



# ORDINANCE 2021-01

## OF THE VILLAGE OF ASHVILLE



AN ORDINANCE AUTHORIZING THE VILLAGE ADMINISTRATOR AND FISCAL OFFICER TO EXECUTE AN AGREEMENT WITH THE BOARD OF EDUCATION OF TEAYS VALLEY LOCAL SCHOOL DISTRICT FOR A PORTION OF PROPERTY AT PARCEL NUMBER D1300050209100, AND DECLARING AN EMERGENCY

WHEREAS, the Board of Education of Teays Valley Local School District, (hereinafter referred to as "School Board") is desirous of selling four point seven (4.7) acres of forty point eight zero six (40.806) acres of land in exchange for the items stated in "Terms and Conditions" in the Real Estate Purchase and Sales Agreement, Exhibit A, and

WHEREAS, the Village of Ashville (hereinafter referred to as "Village") wishes to perform items contained in the "Terms and Conditions" in order to obtain the four point seven (4.7) acres of forty point eight zero six (40.806) acres of land, Exhibit A, and

WHEREAS, the "School Board" and the "Village" wish to complete an Agreement.

NOW, AND HEREAFTER BE IT ORDAINED BY THE VILLAGE COUNCIL, VILLAGE OF ASHVILLE, PICKAWAY COUNTY, STATE OF OHIO THAT:

### SECTION ONE

The Village Administrator and Fiscal Officer are hereby authorized and directed to enter into an Agreement with the "School Board", in substantially the same form and content as the document attached hereto as Exhibit "A" and incorporated herein by reference, on behalf of the Village of Ashville.

### SECTION TWO

It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of Council and that all deliberations of Council and any of the decision making bodies of the Village of Ashville which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the State of Ohio.

### SECTION THREE

All prior legislation, or any parts thereof, which is/are inconsistent with this Ordinance is/are hereby repealed as to the inconsistent parts thereof.

### SECTION FOUR

Council declares this to be an emergency measure immediately necessary for the preservation of the public peace, health, and safety of this municipality and the further reason that Village Council needs to approve and enter into this Agreement in order to continue the development of future water services. Wherefore, provided this Ordinance receives the required affirmative votes of Council, this Ordinance shall take effect and be in force immediately upon passage by Council and approval by the Mayor.

Motion Offered by: Nelson R. Embrey

Seconded to the Motion Offered by: Darryl E. Ward

Upon roll call on the adoption of the ordinance, the vote was as follow:

Council Member	Yes	No	Council Member	Yes	No	Council Member	Yes	No	Council Member	Yes	No	Council Member	Yes	No	Council Member	Yes	No
Roger L. Clark	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Nelson R. Embrey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Randy S. Loveless	<input checked="" type="checkbox"/>	<input type="checkbox"/>	R. David Rainey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tracie N. Sorvillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Darryl E. Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>

PASSED THIS 25<sup>th</sup> DAY OF JANUARY, 2021

ATTEST:  
  
April D. Grube, Clerk-Fiscal Officer

DATE: 1/26/2021

APPROVED:  
  
Charles K. Wise, Mayor

DATE: 28 JAN 2021

Prepared: 01/05/2021  
Revised Date:  
Review Date:

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### CERTIFICATE OF RECORDING OFFICER

I, the undersigned, hereby certify, that the foregoing is a true and correct copy of the ordinance adopted by the Village of Ashville Council held on 25<sup>th</sup> day of January 2021, and that I am duly authorized to execute this certificate.

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(Original signature of April D. Grube)

Clerk-Fiscal Officer  
(TITLE)



REAL ESTATE PURCHASE AND SALES AGREEMENT

THIS REAL ESTATE PURCHASE AND SALES AGREEMENT ("Agreement") is made as of 22 day of February, 2020 (the "Effective Date"), by and between **BOARD OF EDUCATION OF TEAYS VALLEY LOCAL SCHOOL DISTRICT**, a local school district and political subdivision of the State of Ohio (hereinafter referred to as "School Board") and the **VILLAGE OF ASHVILLE, OHIO**, an Ohio municipal corporation (hereinafter referred to as "Village").

RECITALS

A. The School Board is the owner of certain real property located at Lockbourne Eastern Road, Ashville, Ohio 43103 known as Pickaway County tax parcel number D1300050209100 consisting of approximately 40.806 acres, more or less (the "Parent Parcel") on which East Middle School is located;

B. The Village wishes to purchase approximately 4.7 acres of vacant land located in the southwest corner of the Parent Parcel (the "Property") as generally depicted on **Exhibit A** attached hereto, for purposes of constructing a water tower;

C. The School Board is constructing a fieldhouse (the "Fieldhouse") on other property that it owns, specifically the Teays Valley High School campus located at 3887 State Route 752, Ashville, Ohio, which Fieldhouse requires water and sewer service from the Village;

D. Pursuant to Ohio Revised Code Section 3313.41(C), Seller is authorized to sell the Property to the Buyer upon such terms as the parties shall agree; and

E. The School Board is willing to sell its interest in the Property to the Village and the Village is willing to buy the Property on the terms and conditions set forth herein, including that the consideration for the Village's purchase of the Property will include the Village constructing a sanitary sewer extension and providing water and sewer service to the Fieldhouse.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows.

TERMS AND CONDITIONS

1. **PURCHASE AND SALE OF PROPERTY.** Subject to the terms and conditions set forth herein, Seller hereby agrees to sell the Property to Buyer, and Buyer hereby agrees to purchase the Property from Seller.

2. **CONSIDERATION.** As consideration for the purchase of the Property from Seller, Buyer, at Buyer's sole cost and expense:

(a) prior to Closing (as defined below), shall construct approximately 285-feet of 8-inch diameter PVC SDR 35 gravity sewer and two manholes ("the Sewer Extension") as set forth in the plan sheet titled *New Athletic Facility for Teays Valley Schools, Sanitary Plan & Profile*, Sheet No. C7, dated 10/19/2020, prepared by The Kleingers Group, and sealed by Professional Engineer Troy E. Messer, for the purpose of providing sewer service to the Fieldhouse, a copy of which plan sheet is attached hereto as **Exhibit B**;

(b) shall maintain ownership of the Sewer Extension;

(c) prior to Closing, shall secure and acquire any and all easements and permits necessary to construct the Sewer Extension;

(d) shall provide Seller sewer service to the Fieldhouse through the Sewer Extension and water service through a tap into Buyer's water main located within the right-of-way for State Route 752, approximately 200-feet east of the Sewer Extension, as further addressed in Section 6 of this Agreement; and

(e) prior to Closing, shall have a survey and legal description prepared for the lot split necessary to create a new tax parcel for the Property and shall secure all the necessary governmental approvals.

Buyer and Seller agree that the value of the services provided by Buyer is of equal value to the Property.

3. **TIME IS OF THE ESSENCE.** Buyer understands and agrees that time is of the essence for the completion of the Sewer Extension. Buyer shall complete the Sewer Extension no later than March 1, 2021.

4. **DUE DILIGENCE.** Buyer was given the opportunity to access, review, inspect, and conduct feasibility studies of the Property and its usefulness for Buyer's intended purposes and Buyer has determined that the Property is suitable for Buyer's purposes. Further, Seller disclosed to Buyer that a potential jurisdictional wetland exists on the Property that Buyer is acquiring and Buyer shall be liable for all legal responsibilities related to the potential jurisdictional wetland from the date of the Closing.

5. **CONDITION OF TITLE.** At the Closing, Seller shall convey to Buyer, by Quit Claim Deed, good and merchantable fee simple title to the Property, subject to real estate taxes and assessments, if any, which are lien against the Property but not yet payable, and zoning ordinances and easements, covenants, conditions and restrictions of record.

6. **SELLER'S FEES:** Upon completion of the Sewer Extension, and pursuant to the following terms and conditions, Seller agrees to pay the following fees:

6.1 **Water Capacity Fee.** Seller will pay to Buyer the sum of \$21,090 as a water capacity fee in equal installments of \$4,218 over five years, with the first payment due within 30-days of Buyer's issuance of an invoice for same, which invoice may not be issued any sooner than 10-days after Seller taps the water main as set forth in Section 2. The remaining annual payments will be made upon invoice from Buyer, which may be issued no earlier than the anniversary date of making the water tap.

6.2 **Sewer Capacity Fee.** Seller will pay to Buyer the sum of \$28,128 as a sewer capacity fee in equal installments of \$5,625.60 over five years, with the first payment due within 30-days of Buyer's issuance of an invoice for same, which invoice may not be issued any sooner than 10-days after Seller connects to the Sewer Extension as set forth in Section 2. The remaining annual payments will be made upon invoice from Buyer, which may be issued no earlier than the anniversary date of making the connection.

6.3 Fire Suppression Fee. Seller will pay to Buyer the sum of \$10,545 as a fire suppression fee in equal installments of \$2,109.00 over five years, with the first payment due within 30-days of Buyer's issuance of an invoice for same, which invoice may not be issued any sooner than 10-days after Seller taps the water main as set forth in Section 2. The remaining annual payments will be made upon invoice from Buyer, which may be issued no earlier than the anniversary date of making the water tap.

6.4 Nothing in this Agreement is meant to determine the cost of the water and sewer service eventually provided from the construction of these improvements.

7. **SELLER'S WARRANTIES AND REPRESENTATIONS.** As a material inducement to Buyer to enter into this Agreement, the Seller hereby warrants and represents to the Buyer that, to the best of Seller's knowledge:

7.1 Seller owns fee simple marketable title to the Property on the date of Closing and will take and perform those acts, which are necessary hereunder in order to fulfill the terms and conditions hereof.

7.2 There are no pending lawsuits, no threatened lawsuits, and no asserted or threatened violations which may affect the Property or any part thereof or Seller's ability to perform this Agreement.

7.3 Seller has full authority to enter into and carry out the terms of this Agreement. Seller has or will take all necessary action to authorize the transactions contemplated herein. The persons who execute this Agreement on behalf of Seller has full authority to act on behalf of and to bind Seller with respect to this Agreement.

8. **PRORATIONS OF REAL ESTATE TAXES.** Intentionally deleted and not applicable.

9. **"AS IS" SALE.** BUYER ACKNOWLEDGES AND AGREES THAT BUYER HAS AN ADEQUATE OPPORTUNITY UNDER THIS AGREEMENT TO INSPECT AND INVESTIGATE THE PROPERTY AND PERFORM ALL DUE DILIGENCE OF THE PROPERTY THAT BUYER MAY DESIRE TO DO. THE CLOSING SHALL BE CONCLUSIVE EVIDENCE THAT BUYER HAS ACCEPTED AND APPROVED THE PROPERTY IN ALL RESPECTS. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER HAS MADE NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR NATURE, EITHER ORAL OR WRITTEN, DIRECTLY OR INDIRECTLY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PROPERTY. EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, BUYER IS PURCHASING THE PROPERTY FROM SELLER IN ITS "AS IS", "WHERE IS" CONDITION. BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER DISCLOSED TO BUYER THAT A POTENTIAL JURISDICTIONAL WETLAND EXISTS ON THE PROPERTY AND THE POTENTIAL JURISDICTIONAL WETLAND SHALL BECOME THE RESPONSIBILITY OF BUYER AS OF THE DATE OF CLOSING.

10. **CLOSING.**

10.1 Provided all conditions set forth herein have been satisfied or waived, the closing (the "Closing") shall take place upon the completion of construction of the Sewer Extension at a date and time mutually agreed upon by Buyer and Seller. At Closing, Seller and Buyer, as applicable, shall deliver to the other the following:

(a) **Satisfactory evidence of the authority of the persons executing the conveyance documents to sign such documents and consummate the transaction on behalf of Seller;**

(b) A duly authorized and executed Quit Claim Deed of Seller in recordable form conveying good and marketable title to the Property, subject only to current taxes and assessments not yet due and payable, and zoning ordinances and easements, covenants, conditions and restrictions of record; and

(c) Any documents which may be reasonably required by a title company (but excluding any indemnification provisions) to insure Buyer of good and marketable title to the Property, if Buyer purchases title insurance and secures the services of a title company.

10.2 The Buyer shall be responsible for and pay for its own attorneys, engineering, appraisal and other professional fees. Buyer further agrees that it shall be liable for and shall pay any and all taxes as may be required for the conveyance of the Property, so as to convey to Buyer the fee simple title to the Property and shall pay the premium for an owners' policy of title insurance issued to Buyer by the title company, if any. Each party shall be responsible for its own other costs and expenses in accordance with the obligations or conditions to be performed by each party hereto.

11. **NOTICES.** All notices, elections, requests and other communications hereunder shall be in writing, and shall be deemed sufficiently given when personally delivered or when deposited in the United States Mail, postage prepaid, certified or registered, or when delivered to a nationally recognized overnight delivery service and addressed as follows (or to such person, or to such other address, of which any party hereto shall have given written notice as provided herein):

If to Seller:	Board of Education of Teays Valley Local School District Attn: Superintendent 385 Viking Way Ashville, Ohio 43103	Copy to:	Bricker & Eckler LLP 100 South 3 <sup>rd</sup> Street Columbus, Ohio 43215 Attn: Amy S. Bartemes, Esq.
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If to Buyer: Village of Ashville, Ohio  
Attn: Mayor  
200 East Station Street  
Ashville, Ohio 43103

12. **BROKERAGE COMMISSION.** Seller and Buyer each represents to the other that it has no knowledge of any agreement, understanding or fact which would entitle any person, firm or corporation to any such real estate fee or commission in connection with this transaction.

13. **MISCELLANEOUS.**

13.1 **Survival of Agreement.** The representations, warranties and covenants of Buyer and Seller herein contained or in any other document executed by Buyer or Seller to effect the transactions herein intended, shall survive the Closing.

13.2 **Agreement Binding.** This Agreement shall be binding upon and shall inure to the benefit of the Seller, its successors and assigns, and Buyer and its successors and assigns.

13.3 **Headings and Captions.** The several headings and captions of the Sections and Subsections used herein are for convenience or reference only and shall, in no way, be deemed to limit, define or restrict the substantive provisions of this Agreement.

13.4 **Entire Agreement.** This Agreement constitutes the entire agreement of Buyer and Seller with respect to the purchase and sale of the Property superseding any prior or contemporaneous agreement with respect thereto. No amendment or modification of this Agreement shall be binding upon the parties unless made in writing and signed by both the Seller and Buyer.

Exhibit A of ORDINANCE 2021-01 Continued

13.5 Cooperation. Buyer and Seller shall cooperate fully with each other to carry out and effectuate the purchase and sale of the Property in accordance herewith and the satisfaction and compliance with all of the conditions and requirements set forth herein. Wherever the approvals of Buyer and Seller as herein set forth are so required, such approvals shall not unreasonably be withheld.

13.6 Governing Law. This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Ohio.

13.7 Effective Date. The Effective Date of this Agreement shall be the date on which the last party to sign executes this Agreement, as recorded on page one of this Agreement

13.8 Assignment. Buyer shall not have the right to assign this Agreement without consent of Seller.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the dates set forth below.

Accepted and executed by Buyer on Jan. 28, 2021.

**Buyer: VILLAGE OF ASHVILLE, OHIO**

By: Franklin Christman  
Franklin Christman, Village Administrator

By: April Grube  
April Grube, Fiscal Officer

Accepted and executed by Seller on February 22, 2021.

**Seller: BOARD OF EDUCATION OF TEAYS VALLEY LOCAL SCHOOL DISTRICT**

By: Kevin J. Archer  
Kevin Archer, Board President

By: Trey Fausnaugh  
Trey Fausnaugh, Treasurer

**EXHIBIT A**

**PROPERTY**



