in defending against such claims.

13. Entire Agreement. Buyer and Seller acknowledge that, except as set forth in this Agreement, there are no covenants, representations, warranties, agreements or conditions, expressed or implied, collateral or otherwise forming part of, or in any way affecting or relating to this Agreement or upon which either party has relied, and that this instrument supersedes any prior agreement, understandings and promises and constitutes the entire agreement among them. This Agreement may not be modified except by a subsequent agreement in writing executed by both Buyer and Seller.

14. Approval and Consent. In each case in which this Agreement provides for approval or consent, such approval or consent shall not be unreasonably withheld or delayed.

15. Assignment. Buyer and Seller acknowledge and agree that this Agreement may not be assigned by either party except with prior consent of the other party which shall not be unreasonably withheld. Notwithstanding the foregoing, Buyer shall be permitted to assign its rights and obligations under this Agreement to a subsidiary, an entity in which Buyer's principals have managerial control, an affiliate of Buyer, or to a qualified intermediary for the purpose of a Section 1031 exchange.

16. Survival. It is understood and agreed that all representations, warranties, covenants, and agreements and all indemnifications contained herein shall survive Closing for the maximum period permitted by law and shall not be merged in the Deed or any other document.

17. Governing Law. This Agreement shall, in all respects, be interpreted and construed in accordance with and governed by the laws of the State of Ohio.

18. Buyer's Continuing Refusal Right and Option to Purchase. In the event that the Closing does not occur due to any event other than either Buyer's uncured breach which Buyer does not reasonably occur so as to prevent a Buyer default or Buyer's termination of the Agreement pursuant to Section 4(a), then Buyer shall have the following continuing separate (i) Refusal Right (as hereinafter defined) and (ii) Option to Purchase (as hereinafter defined) the Premises (collectively, "Right of First Refusal/Option"). For avoidance of doubt, Section 19 of this Agreement shall expressly survive any other termination of this Agreement.

(a) Seller hereby grants to Buyer each of (i) the Refusal Right and (ii) an option to purchase the Premises (the "Option to Purchase") in accordance with the terms and conditions set forth in this Agreement. Seller shall continue to have the right to market, advertise and list the Premises for sale. In the event that Seller shall receive a bona fide written offer or proposal to purchase the Premises, which offer Seller proposes to accept (an "Offer"), Seller shall deliver to Buyer a copy of said Offer or a written summary of the key terms of such Offer within ten (10) days after Seller proposes to accept the Offer ("Seller Notice"), and Buyer shall have the right (the "Refusal Right") to purchase the Premises, subject to the provisions hereof, at the lower of the Purchase Price herein or on the same financial terms and conditions contained in the Offer. For purposes of this Agreement, an "Offer" includes, without limitation, a proposed purchase agreement as well as a term sheet or letter of intent signed by a prospective purchaser which is contingent upon the execution of a binding purchase agreement consistent in all material respects with the terms of the Offer. Independent of the Refusal Right, Buyer shall also have a continuing independent Option to Purchase the Premises for the Purchase Price.

(b) The Refusal Right shall be exercised within the later of twenty-five (25) days after the date of delivery of the Seller Notice to Buyer or November 30, 2018, at the address and in the manner specified herein, by Buyer's delivering to Seller of (i) written notice of such exercise, together with (ii) a signed purchase agreement consistent with the terms of this Agreement, adjusted for dates ("ROFR/O Purchase Agreement"). In the event that Buyer does not timely and properly exercise the Refusal Right or delivers to Seller a written declination and/or rescission of such Refusal Right, all of Buyer's rights with respect to the Refusal Right shall terminate and be of no further force and effect; provided, however, that (i) if Seller does not consummate the transaction contained in the Seller Notice with the prospective purchaser or its successors or assigns (subject to non-material modifications of the terms stated in the Offer, provided such modifications do not affect any financial terms or payment obligations of the transaction) within one

hundred twenty (120) days after the date of the Seller Notice, then Buyer's rights with respect to the Refusal Right shall be reinstated and the procedure provided for herein shall govern a subsequent Offer; or (ii) if any of the financial terms or payment obligations set forth in the Offer or other material terms of the Offer are modified, then Buyer's rights with respect to the Refusal Right shall be reinstated and the procedure provided for herein shall govern Seller's re-presentation to Buyer of the modified Offer (the occurrence of either of (i) or (ii) being a "Reinstated Refusal Right").

(c) Buyer's exercise of its Option to Purchase shall be by delivery of the ROFR/O Purchase Agreement at any time prior to the extinguishment of the Refusal Right or the extinguishment of any Reinstated Refusal Right.

(d) Within five (5) business days after Buyer timely and properly exercises the Refusal Right or exercises the Option to Purchase, Buyer shall re-deposit the Deposit with the Escrow Agent, which shall be applied to the purchase price at closing or refunded to Buyer in accordance with the terms herein.

(e) The parties agree to work in good faith to adjust any terms of this Agreement to the extent reasonably necessary to conform this Agreement to the terms reasonably applicable to the ROFR/O Purchase Agreement.

(f) Buyer may record with the Cuyahoga Fiscal Office, Recorder's Division, an Affidavit of Title setting forth the existence and terms of the independent Refusal Right Refusal and Option to Purchase.

19. Breach of this Agreement by a Party: Written Notice of Breach: Right to Cure Breach. In the event that a party breaches its obligations hereunder, the other party shall provide specific written notice to the allegedly breaching party of the alleged breach. The notice receiving party shall have a reasonable period [not less than thirty (30) days] to cure such breach to the reasonable satisfaction of the other party. If the notice receiving party reasonably cures such breach within such period of time, then such curing party shall not be in default under this Agreement. If the alleged breach is an actual breach which is not cured, then a party shall be in default hereunder.

**[SIGNATURE PAGE TO FOLLOW]**

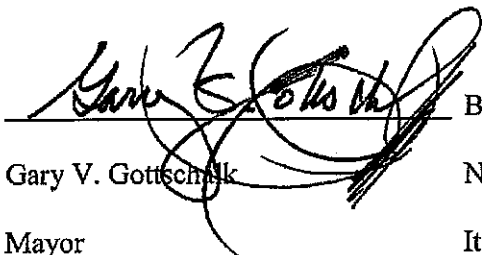
WHEREOF, Buyer and Seller have executed this Agreement as of the date first set forth above.


SELLER:

BUYER:

VILLAGE OF OAKWOOD

PREMIER COMMERCIAL REALTY, LLC,  
an Ohio limited liability company

By:   
Name: Gary V. Gottschalk  
Its: Mayor

By:   
Name: Kevin R. Callahan  
Its: Member

ACCEPTANCE OF ESCROW

Receipt of an executed copy of the foregoing Agreement of Purchase and Sale hereby is acknowledged, and the undersigned hereby agrees to act as escrow agent in accordance with the terms of the Agreement.

GUARDIAN TITLE AGENCY, INC.

Date: \_\_\_\_\_

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

Escrow Number: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**

**Legal Description of the Premises**

**EXHIBIT "A"**  
Legal Description

Parcel No. 1

Situated in the Village of Oakwood, County of Cuyahoga and State of Ohio:  
And known as being part of Original Bedford Township Lot No. 98, bounded and described as follows:  
Beginning on the centerline of Macedonia Road, 60 feet wide, at its intersection with the Southerly line of the Bedford Farm Homes Subdivision No. 1, shown by the recorded Plat in Volume 129 of Maps, Page 7 of Cuyahoga County Records, said place of beginning being also distant South 00° 15' 00" East, 2486.98 feet, measured along the center line of Macedonia Road, from its intersection with the center line of Broadway, 100 feet, thence South 00° 15' 00" East along the center line of Macedonia Road, 206 feet, thence South 00° 29' 52" East continuing along the center line of Macedonia Road, 631.64 feet, thence North 89° 45' 9" West, 40 feet to the Westerly line of Macedonia Road, proposed, 70 feet wide and the principal place of beginning, thence South 00° 29' 52" East along the Westerly line of Macedonia Road proposed, 65 feet to the Northerly line of a 30 foot reserved strip, thence North 89° 45' 09" West and along the Northerly line of said 30 foot reserved strip, 470 feet, thence North 00° 29' 52" West, 65 feet, thence South 89° 45' 9" East, 470 feet to the principal place of beginning and being further known as part of Sublot No. 132 in the Bedford Farms Subdivision No. 2, proposed, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel No. 2

Situated in the Village of Oakwood, County of Cuyahoga and State of Ohio and known as being part of Original Bedford Township Lot No. 98, bounded and described as follows:

Beginning in the centerline of Macedonia Road (60 feet wide) at the Southeasterly corner of a parcel of land conveyed to Julia Charvat by deed dated September 16, 1938 and recorded in Volume 4873, Page 191 of Cuyahoga County Records; thence North 0° 21' and 19" West along the centerline of Macedonia Road, 30 feet to the Southeasterly corner of a parcel of land conveyed to John A. Iannetta and Rose Marie Iannetta by deed dated May 19th, 1966 and recorded in Volume 11829, Page 505 of Cuyahoga County Records; thence North 88° 59' and 39" West 430 feet; thence North 0° 21' 19" West, 360 feet to the Northwesterly corner of a parcel of land conveyed to George R. Benson by deed dated June 21st, 1965 and recorded in Volume 11627, Page 489 of Cuyahoga County Records; thence South 88° 59' 39" East 430 feet to the centerline of Macedonia Road; thence North 0° 21' 19" West along said centerline 828.67 feet to the Northeasterly corner of the parcel conveyed to Julia Charvat as aforesaid; thence North 89° 45' 09" West along a Northerly line of said parcel so conveyed 1073.47 feet to an angle; thence North 0° 15' 05" East along an Easterly line 296.72 feet to the most Northerly corner thereof; thence North 89° 45' 09" West along a Northerly line 146.52 feet to the most Northerly corner of a parcel of land conveyed to the State of Ohio by deed dated March 22nd, 1963 and recorded in Volume 10685, Page 207 of Cuyahoga County Records; thence Southeasterly along the parcel conveyed to Julia Charvat as aforesaid; thence South 88° 59' 39" East along said Southerly line to the place of beginning, be the same more or less, but subject to all legal highways.

**EXCEPTING THEREFROM** that portion deeded to the State of Ohio, Department of Transportation filed November 26, 2014 as Cuyahoga County Recorder's File No. 201411260142.



## DEBRA HLADKY

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**From:** Jim Climer <jclimer@mrrlaw.com>  
**Sent:** Wednesday, October 7, 2020 5:50 PM  
**To:** Dionna Hammett  
**Cc:** DEBRA HLADKY  
**Subject:** Regarding: Village of Oakwood Re: General Matters 2020 (File #: 200002)  
**Attachments:** Ex A - Agreement of Purchase and Sale Executed-224371.pdf; Premier Resale Ordinance-.docx

Hi D:

Please print this and the attachments, give to the Mayor and have him call me with any changes. If no changes, I would appreciate it if you would give to Deb Hladky for the agenda as I am out in depositions tomorrow. Thanks !

**Note: this cannot be passed as an emergency but can be passed by suspension of rules (3/4 vote).**

James A. Climer  
Direct Line: 440-287-8290  
Email: [jclimer@mrrlaw.com](mailto:jclimer@mrrlaw.com)



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