

RECORD OF RESOLUTIONS

Resolution No. 25-2021

Passed: July 27, 2021

A RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE 211 AND 219 WEST CENTRAL AVENUE

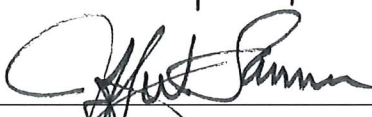
WHEREAS, Angela Wilson is the owner of 211 and 219 West Central Avenue, and;

WHEREAS, it is the desire of the majority of the City Council to authorize the City Manager to purchase said property.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WEST CARROLLTON, OHIO, THAT:

- Section 1: the City Manager is hereby authorized to purchase said parcels of property for the sum of \$45,500; a purchase agreement attached hereto and made part of this resolution.
- Section 2: the City Manager, or designee, is further authorized to do any and all things necessary to complete the property transfer under the terms and conditions as set forth by the City Council.
- Section 3: this resolution shall be in full force and effect from and after its date of passage.

Passed: July 27, 2021



Mayor

Attest: 
Clerk of Council

Effective Date: July 27, 2021

Exhibit "A"

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (this "Agreement"), dated as of July _____, 2021 (the "Effective Date"), is entered into by and between City of West Carrollton, an Ohio municipal corporation, ("Buyer"), and Angelia Wilson, the property owner of record ("Seller").

PROVISIONS

1. Purchase and Sale. Buyer hereby agrees to purchase from Seller and Seller hereby agrees to sell to Buyer: (a) certain real estate parcels commonly known as 211 and 219 Central Avenue, West Carrollton, Ohio and more particularly described on Exhibit A attached hereto and made a part hereof, together with all rights, privileges, hereditaments, easements, and interests appurtenant thereto, including, but not limited to, any rights, title, and interests in and to any streets or other public ways adjacent thereto (the "Land"); (b) all buildings, fixtures and other improvements situated on the Land (collectively, the "Improvements," and the Land and the Improvements being referred to herein collectively as the "Real Property").

2. Purchase Price and Manner of Payment. The purchase price for the Property (the "Purchase Price") shall be Forty-Five Thousand and Five Hundred Dollars and 00/100 (\$45,500.00) payable at Closing. Buyer will provide a One Thousand Dollar and 00/100 (\$1,000.00) deposit to the Seller upon acceptance of this Agreement. Said deposit will be deducted from the Purchase Price at Closing.

3. Closing. The purchase and sale of the Real Property shall be closed at a location mutually agreed upon by both Buyer and Seller. The Closing shall occur on or before August 30, 2021; Time is of the essence hereof. The date and event of the consummation of the purchase and sale of the Property as contemplated hereby is referred to herein, respectively, as the "Closing Date" and the "Closing."

4. Contingencies. Buyer's obligation to purchase the Real Property and Seller's obligation to sell the Real Property is subject to the satisfaction or waiver of the conditions and contingencies described herein.

a. Title Commitment. Buyer, at Buyer's expense, shall obtain a commitment for an owner's policy of title insurance issued by a title insurance company selected by Buyer (the "Title Company") with respect to the Real Property (the "Title Commitment"). The Title Commitment shall show in Seller marketable title in fee simple free and clear from all liens and encumbrances. If title to all or part of the Real Property is unmarketable, or is subject to liens, encumbrances, easements, conditions, restrictions or encroachments other than those excepted by this Agreement, Buyer shall have the right to object to such conditions within twenty (20) days of Buyer's receipt of the Title Commitment. If Buyer so objects, and Seller fails to remedy or remove any such defect, lien, encumbrance, easement, condition, restriction or encroachment, Buyer shall have the option to terminate this Agreement by delivering written notice thereof to seller.

b. Survey. Buyer may obtain a survey (the "Survey") of the Real Property conducted by a licensed, registered surveyor acceptable to Buyer.

c. Seller Encumbrances. Notwithstanding anything to the contrary in this Agreement, all Seller Encumbrances (as defined below) must be satisfied by Seller on or before the Closing Date or, if not so satisfied, shall be satisfied at Closing out of the proceeds otherwise payable to Seller. As used herein, the term "Seller Encumbrance" shall mean (i) any mortgage, deed of trust or other monetary lien encumbering the Property, (ii) any real property taxes and assessments which are due and payable as of the Closing, and (iii) any Voluntary Encumbrance (as defined in Section 9.f).

5. Deliveries, Inspections, and Due Diligence.

a. Due Diligence/Inspection Period. For the period commencing on the Effective Date and ending at Closing (the "Due Diligence Period"), Buyer shall have the right to investigate and determine, in its sole discretion, that the Property is acceptable in all respects, including but not limited to zoning, environmental, and other conditions. If Buyer notifies Seller that Buyer is unsatisfied with the condition of the Property during the Due Diligence Period, this Agreement shall automatically terminate, and neither party shall have any further right or liability arising out of this Agreement (except as otherwise provided herein).

b. Access. From and after the Effective Date and until the earlier termination of this Agreement or the Closing, Buyer, its officers, contractors, consultants, employees, agents, prospective lenders, attorneys, accountants, architects and engineers, and other representatives shall have the right to enter upon the Real Property for the purpose of inspecting the Property and conducting surveys and studies of the Property, including a Phase 1 environmental. Except for matters resulting from Buyer's negligence or willful misconduct, Seller shall indemnify, defend and hold Buyer harmless from and against any and all third party claims arising out of any liens against the Property, injury to any person, or damage to the Property attributable to Buyer's exercise of any of its rights under this Section 5.

c. Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer that, as of the Effective Date:

d. This Agreement is duly authorized, executed and delivered by Seller, creates legal, valid and binding obligations of Seller, and does not violate and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any trust, judicial order, agreement, arrangements, understanding, accord, document or instrument by which Seller or the Property is bound.

e. No consent, waiver, approval or authorization is required from any person or entity in connection with the execution, delivery and performance of this Agreement by Seller.

f. Subject only to Permitted Exceptions as of the Closing Date, Seller owns good, marketable, and indefeasible fee simple title to the Real Property free of any mortgages or other liens.

g. Seller is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code.

h. There is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding (including, without limitation, condemnation or eminent domain proceedings) pending or threatened against the Property.

i. There are no leases affecting the Property.

j. The Property is not subject to any easements, covenants, conditions, restrictions, agreements, or encumbrances not of record.

k. Except as shown on the Title Commitment, there are no liens or claims, including without limitation mechanic's or materialman's liens, against the Property or which may ripen into liens against the Property and there are no unpaid claims for labor performed, done or materials furnished or services rendered in connection with constructing, improving or repairing the Property in respect of which the liens may or could be filed against the Property.

l. Seller has received no written notice from any insurance carrier of defects or inadequacies in the Property which, if not corrected, would result in termination of insurance coverage or an increase in the cost thereof.

m. There are no violations of any laws, regulations, codes, ordinances, orders or requirements affecting the Property, including, but not limited to, applicable laws, regulations, ordinances or requirements relating to ecology, the environment, pollution, health or safety.

n. Seller has not entered into any contract, agreement or option, other than this Agreement, granting to any party the right to purchase the Property that remains in effect.

o. Seller has not received any written notice from any municipal, county, state or other governmental authority of any violation of any statutes, codes, ordinances, rules or regulations with respect to the Property, including, without limitation, those relating to ecology, the environment, pollution, health or safety.

p. No Hazardous Substance (as defined below) has been generated, stored, released, discharged or disposed of, at, from, on, or under the Property. "Hazardous Substances" shall mean any and all pollutants, contaminants, toxic or hazardous wastes or any other substances, including without limitation, petroleum-based products or by-products, that might pose a hazard to health or safety or the environment, or that may be required to be investigated, removed or remediated under Environmental Laws, or that may be regulated, restricted, or prohibited as to their generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal,

release, discharge, spillage, seepage or filtration under any Environmental Law. "Environmental Law" shall mean any law, ordinance, rule, regulation, order, judgment, injunction or decree relating to pollution or substances or materials which are considered to be hazardous or toxic, including, without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Toxic Substances Control Act, the Emergency Planning and Community Right to Know Act, and any state and local environmental law.

q. There is no judgment of any court, state or federal, pending against Seller or the Property, and no petition for bankruptcy has been filed by or against Seller, nor is any petition now pending with respect to Seller with respect to bankruptcy or insolvency.

r. Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller that, as of the Effective Date:

s. Buyer's right, power and authority to enter into this Agreement is subject to approval by City Council.

t. This Agreement is duly authorized, executed and delivered by Buyer, creates legal, valid and binding obligations of Buyer, and does not violate and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any judicial order, agreement, arrangements, understanding, accord, document or instrument by which Buyer is bound.

6. Operation of the Property.

a. Leases. After the Effective Date and until the earlier of the termination of this Agreement or the Closing, Seller shall not enter into any new leases for occupancy of any part of the Property, or any related new commission or brokerage agreements with respect to the Property, except, in each case, with Buyer's written consent.

b. New Contracts. After the Effective Date and until the earlier of the termination of this Agreement or the Closing, Seller shall not enter into any new contracts with respect to the use or operation of the Property, except, in each case, with Buyer's written consent.

c. Insurance Contracts. All insurance maintained by Seller in respect of the Real Property, if any, shall be maintained in the current amounts and with the current coverages until Closing.

d. Utilities. Seller shall pay all charges for utilities consumed at the Property until Closing.

e. Continued Maintenance. After the Effective Date and until the earlier of the termination of this Agreement or the Closing, Seller shall continue to maintain the Property in the same manner as prior to the Effective Date.

f. Voluntary Encumbrances. After the Effective Date and until the earlier of the termination of this Agreement or the Closing, Seller shall not encumber the Property without the prior consent of Buyer (a "Voluntary Encumbrance"), which consent may be withheld in Buyer's sole discretion.

g. Delivery of Possession. At Closing, Seller shall deliver to Buyer exclusive possession of the Property in the same condition as it is on the Effective Date, ordinary wear and tear excepted, free from any leases, tenancies or other contracts or agreements of any kind or nature whatsoever as of the Closing Date, except for any Service Contracts Buyer expressly agrees to assume in writing at Closing. Seller hereby agrees to indemnify, defend and hold Buyer harmless from any loss, liability, cost, claim, demand, damage, action, cause of action, and/or suit, including, without limitation, reasonable attorneys' fees, incurred by Buyer as a result of the existence of any such leases, tenancies or other contracts or agreements. This Section 9 shall survive the Closing.

h. Marketing Activities. After the Effective Date and until the earlier of the termination of this Agreement or the Closing, Seller shall suspend all activities utilized by Seller to market the Property for sale other than in connection with the transaction contemplated by this Agreement, and shall not enter into any agreement with any other person or entity for the sale of the Property.

7. Condemnation/Damage. In the event of any loss or damage to the Property or any portion thereof or any condemnation is threatened against the Property or any portion thereof, Seller shall immediately notify Buyer and Buyer may, within twenty (20) days thereafter, elect to terminate this Agreement by written notice to Seller, in which event the parties shall have no further right or obligation under this Agreement (except for rights or obligations which expressly survive the termination of this Agreement). If Buyer does not elect to terminate this Agreement, then Buyer shall proceed with the transaction contemplated by this Agreement, in which event Seller shall assign to Buyer all of Seller's right, title and interest to any claims and proceeds Seller may have with respect to any casualty insurance policies or condemnation awards relating to the premises in question at the Closing and there shall not be any reduction to the Purchase Price except for the cost of the deductible payment associated with recovering under such insurance policies. Upon Closing, full risk of loss with respect to the Property shall pass to Buyer.

8. Prorations, Adjustments and Expenses.

a. Taxes and Assessments. The Purchase Price for the Property is subject to prorations and adjustments to be determined as of 12:01 a.m. on the Closing Date. On or before the Closing Date, Seller shall pay any and all past due taxes, assessments, levies and other charges with respect to the Real Property and any and all interest or penalties thereon. All taxes, assessments, levies and other charges assessed with respect to the Real Property in the year prior to the year that the Closing occurs but due in the year that the Closing occurs but payable after the Closing Date shall be the responsibility of Seller, and Buyer

shall receive a credit against the portion of the Purchase Price payable at the Closing for such taxes, assessments, levies, and charges. All taxes, assessments, levies or charges assessed with respect to the Real Property in the year that the Closing occurs but due and payable in the year following the year that the Closing occurs shall be prorated through the date of Closing based on the most recently available tax bill. Upon receipt of the actual tax bill, if taxes exceed the taxes as prorated by more than 10%, then at Buyer's written request, the taxes shall be re-prorated based on the date of Closing and such actual taxes and Seller shall remit payment of any shortfall within 30 days of notice of same.

b. Seller shall pay:

- i. Seller's attorneys' fees;
- ii. all state and county transfer taxes and conveyance fees;
- iii. the recording fees for recording any release of lien or other document of record which Seller has agreed to release prior to Closing.

c. Buyer shall pay:

- (i) the premium for an owner's title insurance policy in the amount of the Purchase Price;
- (ii) All closing and fees charged by the Title Company;
- (iii) Buyer's attorneys' fees and all due diligence costs and expenses;
- (iv) the cost of any Endorsements to the title policy requested by Buyer or its lender;
- (v) the cost of the Survey, if any and all other due diligence expenses incurred by Buyer, including the cost of a Phase 1 Environmental review; and
- (vi) the recording fees for recording the Deed to the Buyer or its nominee and all fees and charges relating to any mortgage or other financing by Buyer.

9. Assignment. Buyer may freely assign its rights and obligations under this Agreement to an entity under its control, but such assignment shall not relieve Buyer of its obligations or liabilities under this Agreement. Alternatively, Buyer may, without assigning this Agreement, direct Seller to convey title to the Property to an entity or entities other than Buyer, but such direct deeding shall not relieve Buyer of its obligations or liabilities under this Agreement.

10. Brokers. Buyer and Seller represent and warrant to one another that they have neither contracted nor dealt with any real estate broker or finder with respect to this Agreement or the transactions contemplated hereby. Therefore, no real estate broker or other person claiming through Buyer or Seller is entitled to any commission or finder's fee.

11. Applicable Law. This Agreement and the transactions herein shall be construed and enforced in accordance with the general contract laws of the State of Ohio. Any claim, action, suit, or proceeding seeking to enforce any provision of or based on any matter arising out of or in connection with this Agreement or the transactions contemplated hereby shall be brought only in the State of Ohio and each of the parties hereto hereby consents to the jurisdiction of such court and irrevocably waves to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the venue of any such claim, action, suit, or proceeding in any such court or that any such claim, action, suit, or proceeding that is brought in any such court has been brought in an inconvenient forum.

12. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, oral or written are superseded hereby.

13. Time of Essence. Buyer and Seller hereby agree that time is of the essence with regard to the terms and conditions of this Agreement.

14. Binding Effect. All of the terms, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

15. Notices. All notices which are required or permitted under this Agreement must be in writing and shall be deemed to have been given, delivered or made, as the case may be (notwithstanding lack of actual receipt by the addressee), (a) when delivered by personal delivery, or (b) one business day after having been deposited with an expedited, overnight courier service, in each case addressed to the party to whom notice is intended to be given at the address set forth below:

If to Seller:

Angelia Wilson
7 East Shannon Avenue
West Carrollton, OH 45449
Attn: Angela Wilson

If to Buyer:

City of West Carrollton
300 E. Central Avenue
West Carrollton, OH 45449
Attn: Michael Lucking, Economic Development Director

With a copy to:

Lori Denlinger, Law Director
300 E. Central Avenue
West Carrollton, OH 45449

or to such other address as any party may from time to time designate by notice in writing to the other. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section 17 shall constitute delivery.

16. Waiver. The failure of either party to exercise any right given hereunder or to insist upon strict compliance with any term, condition or covenant specified herein, shall not constitute a waiver of such party's right to exercise such right or to demand strict compliance with such term, condition, or covenant.

17. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

18. Amendment. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived, or discharged either orally or by any course of dealing, but only by an instrument in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.

19. Counterparts, Separate Signature Pages and Facsimile Signatures. This Agreement may be executed in several counterparts, by separate signature pages, and/or by either emailed or facsimile signatures, each of which may be deemed an original, and all such counterparts, separate signature pages, and facsimile signatures together shall constitute one and the same Agreement.

20. Calculation of Days. In the event that any date described in this Agreement for the performance of an action required hereunder by Seller, Buyer and/or the Title Company falls on a Saturday, Sunday or federal legal holiday, such date shall be deemed postponed until the next business day thereafter.

21. Confidentiality. The terms of the Asset Purchase Agreement regarding confidentiality and release of information regarding the proposed transaction shall apply to the transaction contemplated herein.

22. Interpretation. This Agreement and any related instruments shall not be construed more strictly against one party than against the other by virtue of the fact that initial drafts were made and prepared by counsel for one of the parties, it being recognized that this Agreement and any related instruments are the product of extensive negotiations between the parties hereto and that both parties hereto have contributed substantially and materially to the final preparation of this Agreement and all related instruments.

23. Captions. The captions of the various paragraphs herein contained are solely for the convenience of the parties hereto and shall not be construed to interpret or limit the content of any provision or paragraph of this Agreement.

24. No Recordation. Neither this Agreement nor any memorandum of the terms hereof shall be recorded or otherwise placed of public record.

25. Attorneys' Fees. In the event legal action is instituted by any party to enforce the terms of this Agreement or which arises out of the execution of this Agreement, the prevailing party in such legal action will be entitled to receive from the other party the prevailing party's reasonable attorneys' fees and costs and expenses, including the costs of appeal, as may be determined and awarded by the court, or the arbitrator as the case may be, in which the action is brought. For purposes of this Agreement, "prevailing party" shall include, without limitation, a party obtaining substantially the relief sought, whether by compromise, settlement or otherwise. The right to attorneys' fees shall survive the termination of this Agreement or the Closing.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BUYER:

City of West Carrollton,
an Ohio municipal corporation

By:

Its: _____

SELLER:

Angelia Wilson, Property Owner

By:

Its: _____

Exhibit A

Legal Description

Parcel 1 – K48 00105 0076 – 211 Central Avenue

Situate in the City of West Carrollton, County of Montgomery, State of Ohio and being lot numbered Seven (7) of the revised and consecutive numbers of lots on the Revised Plat of the said City of West Carrollton.

More commonly known as: 211 West Central, West Carrollton, Ohio

Prior Deed Reference Book 2420. Page 424 of the Official Records of the Recorder of Montgomery County, Ohio

Parcel 2 – K48 00105 0075 – 219 Central Avenue

Situate in the City of West Carrollton, County of Montgomery, State of Ohio and being 41 feet taken by parallel lines off the East side of Numbered Eight (8) of the revised and consecutive numbers of lots on the Revised Plat of the said City of West Carrollton; said part lot herein conveyed fronting 41 feet on Central Avenue and extending an equal width North to an alley.

More commonly known as: 219 West Central, West Carrollton, Ohio

PRIOR DEED REFERENCE: Book 2420. Page 424 of the Official Records of the Recorder of Montgomery County, Ohio

The above legal descriptions are from Quit Claim Deed between Marvin A. Eby and Angelia Wilson recorded on 01/29/2013 – File # 2013-00006116

As part of the purchase between the City of West Carrollton, Ohio and Angelia Wilson, the City of West Carrollton at its expense will survey the referenced parcels and create a new legal description of the properties.