

ORDINANCE NO. 83-25

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT TO PURCHASE REAL ESTATE LOCATED DIRECTLY BEHIND 39651 COLORADO AVENUE, (SOUTH OF THE FRENCH CREEK) IN THE CITY OF AVON, KNOWN AS PARCEL "B", FROM HAROLD E. & JERLEAN K. DULL AND DECLARING AN EMERGENCY

WHEREAS, because the City continues to grow so does its need to acquire additional lands for public use; and

WHEREAS, the Mayor seeks authorization from Council to enter into a Purchase Agreement with Harold E. & Jerlean K. Dull for the purchase of a parcel of land consisting of approximately 7.7120 acres located south of the French Creek, directly behind 39651 Colorado Avenue in the City of Avon; and

WHEREAS, Council has had an opportunity to meet with the Mayor and discuss the purchase of the subject property, including the terms of the transaction as set forth in the proposed Purchase Agreement; 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 located south of the French Creek, directly behind 39651 Colorado Avenue for use as public property and authorizes the Mayor to execute a purchase agreement to further said acquisition without delay.

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 Purchase Agreement with Harold E. & Jerlean K. Dull to acquire a parcel of land located south of the French Creek, directly behind 39651 Colorado Avenue, in the City of Avon, known as Parcel "B" and consisting of 7.7120 acres. Said Agreement, in substantially the form as presented, is attached hereto as Exhibit A and incorporated herein by reference.

Section 2 - Council hereby authorizes the payment of funds from General Fund No. 101 in an amount equal to that set forth in the Purchase Agreement, together with any costs associated with conducting inspections, etc., including the costs of closing. Payment is to be made pursuant to the directives of the Finance Director who is authorized to increase the appropriation by a reasonable amount to cover any engineering, legal and closing fees associated with this purchase.

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 whenever the opportunity presents itself and without delay; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: September 15, 2025 DATE SIGNED: September 15, 2025

By: Brian Fischer
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: September 16, 2025

BK 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 18, 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. 83-25, passed by the Council of said City on September 15, 2025.

IN WITNESS WHEREOF, I have on this 16th 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

PURCHASE AGREEMENT

This PURCHASE AGREEMENT (the 'Agreement') is made and entered into at Avon, Ohio, by and between HAROLD E. DULL & JERLEAN K. DULL of 39651 Colorado Avenue, Avon, Ohio, herein referred to as the 'Sellers' 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 Sellers, collectively herein referred to as the 'Parties,' agree to go forward upon the following terms and conditions:

DESCRIPTION OF PROPERTY

Sellers agree to sell and convey to the Buyer and the Buyer agrees to purchase from Sellers at the price and upon all the terms, provisions and conditions herein contained, real property known as Parcel B of the lot split parcel approved by Planning Commission on August 20, 2025 consisting of 7.7120 acres of land (hereinafter referred to as "the property") situated in the City of Avon, Lorain County, Ohio and identified in Exhibit A. Said property is located directly behind 39651 Colorado Avenue, south of the French Creek. The sale of the property shall include all rights, privileges, and easements, if any, pertaining to said property.

Article One: Purchase Price

1.01 **Amount.** The total purchase price to be paid by the Buyer to the Sellers for the property described above shall be the sum of **ONE HUNDRED SIXTY THOUSAND DOLLARS (\$160,000.00).**

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 October 31, 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 Sellers 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 Sellers are 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 Sellers 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 Sellers, on or about September 26, 2025, will have the right, but not the obligation to resolve such defects. If the title defects cannot be removed by Sellers by October 19, 2025, 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 satisfactorily completing a diligent inspection of the property and satisfying itself as to the feasibility of the property for its intended use within ten (10) days of the date of execution of this Agreement, but not later than September 26, 2025 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 Sellers' occupancy. Inspections will be kept to a minimum. Buyer will immediately repair all damages it causes and will indemnify, defend, and hold Sellers 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 October 19, 2025, 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 Sellers, to cancel such escrow, terminate this Agreement, and recover any amounts paid by them to Sellers 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 Sellers for breach of

this Agreement. The escrow agent shall be, and is hereby, irrevocably instructed by Sellers 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.** There shall be prorated in escrow between Sellers 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.** At closing, the escrow agent shall prorate all real estate taxes and assessments between the Parties as of the date of closing based on the figures appearing on the latest available tax duplicate which shall be reflected on the HUD-1 Settlement Statement to be prepared by the escrow agent. The HUD-1 Settlement Statement shall also reflect a summary of the costs to the Parties for closing this transaction, for which the City shall assume full responsibility

Article Three: Representations and Warranties of Sellers

3.01 Warranties of Sellers

Sellers hereby represent and warrant to Buyer, to the best of Sellers' 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) Sellers have 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, Sellers are not aware of any such proceeding or assessment contemplated by any governmental authority;

(3) Sellers have 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 Sellers with respect to the property, and Sellers have received no written notice of any investigations or actions, suits or proceedings at law or in equity pending or threatened against Sellers 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 Sellers are 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: Breach

4.01 **By Sellers.** Should Sellers 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 Sellers.

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

(1) Receive One Hundred Percent (100%) of the down payment from the escrow agent or Ten Dollars (\$10.00), whichever is greater, 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. Sellers agree to accept and take said cash payment as its total damages and relief and as Sellers' sole remedy hereunder in such event. Such relief is not intended as a penalty.

Article Five: Miscellaneous

5.01 **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.

5.02 **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.

5.03 **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 Sellers 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.

5.04 **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.

5.05 **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.

5.06 **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.

5.07 **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.

5.08 **Personal Property and Fixtures.** Where this is applicable, upon relinquishing possession of the premises, the Sellers 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.

5.09 **Exchange Cooperation.** Buyer hereby acknowledges that it may be the intent of Sellers to effect an IRC Section 1031 tax deferred exchange, which will not delay the closing or cause additional expense to Buyer. Sellers' rights under this agreement may be assigned to a Qualified Intermediary, for the purpose of completing such an exchange. Buyer agrees to cooperate with Sellers and Qualified Intermediary in a manner necessary to complete the exchange.

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

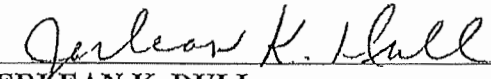
(This document continues on the following page
with the signatures of the parties hereto)

SELLERS:

Witness: _____

Witness: _____


HAROLD E. DULL


JERLEAN K. DULL

9/12/25
DATE OF EXECUTION

BUYER:

Witness: Barbara Broth

Witness: _____


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

September 16, 2025
DATE OF EXECUTION

Prepared by:
John A. Gasior, Law Director
City of Avon
36815 Detroit Road
Avon, Ohio 44011
(440) 934-7676
jgasior@ssgavonlaw.com

EXHIBIT 'A'

LEGAL DESCRIPTION OF "PARCEL B"

7.7120 ACRES

CITY OF AVON

COUNTY OF LORAIN

Situated in the City of Avon, County of Lorain, and State of Ohio and being a part of Original Avon Township Section 4 and being a **7.7120 acres (335,936 sq. ft.)** parcel of land from a 12.20 acres (Auditor's) parcel as conveyed to Harold E. & Jerlean K. Dull by deed dated November 3, 1983 as recorded in Volume 1130 Page 800 (PPN# 04-00-004-103-017) of Lorain County Deed Records and further bounded and described as followed;

Beginning at a stone found at the southwest corner of Original Avon Township Section 4, also being the southwest corner of land as conveyed to Arlene Griffith known as "Parcel No. 2" by deed dated May 3, 2010 as recorded in Instrument #2010-0328678 (PPN# 04-00-004-103-016) of Lorain County Deed Records, and being the northwest corner of land as conveyed to the City of Avon by deed dated January 5, 2007 as recorded in Instrument #2007-0184353 (PPN# 04-003-101-494) of Lorain County Deed Records;

Thence **North 89 degrees 47 minutes 49 seconds East** along the south line of said Section 4, passing over a 1.5" iron pin found at 0.48 feet, a distance of **159.73 feet** to the southeast corner of said Parcel No. 2, as witnessed by a 1.5" iron pin (North 0.53', East 0.05') and being the **Principal Place of Beginning** for the premises herein described;

Course 1: Thence **North 00 degrees 03 minutes 32 seconds West**, along the east line of said Parcel No. 2 and parallel to the west line of said Section 4, a distance of **747.45 feet** to a 1" iron pin found at the northeast corner of said Parcel No. 2;

Course 2: Thence **North 84 degrees 39 minutes 52 seconds East**, a distance of **390.32 feet** to an 5/8" Iron Pin Set* on the west line of land as conveyed to the City of Avon by deed dated January 5, 2007 as recorded in Instrument #20070184354 (PPN# 04-00-004-103-031) of Lorain County Deed Records;

Course 3: Thence **South 08 degrees 07 minutes 21 seconds East** along said west line of the City of Avon, a distance of **536.41 feet** to a 5/8" iron pin found capped "Bramhall 8073";

Course 4: Thence continuing along said west line **South 00 degrees 22 minutes 09 seconds West**, a distance of **251.08 feet** to the southwest corner of said City of Avon's land, as witnessed by a 1.5" iron pin (North 0.03', West 0.019');

Course 5: Thence **South 89 degrees 47 minutes 49 seconds West**, along said south line of Section 4, a distance of **462.03 feet** to the **Principal Place of Beginning** and containing **7.7120 acres (335,936 sq.ft.)** of land, more or less,

*5/8" x 30" Iron Pin Set (w/yellow cap "CVE LTD")

Basis of Bearing for this legal description is **North 00 degrees 03 minutes 32 seconds West** as the west line of Original Avon township Section 4 as evidenced by monuments found and is the same as calculated and reproduced based on the Ohio State Plane Coordinate System, North Zone 3401 by ties to the O.D.O.T. Network.

This legal description was prepared in conjunction with "Dull Lot Split Plat" dated _____ recorded in Instrument # _____ of Lorain County Map Records, under the supervision of and reviewed by Ryan A. Snezek P.S. #8495 from surveys conducted by Chagrin Valley Engineering, Ltd. in 2025 for the City of Avon.



TRM

Date: 08/20/2025

Ryan A Snezek, P.S. #8495

☒ **APPROVED** / ☐ **REJECTED**

BY THE CITY ENGINEER OF AVON, OHIO

[Signature] 8/13/25
RYAN E. CUMMINS, P.E., CPESC

THIS APPROVAL IS FOR GENERAL PLAN & SCOPE ONLY AND DOES NOT RELIEVE THE AUTHORS OF THE DOCUMENTS FROM PROFESSIONAL RESPONSIBILITY FOR ACCURACY OF DESIGN, CONFORMITY TO APPLICABLE ORDINANCES AND ERRORS OR OMISSIONS

File: 25252 Master
LJH 08/11/2025

APPROVED
PLANNING COMMISSION

DATE 8-20-25
AVON, OHIO

Carolyn Witherspoon CHAIRPERSON
Susan Pintz SECRETARY