

ORDINANCE NO. 51-22

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A RIGHT-OF-WAY PURCHASE AGREEMENT WITH JMJ HOLDINGS, CORP., AN OHIO CORPORATION, FOR THE PURPOSE OF COMPLETING THE WEST SMITH RECONSTRUCTION PROJECT, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

- SEC. 1:** That the Mayor is hereby authorized to enter into a Right-of-Way Purchase Agreement with JMJ Holdings Corp., an Ohio Corporation for Parcel #028-19C-05144 for the purpose of completing the West Smith Reconstruction Project.
- SEC. 2:** That the funds to cover the Right-of-Way Purchase Agreement, in the amount of \$300.00 are available in Account No. 108-0610-54411.
- SEC. 3:** That a copy of the Purchase Agreement is marked Exhibit A, attached hereto and incorporated herein.
- SEC. 4:** That this Ordinance shall be considered an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason to execute said right-of-way agreement to allow the project to proceed as quickly as possible; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

PASSED: March 14, 2022

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: March 15, 2022

SIGNED: Dennis Hanwell
Mayor

**CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY
WITHOUT BUILDING(S)**

ORD 51-22
Exh. A

PARCEL(S): 66-WD
MED-CR 0004-15.47

This Agreement is by and between the City of Medina, Ohio ["Purchaser"] and JMJ Holdings Corp., an Ohio corporation ["Seller"; "Seller" includes all of the foregoing named persons or entities]. Purchaser and Seller are referred to collectively in this Agreement as "Parties."

In consideration of the mutual promises, agreements and covenants herein contained the Parties contract as follows:

1. Price and Consideration

Purchaser shall pay to Seller the sum of \$300.00, which sum shall constitute the entire amount of compensation due Seller for: (a) the real property to be conveyed, including all fixtures; (b) any and all damages to any residual lands of Seller; (c) Seller's covenants set forth herein; (d) any and all supplemental instruments reasonably necessary to transfer the title of the subject property; and (e) N/A.

Seller shall be exclusively responsible for all delinquent taxes and assessments, including penalties and interest, and for all other real estate taxes and assessments that are a lien as of the date on which this Agreement closes. The taxes and assessments for the current calendar year shall be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever is earlier in time. Seller shall be responsible for any and all future installments of any special assessments levied and assessed against the real property, whether or not any such special assessment has been certified to the county auditor for collection, provided that such installments of special assessments shall be a lien on the subject real property as of the date of transfer of title. Purchaser may withhold in escrow a sufficient amount of the purchase money to satisfy the foregoing items to be paid by Seller; any balance remaining after such taxes, assessments, etc., are discharged shall be paid to Seller and any deficiency shall be the responsibility of Seller.

2. Estate Sold and Deed to Transfer

Seller, upon fulfillment of all the obligations and terms of this Agreement, shall sell and convey to Purchaser, its successors and assigns, the property which is more particularly described in Exhibit A attached hereto and by this reference incorporated herein, together with all improvements now located thereon and all fixtures of every nature now attached to or used

with said land and improvements including, but not limited to, driveways, signs, utility fixtures, shrubbery and trees.

If the rights, titles and estates described in Exhibit A constitute the fee simple in, to and of the real property, then such sale and conveyance by Seller shall be by a good and sufficient general warranty deed with, if applicable, full release of dower. In the event the rights, titles, and estates described in Exhibit A constitute something less than the fee simple of the real property, then such sale and conveyance by Seller shall be by a good and sufficient deed or other instrument regularly and ordinarily used to transfer such lesser rights, titles and estates with, if applicable, full release of dower.

3. Limited Access Parcels - Waiver of Abutters' Rights

If the property described in Exhibit A is designated by Purchaser as a limited access parcel, then Seller further agrees to release to Purchaser, its successors and assigns, any and all abutters' rights, including access rights, appurtenant to any remaining lands of Seller (from which the property described in Exhibit A is being severed) in, over, on, from and to the property described in Exhibit A.

4. Supplemental Instruments

Seller agrees to execute any and all supplemental instruments or documents necessary to vest Purchaser with the rights, titles and interests described in Exhibit A.

5. Warranty of Title

Seller shall, and hereby does, warrant that the property described in Exhibit A is free and clear from all liens and encumbrances whatsoever, except: (a) easements, restrictions, conditions and covenants of record; (b) all legal highways; (c) zoning and building laws, ordinances, rules and regulations; and (d) any and all taxes and assessments not yet due and payable.

6. Elimination of Others' Interests

Seller shall assist, in whatever manner reasonably possible under the circumstances, to procure and deliver to Purchaser releases and cancellations of any and all other rights, titles and interests in the property described in Exhibit A, such as, but not limited to, those belonging to tenants, lessees, mortgagees or others now in possession or otherwise occupying the subject premises, and all assessment claims against said property.

Seller and Purchaser agree that if a mortgagee of Seller or of a predecessor in title fails to cooperate with the efforts to obtain a release of that mortgagee's mortgage lien secured by the

property described in Exhibit A, then and in that event this Agreement shall become null and void and the parties to this Agreement shall be discharged and released from any and all obligations created by this Agreement; for the purposes of this provision, the term "fails to cooperate" shall include a demand or request by any such mortgagee for a fee to process such a release of that mortgagee's mortgage lien that Purchaser, in its sole discretion, deems to be excessive.

7. No Change in Character of Property

Seller shall not change the existing character of the land or alter, remove, destroy or change any improvement located on the property described in Exhibit A. If, prior to the date on which possession of the subject property is surrendered to Purchaser, the subject property suffers any damage, change, alteration or destruction then, and without regard to the cause thereof, Seller shall restore the subject property to the condition it was in at the time Seller executed this Agreement; in the alternative, Seller may agree to accept the abovementioned purchase price less the costs associated with such restoration. If the Seller refuses to either restore the premises or accept the decreased consideration as aforementioned, then Purchaser, at its option after discovery or notification of such damage, change, alteration or destruction, may terminate and cancel this Agreement upon written notice to Seller.

8. Offer to Sell

If Seller executes this Agreement prior to Purchaser, then this Agreement shall constitute and be an Offer to Sell by Seller that shall remain open for acceptance by Purchaser for a period of 20 days immediately subsequent to the date on which Seller delivers such executed Agreement to Purchaser. Upon Purchaser's acceptance and execution of this Agreement within said period of 20 days, this Agreement shall constitute and be a valid Contract for Sale and Purchase of Real Property that is binding upon the Parties.

9. Designation of Escrow Agent

Seller agrees that Purchaser may designate an escrow agent to act on behalf of the Parties in connection with the consummation and closing of this Agreement.

10. Closing Date

The consummation and closing of this Agreement shall occur at such time and place as the Parties may agree, but no later than 10 days after Purchaser notifies Seller in writing that Purchaser is ready to consummate and close this Agreement. Provided, however, in no event

shall such consummation and closing occur more than 120 days after the last date on which one of the Parties executes this Agreement.

11. Physical Possession of Structures Occupied by Seller

Seller shall surrender physical possession of the land and improvements to Purchaser not later than the date on which Purchaser tenders the purchase price to Seller.

12. Control of Property Occupied by Seller's Tenant(s)

Control of property occupied by Seller's tenant(s) shall be assumed by Purchaser on the date Purchaser tenders the purchase price to Seller. From that date forward, Purchaser shall be entitled to collect and retain as its own funds any and all rental payments thereafter made by such tenant(s). If any rents due under the lease(s) with Seller have been prepaid by Seller's tenant(s), then said prepaid rents shall be prorated to the date on which the purchase price is tendered by Purchaser, and said prepaid rents shall be paid to Seller and Purchaser in accordance with such proration.

13. Binding Agreement

Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective heirs, executors, administrators, successors and assigns.

14. Multiple Originals

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

15. Entire Agreement

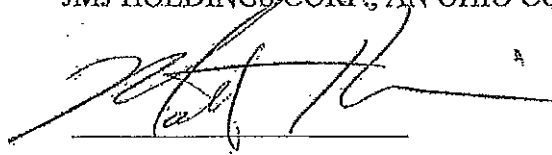
This instrument contains the entire agreement between the Parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatsoever, either express or implied, other than herein set forth, shall be binding upon Seller or Purchaser.

16. Amendments and Modifications

No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement and is signed by Seller and Purchaser.

IN WITNESS WHEREOF, the parties hereto, namely the City of Medina, Ohio and JMJ Holdings Corp., an Ohio corporation have executed this Agreement on the date(s) indicated immediately below their respective signatures.

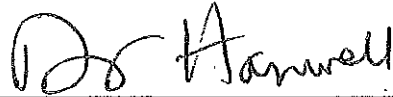
JMJ HOLDINGS CORP., AN OHIO CORPORATION



Matt Kiene, Vice President

Date: 2/16-22

City of Medina, Ohio



Mayor Dennis Hanwell

Date: March 15, 2022

EXHIBIT A

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Rev. 06/09

QWS

Ver. Date 06/22/2021

PID 112540

**PARCEL 66-WD
MED-CR 0004-15.47
ALL RIGHT, TITLE AND INTEREST IN FEE SIMPLE
IN THE FOLLOWING DESCRIBED PROPERTY
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF MEDINA, MEDINA COUNTY, OHIO**

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Medina, City of Medina, being in Original Lot 1 of Montville Township, Township 2 North, Range 14 West of the Connecticut Western Reserve, being part of the formerly known as Medina City Lot 48 on the Montville Township side thereof and now known as Medina City Lot 1048, as conveyed to JMJ Holdings Corp., an Ohio corporation by the instrument filed as Document Number 2019OR000708 (all document references are to the records of Medina County, Ohio Recorder's office, unless otherwise stated).

Being a parcel of land lying on the right side of the centerline of right-of-way of Smith Road (60' R/W Public) and being more particularly described as follows:

COMMENCING FOR REFERENCE at a Mag spike set at an angle point in the centerline of right-of-way of Smith Road, being the centerline intersection of the said Smith Road and Huntington Street FKA West Alley (33' R/W - Public), and being on the northerly line of Montville Township, and on the southerly line of Medina Township, said spike being at station 93+73.60 of the centerline of right-of-way of Smith Road;

Thence along the said centerline of right-of-way of Smith Road, the south line of Medina Township, and the north line of Montville Township, **North 89 degrees 42 minutes 44 seconds East for a distance of 16.43 feet** to a point being at station 93+89.74 of the said centerline of right-of-way of Smith Road;

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Thence leaving the said centerline of right-of-way of Smith Road perpendicularly, **South 00 degrees 17 minutes 16 seconds East for a distance of 30.00 feet** to a Mag spike set at the intersection of the existing southerly right-of-way line of Smith Road and the existing easterly right-of-way line of the said Huntington Street, and being at the northwest corner of the said Medina City Lot 1048, said spike being 30.00 feet right of the centerline of right-of-way of Smith Road station 93+89.74, said spike being the **TRUE POINT OF BEGINNING** of the parcel herein described;

Thence along the said existing southerly right-of-way line of Smith Road and the north line of the said Medina City Lot 1048, **North 89 degrees 42 minutes 44 seconds East for a distance of 2.47 feet** to an iron pin set at the intersection of the said existing southerly right-of-way line of Smith Road and the proposed easterly right-of-way line of Huntington Street, said pin being 30.00 feet right of the centerline of right-of-way of Smith Road station 93+92.21;

Thence crossing through the said Medina City Lot 1048 and along the said proposed easterly right-of-way line of Huntington Street, for the following three (3) courses:

1. **South 23 degrees 45 minutes 53 seconds West for a distance of 2.39 feet** to an iron pin set being 32.18 feet right of the centerline of right-of-way of Smith Road station 93+91.23;
2. Along a line parallel to and 1.50 feet distant from measured perpendicularly from the existing easterly right-of-way line of Huntington Street, **South 00 degrees 09 minutes 28 seconds East for a distance of 9.37 feet** to an iron pin set being 41.55 feet right of the centerline of right-of-way of Smith Road station 93+91.21;
3. **South 89 degrees 42 minutes 44 seconds West for a distance of 1.50 feet** to a Mag spike set at the intersection of the said proposed easterly right-of-way line of Huntington Street and the said existing easterly right-of-way line of Huntington Street, and on the westerly line of the said Medina City Lot 1048, said spike being 41.55 feet right of the centerline of right-of-way of Smith Road station 93+89.71;

Thence along the said existing easterly right-of-way line of Huntington Street and the said westerly line of Medina City Lot 1048, **North 00 degrees 09 minutes 28 seconds West for a distance of 11.55 feet** to the **TRUE POINT OF BEGINNING** of the parcel herein described.

The above description contains a total area of **0.0004 acres**, (0.0000 acres are located within the Present Road Occupied resulting in a net take of 0.0004 acres), being all of Medina County Auditor's Parcel number **028-19C-05-144**.

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The current source of title to the boundary herein described as of this writing recorded in Document Number 2019OR000708 in the records of Medina County.

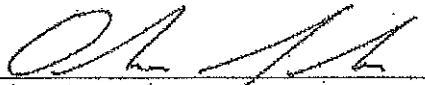
This description was prepared by Andrew T. Jordan, Ohio Registered Professional Surveyor number 8759, and is based on an actual field survey conducted by American Structurepoint Inc. in October of 2020, and is true and correct to the best of my knowledge and belief.

The bearings for this description are based on Grid North, reference North 89 degrees 12 minutes 02 seconds East for the existing centerline of right-of-way for W. Smith Road, as referenced to The Ohio State Plane Coordinate system (North Zone) and the North American Datum of 1983 (2011 Adjustment) as established utilizing a GPS survey and NGS OPUS solution.

Where described, iron pins set are 5/8" rebar, 30" long, with caps stamped "ASI PS 8759".

The stations referenced herein are from the plans known as MED - CR.0004 - 15.47 (W SMITH ROAD) on file with the City of Medina, Ohio.

American Structurepoint, Inc.



Andrew T. Jordan
Registered Professional Surveyor No. 8759

6-22-2021
Date

