

CITY OF BROOK PARK, OHIO

110 9-5-23 Finance
CA 9-12-23
1st R 9-19-23 amended
2nd R
3rd R

ORDINANCE NO: 11358-2023

INTRODUCED BY: MAYOR ORCUTT

AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO A
CONTRACT FOR THE SALE OF PERMANENT PARCEL NOS. 344-15-008,
344-15-009, 344-15-178, AND 344-29-086
AND DECLARING AN EMERGENCY

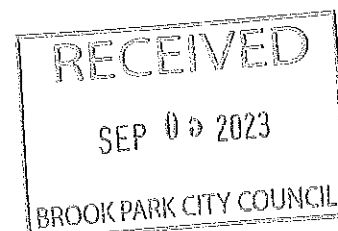
NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Brook Park, State of Ohio, that:

SECTION 1: The Mayor is hereby authorized to enter into a contract for the sale of Permanent Parcel Nos. 344-15-008, 344-15-009, 344-15-178 and 344-29-086, pursuant to the terms and conditions set forth in the aforesaid agreement attached hereto and incorporated herein as if fully rewritten as Exhibit "A".

SECTION 2: The money needed for the sale of the aforesaid transaction shall be paid from the Economic Development Fund No. 243 and the proceeds from this sale shall be placed in the Economic Development Fund No. 243 with \$360,000.00 designated for citywide LED street lighting.

SECTION 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 4: This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and for the further reason to authorize the Mayor to enter into a contract for the sale of Permanent Parcel Nos. 344-15-008, 344-15-009, 344-15-178 and 344-29-086; therefore provided this Ordinance receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.



PASSED:

September 19, 2023

M. R. Kerkio
PRESIDENT OF COUNCIL

ATTEST:

Carol Johnson
CLERK OF COUNCIL

APPROVED:

E. A. Gunt
MAYOR

9-19-23

DATE

CERTIFICATE

Carol Johnson, Clerk of Council, of the City of Brook Park, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ordinance / Resolution No. 11358-2023

passed on the 19 day of September 20 23 by said council.

Carol Johnson
Clerk of Council

Adopted As Amended

I, Carol Johnson, Clerk of Council for the City of Brook Park, State of Ohio, do hereby certify that there is no newspaper of general circulation in the municipality and that publication of the foregoing ordinances/resolutions was made by posting true copies at five of the most public places in said municipality as determined by Ordinance No. 4638-1975; location City Hall 6161 Engle Road, Police Station 17401 Holland Road, #2 Fire Station 22530 Rupe Parkway, #3 Fire Station 17401 Holland Road, Brook Park Library 6166 Engle Road, for a period of fifteen days.

commencing September 22, 2023

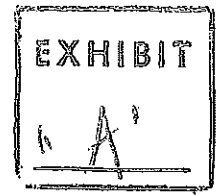
Carol Johnson
CAROL JOHNSON
Clerk of Council

	Yes	Nay
Troyer	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mencini	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Coyne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Polindexter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Salvatore	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Unanimous

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS

Mark Q. Jacob
DIRECTOR OF LAW



AGREEMENT OF SALE

This Agreement of Sale ("**Agreement**") is made this ____ day of _____, 2023 by the City of Brook Park, Ohio ("**Seller**"), and Grey Fox Capital, Ltd., an Ohio limited liability company ("**Buyer**").

RECITALS:

- (A) Seller is the owner, in fee simple, of certain parcels of real property with a commercial building (the "**Building**") and other improvements thereon, consisting of approximately 10 acres of land situated in the City of Brook Park, County of Cuyahoga, State of Ohio, with a street address of 14100 Parkman Blvd., Brook Park, Ohio, known as Permanent Parcel Numbers 344-15-178, 344-29-086, 344-15-009 and 344-15-008, and as more fully described on Exhibit A attached hereto and made a part hereof ("**Property**"); The buyer is aware of that a portion of PPN 344-29-086 is encumbered by Easement. A copy of the easement is included in Exhibit A.
- (B) The Property is outlined on Exhibit B attached hereto and made a part hereof;
- (C) Upon the terms and conditions set forth below, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller the Property.

NOW THEREFORE, in consideration of the mutual covenants and agreements of each party to the other and other valuable consideration, the receipt, adequacy and sufficiency of which are acknowledged, the parties, intending to be bound by this Agreement, do mutually covenant and agree as follows:

ARTICLE 1 INCORPORATION BY REFERENCE

Section 1.1. Incorporation by Reference. The Preamble and the Recitals set forth above and the Exhibits referred to in this Agreement are incorporated into this Agreement as though the same were fully set forth in this Agreement.

ARTICLE 2 PURCHASE AND SALE

Section 2.1. Purchase and Sale; Effective Date. Seller agrees to sell, grant, convey, transfer and assign the Property to Buyer, and Buyer agrees to purchase and receive the Property from Seller, including the hereditaments and appurtenances thereto, subject to and pursuant to the provisions set forth in this Agreement. The effective date is defined as the date on which the Council of the City of Brook Park formally approves by ordinance this Agreement.

Section 2.2. Limited Warranty Deed. The Property shall be sold, granted, conveyed, transferred and assigned by Seller to Buyer by a Limited Warranty Deed ("**Deed**"). The Deed shall convey title to the Property, free and clear of all liens, adverse claims, encumbrances,

reservations, restrictions, charges, equities, rights-of-way and exceptions, except for the Permitted Encumbrances (as defined in Section 4.2).

ARTICLE 3 PURCHASE PRICE

Section 3.1. Purchase Price. The purchase price for the Property to be sold by Seller and purchased by Buyer under this Agreement shall be One Million and 00/100 Dollars (\$1,000,000.00) ("**Purchase Price**").

Section 3.2. Payment of Purchase Price. The Purchase Price shall be payable by Buyer to Seller as follows:

- (A) Within five (5) days of full execution of this Agreement, Buyer shall deliver to Birchway Title Agency, 332 Clearview Court, Broadview Heights, OH 44147, Attn: Billie Finkler ("**Title Company**"), a deposit in the amount of \$10,000.00 ("**Escrow Funds**"). The Escrow Funds shall be made via check payable to Title Company or shall be made via wire transfer. The Escrow Funds shall be placed in an escrow account and shall be released by Title Company as provided in this Agreement.
- (B) The remaining balance of the Purchase Price shall be payable by Buyer to Title Company by wire transfer on the Closing Date (as defined in Section 9.1). At Closing, Title Company shall disburse to Seller, by wire transfer, the balance of the Purchase Price and any and all other funds due Seller.

ARTICLE 4 DUE DILIGENCE PERIOD

Section 4.1. Due Diligence Period. Buyer shall have until 6:00PM Eastern Time on the day that is one hundred eighty (180) days after the Effective Date ("**Due Diligence Period**") to conduct, at Buyer's sole cost and expense, any and all due diligence regarding the Property. Buyer shall have the right, in its sole and absolute discretion, to extend the Due Diligence Period for up to two (2) consecutive periods of sixty (60) days each by delivering written notice of such extension to Seller on or prior to the expiration of the then-current Due Diligence Period (each, a "**Diligence Extension**"). If Buyer elects to exercise one or more Diligence Extensions, then in connection with each Diligence Extension exercised by Buyer a portion of the Escrow Funds in the amount of \$5,000.00 shall become non-refundable to Buyer other than in the event of a Seller default. Pursuant to the Charter of the City of Brook Park, City Council shall make provision by Ordinance for the sale of all municipal property. Therefore, this purchase is contingent upon the approval and passage of an ordinance by Brook Park City Council on or before September 20, 2023.

In the event Buyer is not satisfied with the results of its due diligence, Buyer shall have the right to terminate this Agreement prior to the expiration of the Due Diligence Period, as the same may be extended, and to receive a refund of the Escrow Funds (excluding any portion that

is non-refundable due to exercise of a Diligence Extension) only by giving written notice to Seller and Title Company of Buyer's decision to terminate this Agreement prior to the expiration of the Due Diligence Period ("**Due Diligence Termination Notice**").

In the event Buyer does not timely deliver the Due Diligence Termination Notice to Seller and Title Company, provided that Seller does not default under this Agreement, the Escrow Funds will be unconditionally non-refundable to Buyer and Seller will be entitled upon the scheduled Closing Date or upon Buyer's default under this Agreement to instruct Title Company to then release the Escrow Funds to Seller and Title Company will be authorized to release the Escrow Funds to Seller. In the event Buyer (i) does not timely deliver the Due Diligence Termination Notice, and (ii) thereafter, does not complete its purchase as provided in this Agreement for any reason whatsoever, then the Escrow Funds shall be paid by the Title Company to Seller as liquidated damages and Seller's sole and exclusive remedy for Buyer's default. In the event the sale described in this Agreement is consummated, the Escrow Funds shall be applied towards the Purchase Price.

Seller shall permit Buyer and Buyer's agents, employees, contractors, and consultants (collectively, "**Consultants**") the right, upon not less than 48 hours prior notice to Seller, to access to the Property for the purpose of inspecting the Property and conducting all of Buyer's desired due diligence, subject to the following: (i) Buyer and its Consultants shall promptly pay when due the costs of all tests, investigations, studies and examinations done with regard to the Property and shall not permit any liens to attach to the Property by reason of the exercise of its rights hereunder; and (ii) Buyer and its Consultants shall fully restore the Property to the condition that existed before any such inspections, tests or studies were undertaken, reasonable wear and tear excepted. Buyer hereby agrees to defend, indemnify and hold harmless Seller and its members, employees, agents, successors and assigns from and against any and all claims, expenses, costs, damages, losses and liabilities (including reasonable attorneys' fees and consulting fees) which may at any time be asserted against or suffered by Seller arising from or related to any or all of Buyer's inspections and/or testing of the Property or other access to the Property prior to Closing. Without limiting the foregoing, Buyer shall promptly repair any damage to the Property arising from or related to any or all of Buyer's inspections and/or testing of the Property or other access to the Property prior to Closing. The obligations pursuant to this paragraph shall survive termination of this Agreement. In addition, during the Due Diligence Period, Seller and Buyer shall work together to collaborate on "area" storm water retention for both Buyer's anticipated new development and for other local residents.

Section 4.2. Title Matters. Upon the parties' execution of this Agreement, Seller shall immediately order a commitment ("**Title Commitment**") to issue an owner's title insurance policy for the Property from Title Company. Title Company shall simultaneously deliver copies of the Title Commitment, the vesting deed(s), and all documents referenced therein, to Seller and Buyer. In addition, during the Due Diligence Period, Buyer shall, at its sole expense, have the right to obtain an ALTA survey ("**Survey**") of the Property in form and substance satisfactory to Buyer and prepared by a surveyor acceptable to Buyer. The Title Commitment and the Survey are subject to review and approval by Buyer prior to the expiration of the Due Diligence Period, as the same may be extended. If Buyer objects to any such title exceptions or survey matters ("**Unpermitted Encumbrances**"), Buyer must deliver written notice of any such objection to

Seller within such period ("**Objection Notice**"). Any and each such title exception or survey matter to which Buyer does not object in writing to Seller within such period shall thereafter constitute a "**Permitted Encumbrance**". Upon Seller's receipt of the Objection Notice, Seller shall then have a 15-day period in which to cause the removal or correction of the Unpermitted Encumbrances (it being understood that Seller may, but shall not be required to, remove any Unpermitted Encumbrance). If Seller fails to cause the removal or correction of the Unpermitted Encumbrances within said 15-day period, Buyer may elect, upon written notice to Seller to be received by Seller within fifteen (15) days after the expiration of such 15-day period, to either (i) terminate this Agreement, in which event Buyer shall receive a refund of the Earnest Money Deposit (less any portion that has become non-refundable due to the exercise of a Diligence Extension), or (ii) accept title as it then is, in which event all exceptions in Schedule B of the Title Commitment, including without limitation, the Unpermitted Encumbrances set forth in the Objection Notice and not removed or corrected by Seller, shall become Permitted Encumbrances. If Buyer does not elect within such 15-day period to terminate this Agreement, then Buyer shall be deemed to accept all such Unpermitted Encumbrances in accordance with the foregoing provisions.

ARTICLE 5

DOCUMENTS TO BE MADE AVAILABLE BY SELLER

Section 5.1. Property Documents. Within fifteen (15) days from the date of this Agreement, Seller shall provide, or make available, to Buyer for review in connection with Buyer's due diligence pursuant to **Article 4**, to the extent in Seller's possession or control, (i) any existing title commitment, title policy and/or survey of the Property, (ii) copies of all service contracts in place at the Property, (iii) any environmental reports and/or historical appraisals for the Property, and (iv) a list of capital improvements (collectively "**Property Information**"). No representation or warranty, express or implied, is or will be made with respect to the fairness, accuracy or completeness of any of the Property Information or any other information provided by Seller to Buyer in connection with the sale of the Property. Any use of or reliance upon the Property Information by Buyer is made at Buyer's sole risk and Seller shall have no liability in connection therewith.

ARTICLE 6

COSTS

Section 6.1. Seller's Costs. Seller shall bear the following fees and expenses incurred in connection with the Closing: (i) preparation and recording of the deed, (ii) the cost of issuance of the title commitment, (iii) one-half ($\frac{1}{2}$) of the cost of issuance of the owner's title policy, (iv) any conveyance fees if necessary, documentary stamps or transfer taxes, and (v) one-half ($\frac{1}{2}$) of the escrow fee. Subject to the provisions of **Section 4.2**, Seller shall be responsible for all matters of Seller's title clearance including Seller's investigation and payment of delinquent taxes, special assessments and the clearance of tax or other liens of record.

Section 6.2. Buyer's Costs. Buyer shall bear the following fees and expenses incurred in connection with the Closing: (i) one-half ($\frac{1}{2}$) of the cost of issuance of the owner's policy, (ii) the cost of any special endorsements to or removal of any standard exceptions to the owner's

policy required by Buyer or Buyer's lender, (iii) the costs of recording any mortgage granted by Buyer, and (iv) one-half (½) of the escrow fee. The cost of the Survey shall be paid by Buyer.

ARTICLE 7 POSSESSION

Section 7.1. Possession. Seller shall deliver exclusive possession of the Property to Buyer immediately after Closing on the Closing Date, which possession shall be subject only to any Permitted Encumbrances. The Property shall be delivered free and clear of all personal property on the Closing Date, with all removal and/or disposal costs at Seller's sole cost and expense.

ARTICLE 8 REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER AND BUYER

Section 8.1. Seller's Representations and Warranties. Seller hereby represents, warrants and covenants to Buyer that, as of the date of this Agreement and as of the Closing Date:

- (A) Seller has all requisite power and authority to own and sell the Property.
- (B) The execution and delivery and performance of this Agreement by Seller have been duly and validly authorized and this Agreement is a valid and binding obligation of Seller, enforceable according to its terms.
- (C) Seller shall maintain the Property in its present condition until the Closing Date (ordinary wear and tear excepted).

Section 8.2. Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller that, as of the date of this Agreement and as of the Closing Date:

- (A) Buyer is an Ohio limited liability company duly formed, validly existing, and in good standing under the laws of the State of Ohio, and has all requisite power and authority to own its property and to carry on its business as they are now being conducted.
- (B) The execution, delivery and performance of this Agreement by Buyer have been duly and validly authorized in the manner required by its organizational documents, and this Agreement is a valid and binding obligation of Buyer, enforceable according to its terms.

Section 8.3. "As-Is" Condition. Buyer acknowledges and agrees that, except as otherwise expressly stated in this Agreement, (a) Seller has not made any warranty, guaranty or representation relating to the Property, (b) Buyer is relying solely on its own investigation of the Property and not on any information provided or to be provided by Seller, and (c) Buyer agrees

to accept the Property and acknowledges that the sale thereof as provided for in this Agreement is made by Seller on an "As-Is, Where-Is and with all faults" basis.

Section 8.4 Buyer Covenants to Seller. Buyer hereby represents and warrants to Seller that, as of the date of this Agreement and as of the Closing Date:

- (A) Buyer will allow for a "tie-in" from the public storm sewer system, to the proposed storm water management facility to be designed to accommodate the end use of the subject parcels of land indicated in **RECITALS (A)**.
- (B) Buyer will design said storm water management facility in a manner acceptable to the Seller to accommodate and provide additional storm water storage capacity for the benefit of the adjacent residential neighborhood at no cost to the Seller.

Section 8.5 Seller Covenants to Buyer. Seller hereby represents and warrants to Buyer that, as of the date of this Agreement and as of the Closing Date:

- (A) Seller will provide up to a maximum of two (2) visits annually by the Service Department to assist the Buyer with regularly scheduled maintenance activities of the storm water management facility. All construction and post-construction maintenance and inspection responsibilities remain solely with the Buyer unless such maintenance and inspections become officially accepted by the Seller.

ARTICLE 9 CLOSING AND PRORATION

Section 9.1. Closing. As used in this Agreement, the "Closing Date" shall be within sixty (60) days after the end of the Due Diligence Period, as the same may be extended, on a date designated by Buyer to Seller. The closing ("Closing") of this Agreement shall take place at the offices of Title Company as an escrow closing upon Title Company's receipt from both parties of authorization to close the transaction.

Section 9.2. Proration Date. As used in this Agreement, the "Proration Date" shall be 12:01 a.m. on the Closing Date.

Section 9.3. Closing Deliveries. All matters to be performed under this Agreement shall be performed concurrently on the Closing Date and shall consist of the following transactions, all

of which shall be deemed as having taken place simultaneously and none of which shall be deemed to occur until all have been completed:

- (A) Seller will at Closing deliver or effect the following:
 - (i) Delivery to Buyer of the Deed to the Property; and
 - (ii) Such other and further documents and/or deliveries as may reasonably be required by Buyer and Title Company to enable Seller to perform its obligations hereunder.
- (B) Buyer will at Closing deliver or effect the following:
 - (i) Delivery to Seller of the Purchase Price; and
 - (ii) Such other and further documents and/or deliveries as may reasonably be requested by Seller or Title Company to enable Buyer to perform its obligations under this Agreement.
- (C) At the Closing, real estate taxes and assessments will be prorated as of the Proration Date, using the most recently available tax duplicate, which proration shall be final. All real estate tax proration shall be based on the real estate taxes and assessments levied by each taxing body. Seller shall be responsible for the cost and expense of water and sewer, municipal garbage, rubbish removal and other utilities serving the Property through and including the date immediately preceding the Closing Date. Buyer shall be responsible for the cost and expense of water and sewer, municipal garbage, rubbish removal and other utilities serving the Property for the period commencing on the Closing Date.

ARTICLE 10 CONDEMNATION AND DAMAGE BY CASUALTY

Section 10.1. Condemnation. If all of the Property is or is proposed to be taken or condemned by any public authority between the Effective Date and the Closing Date, Seller shall give Buyer written notice thereof, and this Agreement shall terminate and be null and void and thereafter neither party shall have any liability or obligation to the other except that the Escrow Funds shall be refunded or returned to Buyer. Should less than all of the Property be or is proposed to be taken or condemned by any public authority between the date of execution of this Agreement and the Closing Date, Seller shall give Buyer written notice thereof, and Buyer shall have the option:

- (A) To terminate this Agreement by written notice to Seller within ten (10) days after Buyer's receipt of Seller's notice, in which event this Agreement shall become null and void and thereafter neither party shall have any liability or obligation to the other except that the Escrow Funds shall be refunded or returned to Buyer; or

- (B) To take title to the remaining portion of the Property without abatement of Purchase Price, in which event the proceeds of any condemnation award collected by Seller prior to the Closing Date will be paid or credited to Buyer at Closing, and Seller shall assign to Buyer all of Seller's right, title and interest in and to such award resulting from such taking or condemnation.

In the event that Buyer fails to provide Seller with its termination notice within the 10-day period set forth in subpart 10.1(A) above, then Buyer shall be deemed to have elected to take title to the Property pursuant to 10.1(B) above.

Section 10.2 Casualty. If the Property suffers damage as a result of any casualty prior to the Closing Date in excess of \$100,000.00 then Seller shall give Buyer written notice thereof, and Buyer may elect, by written notice delivered to Seller within ten (10) days after Buyer's receipt of Seller's notice:

- (A) To terminate this Agreement by written notice to Seller, in which event this Agreement shall become null and void and thereafter neither party shall have any liability or obligation to the other except that the Escrow Funds shall be refunded or returned to Buyer; or
- (B) To take title to the remaining portion of the Property without abatement of Purchase Price, in which event the Buyer shall receive all insurance proceeds resulting from such casualty and Seller shall pay to Buyer the amount of any deductible.

In the event that Buyer fails to provide Seller with its termination notice within the 10-day period set forth this Section 10.2, then Buyer shall be deemed to have elected to take title to the Property pursuant to 10.2(B) above. All risks of loss are borne by Seller prior to Closing.

ARTICLE 11 MISCELLANEOUS

Section 11.1. Notices. All notices required or permitted hereunder shall be in writing and deemed given if sent by: (i) certified or registered mail, return receipt requested; (ii) by a nationally recognized overnight courier service (provided that a receipt is given); or (iii) by email, and confirmed by delivering a copy of email notice by another permitted means, provided that such notice shall be deemed effective upon transmittal (not upon dispatch or receipt of a copy). All notices required or permitted hereunder shall be addressed as follows:

To Seller: Edward A. Orcutt
Mayor
The City of Brook Park
6161 Engle Road
Brook Park, Ohio 44142
Email: eorcutt@cityofbrookpark.com

With copy to: Carol Dillon Horvath
Law Director
City of Brook Park
6161 Engle Road
Brook Park, Ohio, 44142
Email: chorvath@cityofbrookpark.com

To Buyer: 3900 Key Center
127 Public Square
Cleveland, Ohio 44114-1291
Attn: Ryan Sommers
Email: RyanSommers@aboutpmc.com

With copy to: Joshua E. Hurtuk
Walter Haverfield
1301 E. 9th St., Suite 3500
Cleveland, OH 44414
E-mail: jhurtuk@walterhav.com

Section 11.2. Entire Agreement. This Agreement, including the attached Exhibits, shall constitute the entire agreement between the parties with respect to the subject matter of this Agreement and shall supersede all previous negotiations, commitments, writings or agreements of sale.

Section 11.3. Amendment. This Agreement may not be amended, changed or modified in any manner except by an instrument in writing signed by each of the parties hereto or their duly appointed officers or representatives. The failure of any party to enforce at any time any of the provisions of this Agreement shall in no way be a waiver of such provision or in any way affect the validity of this Agreement or any part of this Agreement or the right of any party thereafter to enforce each and any such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other breach of this Agreement.

Section 11.4. Headings. The captions appearing in this Agreement are inserted only as a matter of convenience and as a reference and in no way define, limit or describe the scope or intent of this Agreement or any of the provisions hereof.

Section 11.5. Brokers. Each party represents and warrants to the other party that neither party, nor anyone acting on the behalf of either party, has incurred any liability to any broker or finder in connection with the transaction contemplated by this Agreement other than Jason Laver of Cresco Ltd., representing Seller, who shall be compensated by Buyer pursuant to the terms of a separate agreement. The representations and warranties set forth in this Section 11.5 shall survive Closing and/or termination of this Agreement for any reason.

Section 11.6. Computation of Time Period. Wherever this Agreement requires that something be done within a specified period of days, the period shall (a) not include the day from which the period commences, (b) include the day upon which the period expires, (c) expire at

5:00 p.m. local time on the day upon which the period expires and (d) unless otherwise specified in this Agreement shall be construed to mean calendar days, provided, that if the final day of the period falls on a Saturday or Sunday or legal holiday (limited to the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day), it shall be extended to first business day thereafter.

Section 11.7. Counterparts. This Agreement may be executed in multiple counterparts, in original or by fax or email and, when taken together, shall be considered an original.

Section 11.8. Binding. This Agreement shall be binding upon the parties, and their respective successors and permitted assigns. Seller agrees that Buyer may assign this Agreement and its rights under this Agreement to a newly formed entity controlled by Buyer (provided, however, that Buyer shall not be released from liability as a result of such assignment) and Seller will simultaneously with the payment in full of the consideration, sell, convey, assign and transfer the Property, as provided in this Agreement, to such nominee, assignee or designee.

Section 11.9. Exchange of Property. Each party agrees, if requested by the other, to cooperate with Seller to permit Seller to consummate an exchange of property pursuant to IRC Section 1031, including but not limited to the execution of those documents necessary to effectuate such exchange. The cooperating party shall not be responsible for any tax or economic consequences associated with any IRC Section 1031 exchange by the other hereunder. Further, the requesting agrees to pay all cost relative to the preparation of documents and expenses related to the closing of said exchange.

Section 11.10. Severability. If any term or provision of this Agreement or the application thereof to any person, property or circumstance shall to any extent be invalid or unenforceable the remainder of this Agreement, or the application of such term or provision to persons, properties and circumstances other than those as to which it is invalid or enforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 11.11. Governing Law. This Agreement shall be construed in accordance with the internal laws of the State of Ohio.

Section 11.12. Failure to Comply. In the event of a material breach or default by Seller of this Agreement, Buyer shall be entitled, as its sole remedies, to the return of the Escrow Funds or the right to seek specific performance against Seller. In the event of a material breach or default by Buyer of this Agreement, Seller shall be entitled to the Escrow Funds as liquidated damages, which liquidated damages shall be Seller's sole and exclusive remedy.

Section 11.13 Future Home Owners Association (HOA) Requirement. Should the homes to be built because of this sale ever become owner-occupied, the resulting homeowners will be required to form and join a Home Owners Association (HOA).

The following will be included in the resulting deed: "As a purchaser of property in the

residential community in or where the property is located, you ARE, obligated to be a member of the home owners association. Restrictive covenants governing the use and occupancy of the property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of Cuyahoga County, which the community property is located. If required by the Association, you will be obligated to pay assessments.


The amounts of the assessments are subject to change. Your failure to pay the assessments could result in a lien on the property and foreclosure. Copies of the dedicatory instrument may be obtained from the county clerk.”

[Signatures are on the following page.]

The parties have executed this Agreement as of the day and in the year above written.

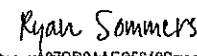
"Seller":

CITY OF BROOK PARK, OHIO

By: 
Name: Edward A. ORCUTT
Title: MAYOR 6.30.2023

"Buyer":

Grey Fox Capital, Ltd.,
an Ohio limited liability company

By: 
Name: Ryan P. Sommers
Title: Manager

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS


DIRECTOR OF LAW

FISCAL OFFICER'S CERTIFICATE

As fiscal officer of the City of Brook Park, Ohio, I certify that the amount required to meet the obligations of the City under the attached Agreement has been lawfully appropriated for such purpose, and is in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. The Certificate is given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

Dated: June 29, 2023



Director of Finance

EXHIBIT A

Legal Description of Property

PARCEL NO. 1

Situated in the City of Brook Park, County of Cuyahoga, and State of Ohio, and known as being part of Original Middleburg Township Lot No. 3, Section No. 1, bounded and described as follows:
Beginning in the Northwesterly line of the B & O Railroad Right-of-Way, 66 feet wide, at the most Easterly corner of Sublot No. 190 of the Fragnato-Preisig-Coplan Subdivision No. 2 as shown by the recorded plat in Volume 174 of Maps, Page 38, of Cuyahoga County Records;
Thence Northwesterly along the Northeasterly lines of Sublots No.'s 190 and 191 in said Subdivision, 179.93 feet to the most Northerly corner of said Sublot No. 191;
Thence Northwesterly along the Northeasterly lines of Sublots No.'s, 192, 193 and 194 in said Subdivision, 150.00 feet to the Northeasterly corner of said Sublot No. 194;
Thence Southwesterly along the Northwesterly line of said Sublot No. 194, 120 feet to its intersection with the Northeasterly line of Westbrook Drive, 60 feet wide;
Thence Northwesterly along the Northeasterly line of Westbrook Drive, 31.01 feet to a point;
Thence Southwesterly along the Northwesterly line of Westbrook Drive, 60 feet to a point of curvature;
Thence Southwesterly along the arc of a circle deflecting to the right 36.22 feet to a point of tangency in the Northerly line of Parkman Blvd., 60 feet wide, said arc having a radius of 20 feet and a chord of 31.47 feet;
Thence Westerly along the Northerly line of Parkman Blvd., 88.37 feet to the Southeasterly corner of Sublot No. 17 in the Parkman Subdivision, as shown by the recorded plat in Volume 185 of Maps, Page 79, of Cuyahoga County Records;
Thence Northerly along the Easterly line of said Sublot No. 17, 120 feet to the Northeasterly corner of said Sublot No. 17;
Thence Westerly along the Northerly line of Sublots No.'s 17, 16, 15, 14, and 13, in said Parkman Subdivision, 250.00 feet to the Northwesterly corner of said Sublot No. 13;
Thence Northerly along the prolongation Northerly of the Westerly line of said Sublot No. 13, about 160 feet to a point which is distant Southerly 150 feet, measured at right angles, from the Southerly line of Snow Road, 100 feet wide;
Thence Easterly parallel with the Southerly line of Snow Road and 150 feet distant Southerly therefrom measured at right angle, about 1025 feet to a point in the Northwesterly line of the B & O Railroad Right-of-Way;
Thence Southwesterly along said Northwesterly Right-of-Way line, about 605 feet to the place of beginning.

Parcel No. 2

Situated in the City of Brook Park, County of Cuyahoga, and State of Ohio, and known as being part of Original Middleburg Township Lot No. 3, Section No. 1, bounded and described as follows:
Beginning in the Southerly line of Snow Road, 100 feet wide, at its intersection with the prolongation Southerly of the Easterly line of Van Wert Avenue, 50 feet wide;
Thence Westerly along the Southerly line of Snow Road, 15 feet;
Thence Southerly at right angles to the Southerly line of Snow Road, 150 feet;
Thence Easterly parallel with the Southerly line of Snow Road, 15 feet;
Thence Northerly 150 feet to the place of beginning.

PPM: 344-15-008 AND 344-15-009

Parcel No. 3

Situated in the City of Brook Park, County of Cuyahoga, and State of Ohio, and known as being Parcel No. 1 in a Lot Split for Skyline Development Inc, as shown by the recorded plat in Volume 249 of Maps, Page 98, of Cuyahoga County Records, be the same more or less, but subject to all legal highways.
PPN: 344-15-178

Parcel No. 4

Situated in the City of Brook Park, County of Cuyahoga, and State of Ohio, and known as being Parcel No. 2 in a Lot Split for Skyline Development Inc, as shown by the recorded plat in Volume 249 of Maps, Page 98, of Cuyahoga County Records, be the same more or less, but subject to all legal highways.
PPN: 344-29-086

This Legal Description Complies with
The Cuyahoga Transfer and
Conveyance Standards and is approved
for transfer.

MAR 29/2021

Agent

EXHIBIT B

Depiction of Property

