

**CITY OF XENIA, OHIO
ORDINANCE 2019 – 01**

**AMENDING ORDINANCE 2018-28, AUTHORIZING THE SALE OF THE PROPERTY
LOCATED AT 220 E. CHURCH STREET, AND DECLARING AN EMERGENCY**

WHEREAS, Ohio Revised Code Section 721.01 grants this Council the special power to sell real estate belonging to the City when such real estate is not needed for any municipal purpose;

WHEREAS, the City owns the property located at 220 E. Church Street, that is not needed for any municipal purpose and the sale of which will bring a productive reuse of the properties;

WHEREAS, this Council, by Ordinance 2018-28, passed on September 27, 2018, authorized the sale of the house and property at 220 E. Church Street to Kyle and Jenny Holmstrom;

WHEREAS, the Holmstroms were unable to complete the purchase, but another suitable buyer has expressed desire to purchase said property and restore it into a single-family home; and

WHEREAS, based upon the recommendation of the City Manager, this Council finds it to be in the best interests of the health, safety and welfare of the City to amend Ordinance 2018-28 to authorize a Real Estate Purchase Agreement with the Xenia Real Estate Group to sell the property located at 220 E. Church Street.

NOW, THEREFORE, THE CITY OF XENIA HEREBY ORDAINS, at least five (5) members of the City Council concurring, that:

Section 1. This Ordinance is an emergency measure necessary for the immediate preservation of the public health, safety and welfare of the City of Xenia, Ohio. The reason for such necessity arises from the need to quickly transfer this property to allow for preservation work to begin on the structure immediately to prevent further deterioration.

Section 2. Section 1 of Ordinance 2018-28 is hereby amended to read as follows:

The sale of the property located at 220 E. Church Street, consisting of 0.2713 acres, more or less (Greene County Auditor Parcel ID M40000200050000100 and a portion of M40000200050032700), subject to any existing easements or covenants of record, to **the Xenia Real Estate Group** ~~Kyle Holmstrom and Jenny Holmstrom, husband and wife~~, in the amount of **Twelve Thousand Five Hundred Dollars and No Cents (\$12,500)** ~~Twenty Thousand Dollars and No Cents (\$20,000)~~, is hereby approved.

Section 3. Section 2 of Ordinance 2018-28 is hereby amended to read as follows:

The City Manager is authorized to execute Real Estate Purchase Agreement with **the Xenia Real Estate Group** ~~Kyle Holmstrom and Jenny Holmstrom~~ for the sale of the property listed in Section 1, above, and to execute the deeds and any other documents necessary to the sale of said property.

Section 4. Existing Sections 1 and 2 of Ordinance 2018-28 are hereby repealed.

Section 5. It is found 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

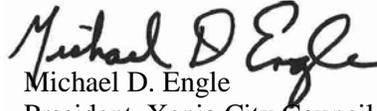
Council that resulted in this formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 6. In accordance with Section 5.04 of the City's Charter, this Ordinance shall become effective upon its adoption.

Adopted: January 24, 2019

Attest:


Michelle D. Johnson
City Clerk


Michael D. Engle
President, Xenia City Council

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the “Agreement”) is made and entered into as of January 10th, 2019, by and between the City of Xenia, Ohio, an Ohio municipal corporation, 107 N. Main Street, Xenia, OH 45385 (“Seller”), and the Xenia Real Estate Group, a domestic limited liability company, 269 N. King Street, Xenia, OH 45385 (“Buyer”).

RECITALS

- I. Buyer wishes to purchase certain property of Seller located at 220 E. Church Street, Xenia, Ohio, (Greene County Auditor Parcel ID M40000200050000100) containing approximately 0.2851 acres, more or less, and all improvements thereon and rights and appurtenances thereto, as described in the attached Exhibit A (the “Property”), and Seller wishes to sell the Property to Buyers.
- II. Buyer intends to keep the house located on the Property as a single-family, owner-occupied home. It is the Buyer’s intention to renovate the house including replacing a majority of the kitchen, remodeling bathrooms, and adding a third bathroom. The Buyer intends to restore the home to its original character and charm. Much of the HVAC, plumbing and electrical systems will also be replaced, as necessary, as part of the remodel.

WITNESS, that in consideration of the mutual promises, covenants and agreements herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, Seller agrees to sell to Buyer, and Buyers agree to purchase from Seller, the Property subject to the following terms and conditions:

1. **Purchase Price.** The purchase price (the “Purchase Price”) to be paid to Seller for the sale of the Property to Buyer, as provided for herein, shall be Twelve Thousand Five Hundred Dollars (\$12,500). At Closing, Buyer shall pay to Seller, by cashier’s check or by wire transfer of current funds, the Purchase Price, subject to adjustment as hereinafter provided and subject to all of the terms and conditions contained herein.
2. **Adjustments.** The following items shall be adjustments to the Purchase Price payable at Closing, unless otherwise so provided:
 - A. General property taxes (state, county, municipal, school and fire district, and other local real estate taxes and personal property taxes), if any, accrued for the year in which the Closing occurs through the date of Closing, and, in addition, if not fully paid prior to Closing, all taxes for years prior to the year in which Closing occurs, shall be charged to Seller as a credit against the Purchase Price;
 - B. Special taxes or assessments, if any, upon the Property levied or which have accrued through the date of Closing shall be charged to Seller as a credit against the Purchase Price;
 - C. On or before the date of Closing, Seller shall cause any and all assessments, liens, previously undisclosed leases or tenancies and encumbrances affecting the Property, including, without limitation, any mechanic’s lien, security interest, mortgage or deed of trust, to be satisfied and released. The proceeds due at Closing shall be applied to satisfy or pay any assessments, liens, encumbrances or other charges affecting the Property, which are to be paid, satisfied or released pursuant to this Agreement.
3. **Title.** It is the Seller’s intent to transfer the property to the Buyer by Quit Claim, and the Seller will not make any guarantees or warranties as to the chain of title, nor shall the Seller be responsible for curing any discrepancies, objections or errors in the chain of title.
4. **Contingencies.** This Agreement and the Buyer’s obligations thereunder, are expressly contingent upon satisfaction of the following contingencies (“Contingencies”):
 - A. *Survey* – Completion of a survey by the Seller, subject to the Buyer’s review and approval, that

creates a new single parcel of the Property. The Seller shall bear the responsibility of filing said survey with Greene County.

- B. *Inspections* - Seller shall provide Buyer with access to and copies of any information in Seller's possession that relates to the Property, including but not limited to copies of any prior surveys of the Property; copies of any prior title examinations or title commitments for the Property; and copies of any environmental and/or engineering studies on the Property. Buyer shall have a period of thirty (30) calendar days (the "Inspection Period"), commencing on the date that this Agreement is executed, within which to physically inspect the Property and perform any testing that Buyer determines is necessary and, in general, conduct their due diligence related thereto. During the Inspection Period, Buyer and Buyer's authorized representatives shall have the right to reasonable access to the Property at reasonable times for the purpose of inspecting the Property and otherwise conducting their due diligence review of the Property. Seller shall not be liable for any damages, liabilities or claims for property damage or personal injury caused by Buyer, its agents, or contractors in the conduct of such inspections and investigations. Seller shall reasonably cooperate with Buyer in facilitating such inspections. Buyer shall have the right to extend the Inspection Period for a period of up to fifteen (15) calendar days by providing written notice to Seller prior to the end of the initial Inspection Period. The Inspection Period may be extended thereafter only upon the written agreement of both parties. Buyer shall have the right to waive or shorten the inspection period upon written notification to the Seller. Upon such waiver or notice, the parties shall schedule the Closing Date.
5. **Buyer's Termination Right.** Within the Inspection Period, Buyer may elect to not to go forward with this Agreement to Closing, which election shall be made by notice to Seller given within the Inspection Period, for the following reasons:
- A. Significant damage to the foundation of the house on the Property;
 - B. Any issues that were unforeseen/unknown the Seller and the Buyer prior to the Inspection Period, but termination by the Buyer under this provision shall only be made upon the written approval of the Seller.
6. **Possession.** Seller shall transfer possession of the Property to Buyer at Closing, subject to the satisfaction of the Contingencies and Conditions Subsequent set forth in this Agreement, and with no tenancies or occupancies.
7. **Closing.** The Closing shall be held on a date to be mutually agreed upon by Buyer and Seller but no later than thirty (30) days after completion of the Inspection Period, as long as the Contingencies have been met or expressly waived by Buyer, or at such earlier time as mutually agreed upon between the Seller and Buyer. The Closing shall take place at the City of Xenia Administration Building, 107 E. Main Street, Xenia, Ohio, 45385. If any of the Contingencies provided for herein cannot be satisfied, then Buyer, at its option, may either: (i) proceed to immediately Close on the purchase of the Property and said unmet Contingency shall become a Condition Subsequent upon Closing, or (ii) terminate this Agreement whereupon the Parties hereto shall have no further obligations hereunder and Buyer shall give Seller a written release from this Agreement.
8. **Closing Costs.**
- A. Seller shall pay:
 - (1) The costs of satisfying and releasing any liens or mortgages on the Property, if any; and
 - (2) Seller's attorneys' fees; and
 - B. Buyer shall pay all other costs associated with the Closing, including:
 - (1) The premium for any title insurance required by Buyer;
 - (2) The costs of Buyer's due diligence investigations;

- (3) Any transfer tax or conveyance fees;
- (4) Any fee of any title company used as closing and/or escrow agent;
- (5) The costs of recording the deed; and
- (6) Buyer's attorneys' fees.

9. **Deliveries at Closing.**

- A. At Closing, and upon payment of the Purchase Price, Seller shall execute and deliver a Quit Claim Deed in proper form for recording, duly executed, and acknowledged, and any other documents as may reasonably be required in order to consummate the transactions contemplated herein.
- B. At Closing, Buyer shall pay the full Purchase Price, as set forth in Section 1 of this Agreement, (subject to the prorations and adjustments required hereunder) and shall execute and deliver such other documents as may reasonably be necessary to effect the transactions contemplated by this Agreement.

10. **Conditions Subsequent.** In consideration of Buyer's purchase of the Property, Seller hereby commits to the following, which conditions shall remain enforceable by Buyer even after Closing:

- A. Seller shall replace the water line from the street to the house on the Property;
- B. Seller shall ensure that the natural gas service to the house on the property is replaced per Vectren's standards to the meter rack location; and
- C. The Seller shall install and construct a driveway apron for the house on the Property off of E. Church St.

11. **Commissions.** Seller and Buyer represent to each other that neither Seller (in the case of Seller's representation) nor Buyer (in the case of Buyer's representation) has dealt with nor does it have any knowledge of any other broker or other person who has or may have any claim against Seller, Buyer, or the Property for a brokerage commission, finder's fee or like payment arising out of or in connection with this transaction.

12. **Casualty Loss.** Risk of loss by damage or destruction to the Property shall be borne by Seller up to Seller's transfer of possession of the Property to Buyer at Closing. After Closing, all risk of loss by damage or destruction to the Property shall be borne by the Buyer. Seller's property liability insurance shall be maintained by Seller up to the date of Closing, and Buyers shall be responsible for providing its own liability insurance on and after the date of Closing.

13. **Seller's Covenants.** Seller covenants and agrees that from and after the date of full execution of this Agreement and until the date of Closing:

- A. Seller shall allow Buyer and its agents and consultants continuing access to the Property during business hours for the purpose of conducting the inspections and investigations set forth in this Agreement. Such access may be exercised by Buyer or by agents of or consultants to the Buyer on Buyer's behalf. After completion of their inspection, Buyer shall restore any disruption of the physical elements of the Property caused by Buyer's inspection, unless such restoration is waived, in writing, by the Seller.
- B. Seller will cause the Property to be insured against all ordinary and insurable risks and to be maintained and repaired in a careful, prudent and efficient manner, in accordance with applicable requirements of all contracts, ordinances, laws and insurance policies; and further that Seller will bear the risk of loss to the Property, through the hour of Closing. Seller shall not take any other action which would cause any representation, warranty or covenant set out herein to be untrue as of Closing without Buyers' prior written consent.
- C. Seller shall maintain and operate the Property in its current order, condition and repair, normal wear excepted.
- D. Seller shall not engage in or permit any sale, assignment, disposition, easement or encumbrance of the Property or any part thereof.

- E. Seller shall reasonably cooperate in good faith with Buyer with any zoning or permitting process as part of the due diligence investigation.

14. **Representations and Warranties.** Seller warrants, represents, covenants, and agrees as follows as of the date of this Agreement and as of the Closing:

- A. Seller has full power and authority to enter into and perform this Agreement in accordance with its terms, and the person executing this Agreement on behalf of Seller has been duly authorized to do so;
- B. Seller is the owner in fee simple of the Property, subject only to encumbrances, matters and interests of record and liens for taxes and installments of assessments not yet due or payable, and there are no leases, options or agreements affecting the Property except those disclosed in writing to Buyers that will be cancelled or terminated on or before Closing without any liability to Buyers;
- C. There is no litigation or proceeding pending or, to the best of Seller's knowledge, threatened against Seller relating to the Property;
- D. No condemnation or eminent domain proceedings are now pending or threatened concerning the Property, and Seller has received no notice from any governmental agency or authority or other potential condemnor concerning any right of way, utility or other taking which may affect the Property;
- E. Neither Seller nor any of Seller's predecessors in title to the Property within the past five years has claimed, with respect to any of the Property, the benefit of any law permitting a special use valuation (such as "agricultural," "open space," or "green belt") for the purposes of obtaining a lower ad valorem tax rate and a change in the ownership or use of the Property from its present ownership and use will not trigger liability or "rollback" taxes or other assessments for prior years;
- F. Neither the execution and delivery of this Agreement by Seller nor the consummation by Seller of the transaction contemplated hereby will: (1) require Seller to file or register with, notify, or obtain any permit, authorization, consent or approval of, any other governmental or regulatory authority; (2) conflict with or breach any of the organizational documents of Seller; (3) violate or breach any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, lease, contract, agreement or other instrument, commitment or obligation to which Seller is a party or by which Seller, the Property or any of Seller's material assets may be bond; or (4) violate any order, writ, injunction, decree, judgment, statute, law or ruling of any court or governmental authority applicable to Seller, the Property, or any of Seller's material assets; and
- G. Neither this Agreement, nor any exhibit, nor any written statement furnished or to be furnished by Seller to Buyer in connection with the transaction contemplated by this Agreement contains or will contain any untrue statement of a material fact or omits or will omit any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, and Seller agrees to furnish to Buyer copies of any notice, claim or demand received by Seller during the pendency of this Agreement which would materially change any representation given by Seller herein.

The representations and warranties set forth herein shall survive Closing. Seller shall immediately notify Buyer if any of the representations, warranties or covenants of Seller become untrue prior to the date of Closing.

15. **Eminent Domain.** If, before Closing, any substantial portion of the Property is taken or threatened by eminent domain, or if there is a material obstruction of access because of a taking or threatened taking by eminent domain, Seller shall, within ten (10) days of such taking, notify Buyer thereof and Buyer shall have the option to terminate this Agreement upon notice to Seller given within ten (10) days after such notice from Seller; or proceed with the purchase of the Property without reduction in

the Purchase Price, in which event Seller shall assign to Buyer all Seller's right, title and interest in all amounts due or collected by Seller as condemnation awards.

16. **Remedies.** If Seller defaults in the performance of Seller's obligations under this Agreement, or if any representation or warranty made by Seller herein proves to be false or misleading in any material respect, or if Seller breaches any representation or warranty made by Seller herein, Buyer shall have all lawful remedies, including without limitation enforcing this Agreement by suit for specific performance. If Buyer defaults in the performance of Buyer's obligations under this Agreement, Seller's sole remedy shall be to terminate this Agreement, and the parties shall have no further rights, claims, liabilities or obligations under this Agreement.

17. **Miscellaneous.**

- A. *Notices* - All notices, requests, demands and other communications hereunder shall be deemed to have been duly given if the same shall be in writing and shall be delivered personally or deposited in the United States Mail by Registered or Certified Mail, return receipt requested, postage prepaid, or sent by any nationally recognized delivery service and addressed as set forth below:

If to Seller: The City of Xenia
107 East Main Street
Xenia, OH 45385
Attn: City Manager

If to Buyer: Xenia Real Estate Group
269 N. King Street
Xenia, OH 45385
Attn: Michael E. Anderson

- Any party may change the address to which notices are to be addressed by giving the other party notice in the manner herein set forth. Notices sent in compliance with this Section shall be effective: (i) upon receipt or refusal if delivered personally; (1) one (1) business day after depositing with such an overnight courier service; or (2) three (3) business days after deposit in the mails if mailed.
- B. *Binding Agreement* - This Agreement shall be binding on and shall inure to the benefit of the parties named herein and to their respective successors and assigns.
- C. *Assignment* - Buyer may not assign their rights and interests herein or delegate their duties hereunder without the prior written consent of Seller.
- D. *Governing Law* - This Agreement shall be construed and interpreted according to the laws of the State of Ohio.
- E. *Entire Agreement* - This Agreement, together with the Exhibits attached hereto and incorporated by reference herein, constitutes the entire undertaking between the parties hereto and supersedes any and all prior and contemporaneous agreements, arrangements and understandings between the parties.
- F. *Survival of Obligations* - All matters required to be performed hereunder after the date of Closing and all Conditions Subsequent shall survive Closing.
- G. *Time* - Time is of the essence of this Agreement, provided that if any date upon which some action, notice or response is required of any party hereunder occurs on a weekend or national holiday, such action, notice or response shall not be required until the next succeeding business day.
- H. *Attorneys' Fees* - In the event of any proceeding between the parties hereto to enforce any of the provisions of this Agreement, the prevailing party in such proceeding shall be entitled to an award of all costs and expenses, including reasonable attorneys' fees. This section shall survive the Closing or a prior termination hereof.
- I. *Execution* - This Agreement may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of this document may be accomplished by electronic facsimile (FAX) or electronic transmission (Email); if FAX or Email delivery is utilized, the original document shall be promptly delivered thereafter by ordinary U.S. mail service.

IN WITNESS WHEREOF, the parties hereto have executed this Purchase and Sale Agreement as of the day and year set forth beneath each party's respective signature.

SELLER:

City of Xenia, Ohio
an Ohio Municipality

By: _____
Name: Brent Merriman
Title: City of Xenia City Manager

BUYER:

Xenia Real Estate Group
a domestic Limited Liability Company

By: _____
Name: Michael E. Anderson
Title:

By: _____
Name:
Title:

Approved as to form:

By: _____
Donnette A. Fisher
City of Xenia Director of Law

EXHIBIT A
Legal Description of the Property

Tract 1:

Situate in the City of Xenia, County of Greene and State of Ohio, and being part of Military Survey N. 2243 and for the part hereby conveyed:

Beginning at a stake 40 feet N. 82 degrees 15' E. from the southeast corner of the Library lot, conveyed by these grantors [Grantors in deed recorded in Vol. 873, p. 17 of the Official Records of Greene County, Ohio] to the Xenia Library Association, and 10 feet N. of the north line of Church Street; thence N. 7 degrees 45' W. and at right angles to Church Street on the east line of a 40 foot street, 150 feet to a stake in the E. line of said street; thence at right angles with the first course N. 82 degrees 15' E. 66.6 feet to a stake, thence at right angles with the second course S. 7 degrees 45' E. 150 feet to a stake 10 feet N. of the north line of Church Street; thence at right angles with the third course in parallel with the north line of said Church Street S. 82 degrees 15' W. 66.6 feet to the beginning, containing 23/100 of an acre, more or less.

The strip ten (10) feet wide above-mentioned and fronting on the north line of Church Street is hereby given for a sidewalk. Being the same premises conveyed to Mildred W. Prugh by Dina Roberts, et. al., by deed recorded in Volume 98, Page 255 of the Deed Records of Greene County, Ohio. And also being the premises in which Mildred W. Prugh conveyed an undivided two-thirds (2/3) interest to Mildred W. Prugh as Guardian of Phillip W. Prugh, and Mildred W. Prugh, now Mildred P. Wagner, by deed record in Volume 100, Page 525 of the Deed Records of Greene County, Ohio.

Subject to all easements, covenants, conditions, restrictions and reservations of record and all zoning and legal highways.

Property Address: 220 E. Church Street, Xenia, OH 45385

Property Owner: City of Xenia, Ohio

Parcel No. _____

Prior Deed Reference: Volume 1040, Page 36 of the Official Records of Greene County, Ohio

Tract 2:

Situate in the City of Xenia, County of Greene, State of Ohio, and being 0.0413 acres out of a 0.055 acre tract as conveyed to the City of Xenia and described in Instrument Number 2017009850. Said 0.055 acre tract also being shown in Greene County Surveyor's Record No. 28, Page 305. All references to Instrument Numbers, Deed Books, Official Records, Survey Records and/or Plats refer to the Greene County Recorder's Office, Greene County, Ohio. Said 0.0413 acre parcel being more particularly described as follows:

Commencing at the intersection of the southerly line of Hayes Street, a corner of Dodds Addition Block 1-6, as recorded in Plat Cabinet 31, Pages 266B – 267A, and the easterly line of said 0.055 acre tract at the corner of Gary L. Creviston and S.K. Creviston's 0.11 acre tract as shown in Deed Book 531, Page 284, an iron pin found bears South 07°54'19" East 0.36';

Then with Creviston's West line, South 07°54'19" East 50.00 feet to a point being the northwest corner of a 0.23 acre tract conveyed to the City of Xenia, as shown in Instrument Number 2017009850, the southwest corner of said Cleviston's 0.11 acre tract, witness a 1" iron pipe found 0.27' South of said corner, said point being the TRUE POINT OF BEGINNING;

Thence with the West line of said City of Xenia's 0.23 acre tract, South 07°54'19" East 150.00 feet to an iron pin found (Sutton 7124 cap) being the southwest corner of said City of Xenia's 0.23 acre tract and on the North Right-of-Way of Church Street;

Thence with the North Right-of-Way of said Church Street, South 81°49'51" West 12.00' to a Mag Nail set being the southeast corner of a parcel of land conveyed to Greene County Board of Commissioners and described in Official Record 1133, Page 316;

Thence with the East line of said Greene County Board of Commissioners' land, North 7°54'19" West 150.00' to a 5/8" iron pin set (Prism Surveys, LLC. cap);

Thence on a new division line North 81°49'51" East 12.00' returning to the POINT OF BEGINNING.

Containing 0.0413 acres, more or less.

Subject to all legal highways, easements, and restrictions of record.

Basis of Bearing: South line of Hayes Street shown as North 81°49'51" East on Greene County Surveyor's Record No. 28, Page 305.

Property Address: 220 E. Church Street, Xenia, OH 45385
Property Owner: City of Xenia, Ohio

Prior Deed Reference: Instrument Number 2017009850

Parcel No. _____

Description prepared by Prism Surveys, Kenneth W. Boutwell, P.S., Registered Surveyor, Ohio License Number S-8211

NOTE: The above-described Tract 2 shall be combined with Tract 1 and shall not create an independent building site.