

CITY OF OBERLIN, OHIO

ORDINANCE No. 12-02 AC CMS

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH PASI, INC. FOR THE SALE OF THE REAL PROPERTY KNOWN AS 260 SOUTH MAIN STREET, OBERLIN, OHIO, AND DECLARING AN EMERGENCY

WHEREAS, by Ordinance No. 08-11 AC CMS Oberlin City Council declared the property located at 260 South Main Street to be surplus and not necessary for any current municipal purpose; and

WHEREAS, said Ordinance further authorized and designated the Oberlin Community Improvement Corporation (OCIC), in conjunction with the City Manager, to sell the property for not less than its fair market value; and

WHEREAS, OCIC has recently received an offer for the property that is greater than its current fair market value, which offer is fair and reasonable and in the best interests of the City to accept.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, Lorain County, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the City Manager is hereby authorized and directed to enter into an agreement with PASI, Inc., an Ohio corporation, for the sale of the "Clark Lumber Yard Property", known as 260 South Main Street, Oberlin, Ohio, a copy of said agreement being attached hereto, marked "Exhibit A", and incorporated herein by reference, and to do all things necessary and proper to complete the sale, including the execution of the deed of conveyance, all in accordance with Ordinance No. 08-11 AC CMS.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or 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.

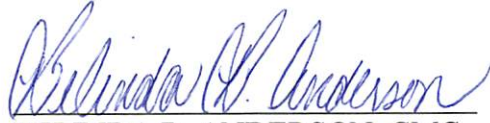
SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio or to provide for the usual daily operation of a municipal department to wit:

"to authorize the sale of the property at 260 South Main Street at the earliest possible date in order to maximize the greatest potential return on the City's investment,"

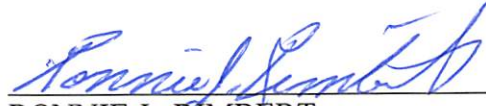
and shall take effect immediately upon passage.

PASSED: 1st Reading – February 6, 2012 (S, E, F)
2nd Reading –
3rd Reading –

ATTEST:



BELINDA B. ANDERSON, CMC
CLERK OF COUNCIL



RONNIE J. RIMBERT
PRESIDENT OF COUNCIL

POSTED: 02/07/2012

EFFECTIVE DATE: 02/06/2012

Agreement to Purchase Real Estate

This Agreement to Purchase Real Estate (Agreement) is made this 16 of February, 2012, by and between the City of Oberlin, 85 South Main Street, Oberlin, Ohio 44074, hereinafter referred to as the "Seller", and PASI Inc, 3795 Wyse Road, Dayton, Ohio 45414, hereinafter referred to as the "Buyer".

WHEREAS, the Seller currently owns a certain parcel or parcels of real property containing approximately 1.26 acres in the City of Oberlin, Lorain County and the State of Ohio, as more fully described in Paragraph 1. PROPERTY, below, together with all rights, waters, ways, and privileges appurtenant or tenants thereto or in anyway pertaining thereto; and

WHEREAS, Buyer desires to acquire the Property from the Seller to be developed by the Buyer; and

WHEREAS, Seller desires to sell the Property to the Buyer and the Buyer desires to acquire the Property from the Seller, subject to and in accordance with the terms and provisions as set forth in this Agreement.

WITNESSETH

NOW, THEREFORE, in consideration of the above statements which are a material and substantive part of this Agreement, and in further consideration of the deposit paid by the Buyer to the Seller as defined below, and the mutual covenants and promises of Seller and Buyer as contained in this Agreement, the parties hereby agree as follows:

1. PROPERTY:

Seller agrees to sell and convey to the Buyer, and the Buyer agrees to purchase from the Seller, the Property, in fee simple, which is described as follows: an approximate 1.26 acre parcel or parcels of land lying on the west side of South Main Street (SR 58) approximately 200 feet south of South Street. The property is essentially rectangular and measures approximately two hundred sixty-two (262') feet of frontage along South Main Street (SR 58) by approximately two hundred sixteen (216') feet of depth. The Property is known as Lorain County, Ohio Parcel ID # 09-00-095-106-038, "Clark Lumber Yard Site", and "200 block of South Main Street", Oberlin, Ohio. The Property is further described and indicated on Exhibit "A", which is attached hereto and incorporated herein. All dimensions listed herein are estimates and subject to a boundary survey to be performed by Buyer. Should the Property be approved by Buyer's tenant or tenants, Buyer will immediately perform a boundary survey as provided hereunder. Should Buyer's survey disclose a substantial difference in the size of the parcel from that described herein, that would result in Buyer's site plan becoming unfeasible or unacceptable to the Buyer's tenant or tenants, then and in that case, the Buyer may render the development unacceptable and the Buyer shall have the right to terminate and receive a full refund of any deposits made hereunder, pursuant to Paragraph 7 below.

2. PURCHASE PRICE:

The Purchase Price for the Property shall be the sum of \$335,000.00 which shall be payable in full at the time of Closing and delivery of the deed. The Buyer may either credit the deposit toward the payment of the Purchase Price or receive a refund of the deposit at Closing.

3. CLOSING:

The conveyance of the Property and payment of the purchase price (Closing) shall take place at Lawyers Title, Elyria, Ohio, Office, following the satisfaction and/or release of all the conditions and contingencies as set forth below; provided, however, that if the Closing has not taken place by one hundred twenty (120) calendar days from the Effective Date of this Agreement, unless a written extension is obtained, then this Agreement shall be null and void and of no further force and effect and the deposit(s) shall be returned to the Buyer or retained by the Seller as provided herein, unless the parties agree in writing to extend the outside date for Closing to a subsequent date certain. Possession of the Property shall be given to the Buyer at Closing free and clear of any and all leasehold rights, tenant or tenants, licenses, or other claims whatsoever for possession of the Property. The parties acknowledge that neither party shall be obligated to attend Closing; rather Closing may be facilitated through an "escrow closing" whereby all documents may be executed and returned to the Escrow Agent, Lawyers Title, Elyria, Ohio, where such documents shall be held

in trust by Escrow Agent until the actual, mutually acceptable time of Closing and full payment of the Purchase Price to the Seller.

4. TITLE:

At Closing, the Seller shall convey the Property to the Buyer in fee simple by a General Warranty Deed with covenants against encumbrances. If title to the Property shall not be found good, marketable, and insurable at regular rates prior to Closing, the Buyer shall specify in writing the defects found and the Seller shall use its best efforts and due diligence to make said title good, marketable, and insurable at regular rates and shall have a reasonable time within which to do so, not to exceed thirty (30) days following the date of Buyer's notice to Seller. If the Seller is unable to make said title good, marketable, and insurable within said thirty (30) day period, then the Buyer may, at its sole option, terminate this Agreement and receive a complete refund of its deposit. It is the Buyer's intent and desire to receive preliminary review / evaluation of the Property by Buyer's tenant or tenants as soon after full execution of this agreement as is practicable. If review of the site by Buyer's tenant would be favorable, Buyer will immediately order the title commitment. Notwithstanding anything to the contrary contained herein, in no event shall Buyer be required to order a title commitment if the overall site is rejected by its tenant or tenants. The terms of this Article shall be effective up to and including the date of Closing and if Seller is unable to transfer clear and unencumbered title free of encumbrances that would materially effect Buyer's ability to use the Property, then the Buyer shall have the right to terminate this Agreement and shall be entitled to a full and prompt return of its earnest money deposit up to the date of Closing. Buyer agrees to notify the Seller upon its receipt of the title commitment; of any title defects to the Property; which could prove unacceptable to the Buyer. Upon issuance to Buyer, Buyer shall promptly provide a copy of its title commitment to Seller at no cost to Seller.

5. CLOSING ADJUSTMENTS/PRORATIONS:

All real estate taxes, water and sewer assessments, and all public charges payable on an annual basis shall be prorated between the Buyer and the Seller up to the actual date of Closing irrespective of any usual and customary "short form" real estate tax / assessment proration methods utilized in the area. Thereafter, any and all real estate taxes and assessments shall be assumed by the Buyer. The cost of all county transfer taxes associated with this transaction shall be paid by the Seller. It shall be the responsibility of Buyer to pay all other closing costs.

6. CONDITIONS PRECEDENT/CONTINGENCIES:

The obligation of the Buyer to purchase and acquire title to the Property is subject to the satisfaction of the following contingencies (the "conditions precedent"), any or all of which may be waived, or deemed waived, in whole or in part, by Buyer. Said conditions precedent are as follows:

A. Site Approval:

The Closing of this purchase is contingent upon the Buyer obtaining approval of the development site by the Buyer's proposed tenant or tenants upon terms and conditions satisfactory to the Buyer, for the Buyer's contemplated development. Buyer shall promptly notify Seller upon obtaining approval of the development site by proposed tenant or tenants. Should the Buyer be unable to secure such approval or approvals, the Buyer shall so notify the Seller in writing and this Agreement shall be terminated subject to the terms of Paragraph 7 below. Unless Buyer notifies Seller in writing within sixty (60) days of the Effective Date, this contingency shall be deemed waived, and Buyer shall be deemed to have notified Seller of approval of the development site by the proposed tenant or tenants on such date. This contingency period may be extended by the written agreement of the parties.

B. Development Approval:

The Closing of this purchase is contingent upon the Buyer obtaining final and irrevocable approval of the Buyer's intended use and development plan along with all things incidental thereto from the City of Oberlin, Lorain County, the State of Ohio, and/or any other governmental entity as may have jurisdiction and may be appropriate. Should the Buyer be unable to secure such approval or approvals from any such governmental authority having jurisdiction within the stated time frame, the Buyer shall so notify the Seller in writing and this Agreement shall be terminated subject to the terms of Paragraph 7. Such approval shall be obtained within sixty (60) days of the date Buyer notifies Seller that tenant approval has been obtained, or deemed to

have been obtained, pursuant to Paragraph A above (the "Tenant Approval Date"). This contingency period may be extended by the written agreement of the parties.

C. Survey:

Should Buyer, in Buyer's sole and reasonable discretion satisfy Paragraph 6(A), (Site Approval) above, Buyer shall perform a boundary survey. Buyer's purchase of the Property is contingent upon the survey disclosing the Property as: an approximate 1.26 acre parcel or parcels of land lying on the west side of South Main Street (SR 58) approximately 200 feet south of South Street. The property is essentially rectangular and measures approximately two hundred sixty-two (262) feet of frontage along South Main Street (SR 58) by approximately two hundred sixteen (216) feet of depth. The Property is known as Lorain County, Ohio Parcel ID # 09-00-095-106-038, "Clark Lumber Yard Site", and "200 block of South Main Street", Oberlin, Ohio. The Property is further described and indicated on Exhibit "A", which is attached hereto and incorporated herein. Should the Property and the overall development site be approved by Buyer's tenant or tenants, Buyer will immediately perform a boundary survey as provided hereunder. Should Buyer's survey disclose a substantial difference in the size of the parcel from that described herein, that would result in Buyer's site plan becoming unfeasible or unacceptable to the Buyer's tenant or tenants, then and in that case, the Buyer may render the development unacceptable and the Buyer shall have the right to terminate and receive a full refund of any deposits made hereunder, pursuant to Paragraph 7 below. Buyer agrees to furnish to the Seller, a copy of the survey upon its availability. This contingency shall be deemed waived unless notice of termination is received by Seller within sixty (60) days of the Tenant Approval Date.

D. Zoning:

This Agreement is contingent upon a determination by the Buyer that the Property shall be zoned for and shall permit the construction and configuration of the Buyer's proposed use and that any and all subdivisions, variances, special use permits, alley / right-of-way vacations, or other necessary zoning changes/alterations will have been obtained. If the Buyer determines that the Property is not zoned to permit Buyer's proposed development, or that the Buyer is unable to utilize the Property as planned due to zoning and/or related matters, the Buyer shall have the right to terminate this Agreement and the Buyer's earnest money deposit shall be refunded to the Buyer or retained by the Seller subject to the terms of Paragraph 7. This contingency will be deemed waived unless notice of termination is received by Seller within sixty (60) days of the Tenant Approval Date.

E. Public Thoroughfare Access:

The parties understand that adequate access to a public thoroughfare for the Buyer's proposed tenant or tenants is a necessary element to this development. In the event Buyer is unable to procure access to and from the proposed development, which is in the sole and absolute discretion of the Buyer acceptable, the Buyer may terminate this Agreement, subject to the terms of Paragraph 7. Nothing contained herein shall in any way prejudice Buyer's right to terminate as provided hereunder if access to and from the Property is judged to unacceptable by Buyer's proposed tenant or tenants. This contingency will be deemed waived unless notice of termination is received by Seller within sixty (60) days of the Tenant Approval Date.

F. Other Inspections:

The Buyer shall further have the right to do any and all other inspections it deems necessary, including, utilities, soils explorations, storm water management, environmental investigations, including exploration for petroleum contaminants and/or hazardous materials or wastes, and the such other engineering work as the Buyer deems necessary to determine the feasibility of the development. All such work shall be done at the Buyer's expense, it is agreed that the Property will not be unduly damaged in the process, and Buyer shall restore the Property to substantially its previous condition. Buyer shall indemnify and hold the Seller harmless from and against any suit, claim, or cause of action arising out of Buyer's investigations / activities or the investigations / activities of others acting on behalf of Buyer performed on, at, or in the Property. Should the Property be or have been used as a gasoline station, dry cleaners, or any other facility that utilized, housed, or generated any substance generally regarded as hazardous waste, the Seller specifically agrees to provide the Buyer with copies of any and all environmental assessments, audits, or investigations previously performed. If the Buyer's testing concludes that the land, utilities, soils, or environmental status of the Property, are not suitable for the proposed development, it shall notify the Seller, in writing, and this agreement shall be terminated, subject to the terms of Paragraph-7. In the event Buyer would not conclude

the Closing and transfer of title to the Property as contemplated hereunder, Buyer agrees to provide Seller with copies of any and all investigations, studies, assessments, surveys and the like as it may have procured in the process of its investigation of the Property at no charge to Seller. In the event Buyer performs any additional testing and/or investigations after Closing, Buyer shall provide such additional reports to Seller at no cost to Seller. This contingency shall be deemed waived unless notice of termination is received by Seller pursuant to this Paragraph F within sixty (60) days of the Tenant Approval Date.

7. DEPOSIT:

Upon the "Effective Date" of this Agreement, the Buyer shall deposit with Lawyers Title, Elyria, Ohio, Office the sum of \$5,000.00 in cash. Such Earnest Money Deposit shall be so placed pursuant to the terms and conditions set forth herein. Such \$5,000.00 deposit shall grant the Buyer sixty (60) days to solicit the interest of its tenant or tenants. Buyer may terminate at any time up to and including the 60th day following the Effective Date of this Agreement and receive a full and prompt refund of its earnest money deposit. Buyer shall have the right to extend this Agreement for one period of 30 calendar days with the deposit of an additional \$5,000.00 for such period. Such additional deposit shall extend all contingency periods set forth above an additional thirty (30) days. Evidence of such additional \$5,000.00 must be received by the Seller on or before the 60th day after the Effective Date of the Agreement. The deposit shall either be applied to the purchase price at the time of Closing, returned to the Buyer under the specific terms and conditions as found in this Agreement, or in the event of default by the Buyer, shall be retained by the Seller. Notwithstanding Buyer's 60 day initial period to solicit the interest of its tenant or tenants, and notwithstanding the additional period within which Buyer must perform its items of due diligence as stipulated under Paragraph 6 above, if Buyer should learn at any time during said 60 day initial period or -(30) day extension period that its prospective tenant or tenants should reject the Property, Buyer shall promptly notify the Seller, this agreement will terminate and neither party shall have any ongoing obligation or liability to the other.

8. PRE-EXISTING CONDITIONS:

Notwithstanding anything to the contrary contained herein, should Buyer's investigation into the Property AT ANY TIME DURING THE TERM OF THIS AGREEMENT OR ANY EXTENSION PROVIDED HEREIN, disclose a defect inherent to the Property or to the property of any other Seller who is a party to the assemblage as hereinafter defined, specifically including, but not limited to, issues of geotechnical soil stability, petroleum contamination, hazardous waste contamination (including PCBs), or any other condition affecting the Property, inherent to the Property or to the property of any other Seller who is a party to the assemblage as hereinafter defined and/or pre-existing in, on, or around the Property which would reasonably impair Buyer's ability to finance, purchase, and develop the Property, or materially increase Buyer's cost of development of the property, such discovery shall constitute good and sufficient cause for Buyer to terminate this Agreement and receive a prompt and full refund of any and all of its earnest money deposits made as of that date irrespective of time or date.

9. RETURN OF EARNEST MONEY:

If Buyer is unsuccessful in securing approval of the development by its tenant or tenants, it shall so notify the Seller and the Escrow Agent in writing on or prior to the 60th calendar day from the Effective Date, or the 90th day from the Effective Date if an extension has been obtained, and Buyer shall be entitled to an immediate refund of its Earnest Money Deposit. Further, pursuant to Article 8 above, should Buyer's investigation into the Property disclose any pre-existing condition inherent to the Property which would materially affect the Property and reasonably affect or impair the Buyer's ability to develop the Property or reasonably affect or increase the Buyer's cost or costs to develop the Property, the Buyer shall have the right to terminate this Agreement and receive a prompt and full refund of 100% of its earnest money deposits made as of that time without approval, endorsement, consent, or acknowledgement from Seller, and subject to the terms of Paragraph 7. This Agreement shall be provided to Lawyers Title and it is agreed between Seller and Buyer that this document shall constitute the sole instructions by which Lawyers Title shall retain, return, and/or disperse the earnest money deposit.

10. SELLER'S REPRESENTATIONS:

Seller represents and warrants to the Buyer as of the date hereof and as of closing that:

- (a) Seller owns or will own good and marketable fee simple title to the Property;
- (b) Seller has the authority to execute this Agreement and to transfer good and marketable fee simple title to the Property to the Buyer;
- (c) This Agreement and such other instruments and documents to be executed by the Seller to effect the conveyance contemplated by this Agreement will, when executed and delivered, constitute the valid and binding obligation of the Seller enforceable in accordance with their respective terms;
- (d) To the best of the Seller's knowledge, there are no existing violations of any laws or regulations of applicable governmental authorities affecting the Property, no governmental actions pending nor, to the best of the Seller's knowledge, being threatened against the Seller or the Property, or which would prohibit the use of the Property for Buyer's intended use;
- (e) There are no suits, hearings, or other legal proceedings pending, nor to the best of the Seller's knowledge, threatened or reasonably anticipated against the Seller with respect to the Property or affecting the Property before any court or before any governmental authority;
- (f) There are no outstanding contracts or agreements binding against the Seller or the Property other than those that are of record among the Property's County Land Records;
- (g) Electricity, public water and public sanitary sewer are available to the Property without any moratorium;
- (h) To the best of Seller's knowledge, the present use of the Property is not in violation of any statute, ordinance, or code;
- (i) To the best of Seller's knowledge, the Property is in compliance with all environmental laws and regulations, including, but not limited to, hazardous waste regulations and wetlands regulations and to the best of Seller's knowledge, no unlawful dredging or filling of wetlands has been performed on the Property;

11. NOTICES:

All notices and requests required or permitted hereunder shall be sent by United States Mail, return receipt requested, by Overnight Delivery Service, and/or by Facsimile Transmission as set forth below:

Notices to the Buyer shall be addressed as follows:

Gale L Shoup
 PASI Inc.
 3795 Wyse Road
 Dayton, OH 45414
 Phone: (937) 890-0510
 Fax: (937) 890-3094

Notices to the Seller shall be addressed as follows:

City of Oberlin
 C/O Ms. Tita Reed
 85 South Main Street
 Oberlin, Ohio 44074
 Phone: (440) 775-7257
 Fax: (440) 774- 9714

Notices to Lawyers Title / Escrow Agent shall be addressed as follows:

Lawyers Title Insurance Company
 424 Middle Avenue
 Elyria, Ohio 44035
 Attention: Diane Mackin
 Phone: (440) 284-5100

Fax: (440) 284-5161

Copies to be provided to:

PH: _____

FAX: _____

Such addresses may be changed at any time by like written notice given by either party to the other.

12. DEFAULT BY BUYER/DAMAGES:

Seller acknowledges that in the event that the Buyer defaults for any reason under the terms of this Agreement to Purchase Real Estate, the Seller's sole and exclusive remedy shall be to terminate this Agreement and retain the deposit amount(s) as liquidated damages. Seller acknowledges that the calculation of damages for the breach of an Agreement to Purchase Real Estate is difficult, and that the parties have agreed herein, that the deposit amount(s) of \$5,000.00 (or \$10,000) if an extension is granted pursuant hereto) is a reasonable pre-estimate of Seller's probable loss in the event of default by the Buyer. Nothing in this paragraph shall affect the Buyer's right to receive a return of the earnest money deposit(s) as set forth in preceding paragraphs if Buyer is not in default.

13. ENTIRE AGREEMENT:

This Agreement embodies and constitutes the final and entire agreement between the Buyer and the Seller and neither party shall be bound by terms, covenants, conditions, representations, or warranties not expressly contained herein. This Agreement may only be changed, amended, or altered by a writing, executed by both parties.

14. BINDING EFFECT:

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Each party agrees to furnish to the other, upon demand, any necessary, appropriate, and customary documentation evidencing the due authorization of such party to enter into this Agreement and to consummate the transactions contemplated hereunder.

15. DISCLOSURE:

Barry W. Weaver, a member of Buyer, is a duly licensed real estate agent in the State of Ohio, but is not acting in that capacity in this transaction.

16. ENFORCEABILITY:

Any term or condition contained herein held to be unenforceable shall have no effect whatsoever upon the enforceability of the remaining terms and conditions.

17. APPLICABLE LAW:

This Agreement shall be governed, construed, and enforced according to the laws of the state in which the Property is located.

18. LAST DAY FOR ACCEPTANCE

This Agreement is hereby signed by the Buyer and set forth to the Seller as an offer, which shall remain open for acceptance up to and including the 30th day after the date it is signed by Buyer.

19. COMMISSION:

Buyer and Seller warrant to one another that neither has enlisted the services of nor has incurred the obligation to pay a real estate commission to any broker or brokerage, and the parties hereby agree to defend and hold harmless the other against any such claim.

20. EFFECTIVE DATE:

The Effective Date of this Agreement shall be the date it is last signed by Buyer and Seller as set forth below.

Witness:

Buyer:

Debra K Sharp [Signature]

Date 2-9-2012

[Signature]

Seller:

[Signature]

[Signature] 2/16/12
Eric Norenberg Date

City Manager

[Signature]

EXHIBIT "A"



15 4th St

S Main St

Edison St



68

McDonald's

S Wair St

CVS & Retail

