

ORDINANCE NO. 79-25

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH TURCO REAL ESTATE HOLDINGS COMPANY TO PURCHASE REAL PROPERTY CONSISTING OF APPROXIMATELY 0.4800 ACRES OF LAND, (A 10' WIDE STRIP ON THE SOUTH SIDE OF FREEMAN DRIVE), PPN 04-00-009-000-167 AND DEDICATING SAME FOR USE AS A PUBLIC RIGHT-OF-WAY AND DECLARING AN EMERGENCY

WHEREAS, the City continues to grow and so does its need to acquire additional land for public road improvements and other public infrastructure; and

WHEREAS, the Mayor seeks authorization from Council to enter into a Real Estate Purchase Agreement (REPA) with Turco Real Estate Holdings Company, an Ohio corporation, (Turco), for real property consisting of approximately 0.4800 acres, (a 10' wide strip on the south side of Freeman Drive), PPN No. 04-00-009-000-167; and

WHEREAS, Council has had an opportunity to meet with the Mayor and members of the Administration to discuss the purchase of the subject property, including the terms of the transaction as set forth in the proposed REPA; and

WHEREAS, Council deems it to be in the best interests of the health, safety, and welfare of the community that the City acquire the land being offered for sale in the vicinity of Freeman Drive consisting of approximately 0.4800 acres, (a 10' wide strip on the south side of Freeman Drive), and to dedicate same for public use and authorizes the Mayor to execute the REPA in furtherance of said acquisition.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, COUNTY OF LORAIN AND STATE OF OHIO:

Section 1 - That the Mayor is hereby authorized to enter into a Real Estate Purchase Agreement with Turco Real Estate Holdings Company for real property located in the City of Avon in the vicinity Freeman Drive, to wit: a ~10' x ~2,100' strip on the south side of Freeman Drive, PPN No. 04-00-009-000-167, totaling approximately 0.4800 acres. Further, Council hereby accepts this real property and dedicates it for public use. Said REPA, in substantially the form set forth in Exhibit A, is attached hereto and incorporated herein by reference.

Section 2 - Council hereby authorizes the payment of funds from the General Fund No. 101 in an amount equal to that set forth in the REPA, together with any costs of closing. Payment is to be made pursuant to directives of the Finance Director.

Section 3 - That it is found and determined that all formal actions of the Council of the City of Avon concerning and relating to the adoption of this Ordinance were taken in an open meeting of the Council of the City of Avon and that all deliberations of this City's Council and any of its committees that resulted in those formal actions were in meetings open to the public, or

otherwise in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4 - That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, safety, and welfare of the citizens of the City of Avon, the immediate emergency being the necessity for the City to acquire additional land for public use; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: September 8, 2025 DATE SIGNED: September 8, 2025

By: Brian Fischer
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: September 9, 2025

Bryan K. Jensen
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior
John A. Gasior, Law Director

ATTEST:

Barbara Brooks
Barbara Brooks, Clerk of Council

Posted: September 11, 2025
Electronically and at City Hall as
Provided by Council

Prepared By:
John A. Gasior, Esq.
Law Director, City of Avon

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 79-25, passed by the Council of said City on September 8, 2025.

IN WITNESS WHEREOF, I have on this 9th day of September 2025, affixed my signature and official seal.

Barbara J. Brooks
Barbara J. Brooks, Clerk of the Council
of the City of Avon, Ohio

EXHIBIT A TO ORDINANCE NO. 79-25

REAL ESTATE PURCHASE AGREEMENT

This REAL ESTATE PURCHASE AGREEMENT (the 'Agreement') is made and entered into at Avon, Ohio, by and between **TURCO REAL ESTATE HOLDINGS COMPANY**, of 1101 Moore Road, Avon, Ohio 44011, herein referred to as the 'Seller' and **THE CITY OF AVON, OHIO**, an Ohio municipal corporation, located at 36080 Chester Road, Avon, Ohio 44011, herein referred to as the 'Buyer'. Network Land Title Agency, located at 105 Cleveland Street, Suite 200, Elyria, Ohio 44035-6137, (440/322-5300) shall serve as escrow agent for this transaction subject to its standard conditions of acceptance of escrow. Buyer and Seller, collectively herein referred to as the "Parties," agree to go forward upon the following terms and conditions:

DESCRIPTION OF PROPERTY

Seller agrees to convey to the Buyer and the Buyer agrees to acquire from Seller upon all the terms, provisions and conditions herein contained, the real property consisting of one (1) parcel of real estate (hereinafter referred to as "the property") situated in the City of Avon, Lorain County, Ohio and identified as Lorain County Auditor's Permanent Parcel No. 04-00-009-000-167. Said property consists of approximately 0.4800 acres of vacant land (a 10' wide strip on the south side of Freeman Drive). The acquisition of the property shall include all rights, privileges, and easements, if any, pertaining to said property. A legal description for the parcel described above is attached hereto and marked Exhibit A.

Article One: Consideration for the Purchase

1.01 **Amount.** As consideration for this acquisition of the property herein, Buyer agrees to pay the Seller the sum of One Dollar (\$1.00). In addition, 1) Buyer agrees to pay all closing costs associated with this transaction including, but not limited to (i) the cost of the ALTA survey, title examination, commitment preparation and the premium for title insurance;

(ii) recording costs; (iii) all transfer or conveyance fees; (iv) extended title insurance costs; and (v) all costs in connection with Buyer's due diligence review; **2)** Buyer agrees to pay any outstanding real estate taxes associated with this parcel number up to the date of closing; **3)** Buyer, at Buyer's expense, prior to the paving of the property, agrees to install two (2) sanitary sewer laterals with risers to approximately 9' to Seller's property located at 1101 Moore Rd, Avon, Ohio 44011 (identified as Lorain County Auditor's PPN 04-00-009-000-168) ("Seller's Retained Property"), located east of the ditch (Powdermaker Ditch) that bisects said parcel; and **4)** Buyer agrees that Seller shall have no responsibility or liability whatsoever for any assessments, charges, or fees imposed on Seller's Retained Property as a result of any public improvements, repairs, or modifications to the property with the exception of water and sanitary sewer tap fees (provided that Seller is the party initiating or performing the tap).

Article 2: Escrow

2.01 Opening of Escrow. An escrow shall be opened pursuant to this Agreement at Network Land Title Agency, 105 Cleveland Street, Suite 200, Elyria, Ohio 44035-6137, (440/322-5300) who shall serve as escrow agent for this transaction subject to its standard conditions of acceptance of escrow.

2.02 Closing Date. The closing date of this transaction shall take place on or before September 15, 2025. Delivery of said title to the Buyer shall take place immediately upon closing, free and clear of all uses and occupancies. The Buyer's obligation to purchase the Property pursuant to this Agreement is **EXPRESSLY CONDITIONED ON:**

Acceptance by Council. Acceptance by Avon City Council shall be in the form of an Ordinance authorizing the Mayor to enter into this Purchase Agreement for the acquisition of said real estate.

Marketable Title. The conveyance to the Buyer of good and marketable title to the property, as evidenced by the deposit into escrow at closing by Seller of a General Warranty Deed to the Buyer subject only to liens, encumbrances, restrictions, easements, or conditions as may be approved in writing by the Buyer; provided however, Buyer may only object to those matters which adversely and materially impair marketability of title. As further assurance that Seller is conveying good and marketable title to the property, the Title Company shall cause to be issued to the Buyer an Owner's Fee Policy of Title Insurance, subject only to the exceptions stated above. Upon the execution of this Agreement, Buyers shall cause to be ordered from the Title Company a commitment for an Owner Policy and an ALTA survey, and a copy of each shall be sent to Buyer for Buyer's review. Within ten (10) days of receipt of the commitment and the survey, Buyer shall notify Seller in writing of any liens, encumbrances, restrictions, easements, or conditions shown therein which are objectionable to Buyer. If so notified, the items that are objectionable to Buyer shall be considered "title defects" and Seller, prior to closing, will have the right, but not the obligation to resolve such defects. If the title defects cannot be removed by Seller before the date set for closing, or any extensions of the closing date as may be agreed to by the Buyer for the correction of these title defects, this Agreement shall be null and void and all funds and documents previously delivered to the parties or deposited into escrow shall be returned to the respective parties who delivered or deposited such funds or documents, and there shall be no further liability between the parties.

Inspection of the Property. Buyer will satisfactorily complete a diligent inspection of the property and satisfy itself as to the feasibility of the property for its intended use within thirty (30) days of the date of execution of this Agreement. Buyer's inspection may include, without limitation, tests of the subsurface soil conditions of the property, inspection of buildings and fixtures on said property, boundary surveys, engineering reports, feasibility studies, and

environmental inspections. Buyer and Buyer's agents shall have access to the property for such inspections but will not interfere with Seller's occupancy. Inspections will be kept to a minimum. Buyer will immediately repair all damages it causes and will indemnify, defend, and hold Seller harmless on all claims resulting from such investigations.

2.03 Failure of Conditions. Should any of the conditions specified in paragraph 2.02, above, of this Agreement fail to be fulfilled by the date set for closing, or for such other period of time as the parties may otherwise agree to in writing, Buyer shall have the power, exercisable by the giving of written notice to the escrow agent and to Seller, to cancel such escrow, terminate this Agreement, and recover any amounts paid by them to Seller or to the escrow agent on account of the purchase price of said property. The exercise of such power by Buyer shall not, however, constitute a waiver by Buyer of any other rights Buyer may have against Seller for breach of this Agreement. The escrow agent shall be, and is hereby, irrevocably instructed by Seller on such failure of conditions and receipt of such notice from Buyer to refund immediately to Buyer all monies and instruments deposited by him in escrow pursuant to this Agreement.

2.04 Prorations. If applicable, there shall be prorated in escrow between Seller and Buyer on the basis of thirty (30)-day months, as of 5:00 p.m. on the day of closing:

(1) Real property taxes and assessments levied or assessed against said property as shown on the latest available tax bills without further re-proration.

2.05 Expenses of Closing. All expenses of closing shall be paid in full by the Buyer, including all real estate taxes and assessments due on the property as of the date of closing.

Article Three: Representations and Warranties of Seller

3.01 Warranties of Seller

Seller hereby represents and warrants to Buyer, to the best of Seller's knowledge, the following:

(1) There are no other parties in possession of any part of said property as lessees, tenants at sufferance, or trespassers.

(2) Seller has received no written notice of any pending or threatened condemnation or similar proceeding or assessment affecting said property, or any part thereof, nor to the best their knowledge and belief, Seller is not aware of any such proceeding or assessment contemplated by any governmental authority;

(3) Selles has received no written notice of any violation of any applicable laws, ordinances, regulations, statutes, rules, and restrictions relating to said property, or any part thereof;

(4) The property is in compliance with all applicable laws, rules, regulations, and ordinances, including, without limitation, building, zoning and environmental laws, rules, regulations, and ordinances.

(5) There are no actions, suits or proceedings against Seller with respect to the property, and Seller has received no written notice of any investigations or actions, suits or proceedings at law or in equity pending or threatened against Selles that would adversely affect this transaction or the property being sold hereunder.

(6) As of the date of closing, all documents delivered hereunder to Buyer and all warranties herein made by Seller is accurate and complete, and there has been no material change in any of the facts, circumstances, or subject matter of this transaction of which Buyer has not been informed.

Article Four: No Warranties / "AS IS, WHERE IS"

4.01 NO WARRANTIES/"AS IS, WHERE IS"; "WITH ALL FAULTS".
EXCEPT AS PROVIDED HEREIN, OR ANY DOCUMENT EXECUTED BY SELLER
RELATED TO THIS TRANSACTION, BUYER REPRESENTS THAT UPON COMPLETION

OF ITS INSPECTIONS OF THE PROPERTY, BUYER WILL HAVE FULLY INSPECTED THE PROPERTY, WILL HAVE MADE ALL INVESTIGATIONS AS IT DEEMS NECESSARY OR APPROPRIATE AND WILL BE RELYING SOLELY UPON ITS INSPECTION AND INVESTIGATION OF THE PROPERTY FOR ALL PURPOSES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, THE DETERMINATION OF THE CONDITION OF THE STRUCTURES, IMPROVEMENTS, SOILS, SUBSURFACE, DRAINAGE, SURFACE AND GROUNDWATER QUALITY, AND ALL OTHER PHYSICAL CHARACTERISTICS; AVAILABILITY AND ADEQUACY OF UTILITIES; COMPLIANCE WITH GOVERNMENTAL LAWS AND REGULATIONS; ACCESS; ENCROACHMENTS; ACREAGE AND OTHER SURVEY MATTERS; AND THE CHARACTER AND SUITABILITY OF THE PROPERTY. IN ADDITION, BUYER ACKNOWLEDGES THAT THE PROPERTY IS BEING PURCHASED AND WILL BE CONVEYED "AS IS" WITH ALL FAULTS AND DEFECTS, WHETHER PATENT OR LATENT, AS OF THE DATE OF CLOSING. THERE HAVE BEEN NO REPRESENTATIONS, WARRANTIES, GUARANTEES, STATEMENTS OR INFORMATION, EXPRESS OR IMPLIED, PERTAINING TO THE PROPERTY, ITS CONDITION, OR ANY OTHER MATTERS WHATSOEVER, MADE TO OR FURNISHED TO BUYER BY SELLER OR ANY EMPLOYEE OR AGENT OF SELLER, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

Article Five: Buyer's Post-Closing Covenant

5.01 **Expansion of the Property.** Following the Closing, Buyer acknowledges and agrees that Buyer shall not undertake, permit, or authorize any voluntary expansion, widening, or improvement of the property in a manner that results in any encroachment onto any portion of Seller's Retained Property. This covenant shall survive the Closing and be binding upon Buyer

and its successor and assigns. Notwithstanding the foregoing, nothing in this section shall prohibit Buyer from making any improvements within the boundaries of the property being purchased by Buyer.

Article Six: Breach

6.01 **By Seller.** Should Seller default on the full and timely performance of any obligations under the terms of this Agreement for any reason other than Buyer's default, Buyer may:

- (1) Bring suit for damages and/or Specific Performance against Seller.

.02 **By Buyer.** Should Buyer fail to consummate the purchase of said property, the Buyer's obligations set forth in paragraph 2.02 of this Agreement having been satisfied and Buyer being in default, and Seller not being in default hereunder, Seller may:

- (1) Receive One Hundred Percent (100%) of the down payment from the escrow agent, such sum being agreed on as liquidated damages for the failure of Buyer to perform the duties, liabilities, and obligations imposed on it by the terms and provisions of this Agreement. Seller agrees to accept and take said cash payment as its total damages and relief and as Seller's sole remedy hereunder in such event. Such relief is not intended as a penalty.

Article Seven: Miscellaneous

7.01 **Assignment of Agreement.** This Agreement shall be binding on the respective heirs, executors, administrators, successors, and to the extent assignable, on the assigns or nominees of the parties hereto.

7.02 **Survival of Covenants.** Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties pertaining to a period of time following the closing of the transactions contemplated hereby shall survive the closing and shall not be merged therein.

7.03 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Buyer, as the case may be, at the address set forth in Paragraph One (1) herein and opposite the signature of such party hereto.

7.04 **Ohio Law to Apply.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be constructed as if such invalid, illegal, or unenforceable provision had never been contained herein.

7.05 **Prior Agreements Superseded.** This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the aforesaid subject matter.

7.06 **Gender.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, and vice versa, unless the context requires otherwise.

7.07 **Descriptive Heading.** The descriptive headings used herein are for convenience only and are not intended to necessarily refer to the matter in sections which precede or follow them and have no effect whatsoever in determining the rights or obligations of the parties.

7.08 **Personal Property and Fixtures.** If applicable, upon relinquishing possession of the premises, the Seller shall relinquish ownership of any and all items of personal property on the premises. Any personal property remaining on the premises upon transfer of title shall become the property of the Buyer.

(Document continues on next page)

7.09 **Effective Date.** The effective date of this Agreement shall be the latest of the execution dates of the parties as set forth below.

SELLER:

Witness: *Jeanette Turco*

Witness: _____

**TURCO REAL ESTATE HOLDINGS
COMPANY**

Matthew Turco
MATTHEW TURCO, PRESIDENT

9/5/25
DATE OF EXECUTION

BUYER:

Witness: *Barbara Booth*

Witness: _____

Bryan J. Jensen
BRYAN J. JENSEN, MAYOR
City of Avon, Ohio
36080 Chester Road
Avon, Ohio 44011

9/9/25
DATE OF EXECUTION

Prepared by:
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