

EMERGENCY ORDINANCE NO. 2019-01

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A REAL ESTATE PURCHASE AGREEMENT BY AND BETWEEN THE CITY OF MONROE, MUNAFO SEVEN, INC., AND OFANUM PARTNERS FOR THE PURCHASE OF REAL PROPERTY LOCATED AT 601 SOUTH MAIN STREET, MONROE, OHIO, AND DECLARING AN EMERGENCY.

WHEREAS, the real property located at 601 South Main Street has been determined as a feasible location for a new police facility; and

WHEREAS, Council desires to proceed with the purchase of said property to begin the relocation of the police department to provide the needed space to continue efficient operations.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: The City Manager is authorized to enter into a real estate purchase agreement by and between the City of Monroe, Munafco Seven, Inc., and Ofanum Partners for the purchase of real property located at 601 South Main Street, Monroe, Ohio, pursuant to the terms and conditions set forth on Exhibit "1" attached hereto and made a part hereof.

SECTION 2: This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and further for the reason that Council desires to authorize the execution of the agreement referred to herein to provide the needed space to continue the efficient operation of the Department of Police. Therefore, this measure shall take effect and be in full force from and after its passage.

PASSED: January 22, 2019

ATTEST:



Clerk of Council

APPROVED:



Mayor

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.



Clerk of Council
City of Monroe, Ohio

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Municipal Law, Section 121.22 of the Ohio Revised Code.

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (this "Agreement"), dated as of _____, 2019 (the "Effective Date"), is entered into by and between City of Monroe, an Ohio municipal corporation, ("Buyer"), Munafa Seven, Inc. and Ofanum Partners (collectively, "Seller").

PROVISIONS

1. Purchase and Sale. Buyer hereby agrees to purchase from Seller and Seller hereby agrees to sell to Buyer: (a) certain real estate commonly known as 601 S. Main Street and more particularly described on Exhibit A attached hereto and made a part hereof, together with all rights, privileges, hereditaments, easements, and interests appurtenant thereto, including, but not limited to, any rights, title, and interests in and to any streets or other public ways adjacent thereto (the "Land"); (b) all buildings, fixtures and other improvements situated on the Land (collectively, the "Improvements," and the Land and the Improvements being referred to herein collectively as the "Real Property").

2. Purchase Price and Manner of Payment. The purchase price for the Real Property (the "Purchase Price") shall be One Million Nine Hundred Thousand Dollars and 00/100 (\$1,900,000.00) payable at Closing. Contemporaneously herewith, Buyer shall pay to Seller an earnest money deposit ("Deposit") of Ten Thousand and 00/100 (\$10,000.00) Dollars, which shall be a credit against the Purchase Price at Closing or disbursed pursuant to the terms hereof.

3. Closing. The purchase and sale of the Real Property shall be closed at a location mutually agreed upon by both Buyer and Seller. The Closing shall occur on or before March 1, 2019; Time is of the essence hereof. The date and event of the consummation of the purchase and sale of the Real Property as contemplated hereby is referred to herein, respectively, as the "Closing Date" and the "Closing."

4. Contingencies. Buyer's obligation to purchase the Real Property and Seller's obligation to sell the Real Property is subject to the satisfaction or waiver of the conditions and contingencies described herein.

a. Title Commitment. Buyer, at Buyer's expense, shall obtain a commitment for an owner's policy of title insurance issued by a title insurance company selected by Buyer (the "Title Company") with respect to the Real Property (the "Title Commitment"). The Title Commitment shall show in Seller marketable title in fee simple free and clear from all liens and encumbrances. If title to all or part of the Real Property is unmarketable, or is subject to liens, encumbrances, easements, conditions, restrictions or encroachments other than those excepted by this Agreement, Buyer shall have the right to object to such conditions within twenty (20) days of Buyer's receipt of the Title Commitment, but in no event later than the expiration of the Due Diligence Period (defined below). If Buyer so objects, and Seller fails to remedy or remove any such defect, lien, encumbrance, easement, condition, restriction or encroachment within fifteen days from the date of Buyer's objection, Buyer shall for five days thereafter have the option to terminate this Agreement

by delivering written notice thereof to Seller. Upon termination, Seller shall return the Deposit to Buyer, and thereafter neither party shall have any further obligation to the other hereunder other than those obligations which survive the termination of this Agreement.

b. Survey. Buyer may obtain a survey (the "Survey") of the Real Property conducted by a licensed, registered surveyor acceptable to Buyer.

c. Environmental Conditions. Buyer shall have the right and Seller shall provide Buyer access to the Real Property reasonably necessary, to obtain environmental reports regarding, but not limited to, the soils, ground water, underground tanks, topography, geology and other conditions of the Real Property, together with reliance letters of the preparers of such reports as may be required by Buyer ("Environmental Reports"). In no event shall Buyer have the right to do invasive testing at the Real Property without the prior written consent, and upon such terms and conditions, as may be determined by Seller, in its sole discretion. If the Environmental Reports reveal any environmental matters adversely affecting the Real Property (the "Environmental Conditions"), Buyer may, on or before expiration of the Due Diligence Period notify Seller of such Environmental Conditions (the "Environmental Notice"). Upon receipt of an Environmental Notice, Seller shall have the right, but not the obligation, to cure any disapproved Environmental Conditions. If the Environmental Condition is not cured to Buyer's reasonable satisfaction, Buyer shall have the right to terminate the Agreement by delivering written notice thereof to Seller. Upon termination, Seller shall return the Deposit to Buyer, and thereafter neither party shall have any further obligation to the other hereunder other than those obligations which survive the termination of this Agreement.

d. Seller Encumbrances. Notwithstanding anything to the contrary in this Agreement, all Seller Encumbrances (as defined below) must be satisfied by Seller on or before the Closing Date or, if not so satisfied, shall be satisfied at Closing out of the proceeds otherwise payable to Seller. As used herein, the term "Seller Encumbrance" shall mean (i) any mortgage, deed of trust or other monetary lien encumbering the Real Property, (ii) any real property taxes and assessments which are due and payable as of the Closing, and (iii) any Voluntary Encumbrance (as defined in Section 9.f).

5. Deliveries, Inspections, and Due Diligence.

a. Seller Deliveries. Seller shall deliver to Buyer any and all documents pertaining to the Real Property requested by Buyer from time to time that are in Seller's possession or are reasonably available to Seller. Any such deliveries are made as a convenience to Buyer only and Buyer shall have no right to rely on any of them, it being understood and agreed that Seller is selling the Real Property, and Buyer is buying the Real Property, AS IS, WHERE IS, WITH ALL FAULTS, without any representation or warranty whatsoever with respect to the condition thereof. Buyer expressly agrees to rely strictly upon the representations and warranties set forth in this Agreement and upon its own investigations.

b. Due Diligence/Inspection Period. For the period commencing on the Effective Date and ending on February 1, 2019 (the "Due Diligence Period"), Buyer shall

have the right to investigate and determine, in its sole discretion, that the Real Property is acceptable in all respects, including but not limited to zoning, environmental, and other conditions. If Buyer notifies Seller that Buyer is unsatisfied with the condition of the Real Property during the Due Diligence Period, this Agreement shall automatically terminate, Seller shall return the Deposit and neither party shall have any further right or liability arising out of this Agreement (except as otherwise provided herein).

c. Access. From and after the Effective Date and until the earlier termination of this Agreement or the Closing, Buyer, its officers, contractors, consultants, employees, agents, prospective lenders, attorneys, accountants, architects and engineers, and other representatives shall have the right to enter upon the Real Property, subject to the rights of tenants in possession, for the purpose of inspecting the Real Property and conducting surveys and studies of the Real Property, including any tests relating to the Real Property (including, but not limited to, engineering, and environmental). Except for matters resulting from Seller's negligence or willful misconduct, Buyer shall indemnify, defend and hold Seller harmless from and against any and all third party claims arising out of any liens against the Real Property, injury to any person, or damage to the Real Property attributable to Buyer's exercise of any of its rights under this Section 5; provided however, the proper installation and abandonment of soil borings and/or groundwater monitoring wells, if permitted by Seller, on or at the Real Property shall not be construed to constitute damage to the Real Property. Additionally, the mere discovery by Buyer of any fact or condition relating to the Real Property shall not give rise to any liability hereunder.

d. Easements. During the Due Diligence Period, the parties shall negotiate the terms of retained drainage easements for the benefit of Seller's adjacent property and cross easements for access to and from the Real Property. The parties shall work cooperatively with respect to the terms of all such easements and shall in good faith determine the locations thereof. If the parties have not agreed to the terms of the easements prior to the expiration of the Due Diligence Period, either party may terminate this Agreement upon written notice to the other. Upon termination for failure of this condition, Seller shall return the Deposit to Buyer, and thereafter neither party shall have any further obligation to the other hereunder, other than obligations which survive the termination hereof.

6. Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer that, as of the Effective Date:

a. This Agreement is duly authorized, executed and delivered by Seller, creates legal, valid and binding obligations of Seller, and does not violate and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any trust, judicial order, agreement, arrangements, understanding, accord, document or instrument by which Seller or the Real Property is bound.

b. No consent, waiver, approval or authorization is required from any person or entity in connection with the execution, delivery and performance of this Agreement by Seller.

c. Subject only to Permitted Exceptions as of the Closing Date, Seller owns good, marketable, and indefeasible fee simple title to the Real Property free of any mortgages or other liens.

d. Seller is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code.

e. There is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding (including, without limitation, condemnation or eminent domain proceedings) pending or threatened against the Real Property.

f. The following oral month-to-month leases (the "Leases") affect the Real Property.

a. Casano's

b. Foggyz

g. Other than the Leases, the Real Property is not subject to any easements, covenants, conditions, restrictions, agreements, or encumbrances not of record.

h. Except as shown on the Title Commitment, there are no liens or claims, including without limitation mechanic's or materialman's liens, against the Real Property or which may ripen into liens against the Real Property and there are no unpaid claims for labor performed, done or materials furnished or services rendered in connection with constructing, improving or repairing the Real Property in respect of which the liens may or could be filed against the Real Property.

i. Seller has received no written notice from any insurance carrier of defects or inadequacies in the Real Property which, if not corrected, would result in termination of insurance coverage or an increase in the cost thereof.

j. To Seller's knowledge, there are no violations of any laws, regulations, codes, ordinances, orders or requirements affecting the Real Property, including, but not limited to, applicable laws, regulations, ordinances or requirements relating to ecology, the environment, pollution, health or safety.

k. Seller has not entered into any contract, agreement or option, other than this Agreement, granting to any party the right to purchase the Real Property that remains in effect.

l. Seller has not received any written notice from any municipal, county, state or other governmental authority of any violation of any statutes, codes, ordinances, rules or regulations with respect to the Real Property, including, without limitation, those relating to ecology, the environment, pollution, health or safety.

m. There is no judgment of any court, state or federal, pending against Seller or the Real Property, and no petition for bankruptcy has been filed by or against Seller, nor is any petition now pending with respect to Seller with respect to bankruptcy or insolvency.

7. Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller that, as of the Effective Date:

a. Buyer's right, power and authority to enter into this Agreement is subject to approval by City Council.

b. This Agreement is duly authorized, executed and delivered by Buyer, creates legal, valid and binding obligations of Buyer, and does not violate and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any judicial order, agreement, arrangements, understanding, accord, document or instrument by which Buyer is bound.

8. Operation of the Real Property.

a. Leases. After the Effective Date and until the earlier of the termination of this Agreement or the Closing, Seller shall not enter into any new leases for occupancy of any part of the Real Property, or any related new commission or brokerage agreements with respect to the Real Property, except, in each case, with Buyer's written consent.

b. New Contracts. After the Effective Date and until the earlier of the termination of this Agreement or the Closing, Seller shall not enter into any new contracts with respect to the use or operation of the Real Property, except, in each case, with Buyer's written consent.

c. Insurance Contracts. All insurance maintained by Seller in respect of the Real Property, if any, shall be maintained in the current amounts and with the current coverages until Closing.

d. Utilities. Seller shall pay all charges for utilities consumed at the Real Property until Closing.

e. Continued Maintenance. After the Effective Date and until the earlier of the termination of this Agreement or the Closing, Seller shall continue to maintain the Real Property in the same manner as prior to the Effective Date.

f. Voluntary Encumbrances. After the Effective Date and until the earlier of the termination of this Agreement or the Closing, Seller shall not encumber the Real Property without the prior consent of Buyer (a "Voluntary Encumbrance"), which consent may be withheld in Buyer's sole discretion.

g. Delivery of Possession. At Closing, Seller shall deliver to Buyer exclusive possession of the Real Property in the same condition as it is on the Effective Date, ordinary

wear and tear excepted, free from any leases, tenancies or other contracts or agreements of any kind or nature whatsoever as of the Closing Date, except for the Leases and any Service Contracts Buyer expressly agrees to assume in writing at Closing. This Section 9 shall survive the Closing.

h. Marketing Activities. After the Effective Date and until the earlier of the termination of this Agreement or the Closing, Seller shall suspend all activities utilized by Seller to market the Real Property for sale other than in connection with the transaction contemplated by this Agreement, and shall not enter into any agreement with any other person or entity for the sale of the Real Property.

9. Condemnation/Damage. In the event of any loss or damage to the Real Property or any portion thereof or any condemnation is threatened against the Real Property or any portion thereof, Seller shall immediately notify Buyer and Buyer may, within twenty (20) days thereafter, elect to terminate this Agreement by written notice to Seller, in which event Seller shall return the Deposit to Buyer and the parties shall have no further right or obligation under this Agreement (except for rights or obligations which expressly survive the termination of this Agreement). If Buyer does not elect to terminate this Agreement, then Buyer shall proceed with the transaction contemplated by this Agreement, in which event Seller shall assign to Buyer all of Seller's right, title and interest to any claims and proceeds Seller may have with respect to any casualty insurance policies or condemnation awards relating to the premises in question at the Closing and there shall not be any reduction to the Purchase Price except for the cost of the deductible payment associated with recovering under such insurance policies. Upon Closing, full risk of loss with respect to the Real Property shall pass to Buyer.

10. Prorations, Adjustments and Expenses.

a. Taxes and Assessments. The Purchase Price for the Real Property is subject to prorations and adjustments to be determined as of 12:01 a.m. on the Closing Date. On or before the Closing Date, Seller shall pay any and all past due taxes, assessments, levies and other charges with respect to the Real Property and any and all interest or penalties thereon. All taxes, assessments, levies and other charges assessed with respect to the Real Property in the year prior to the year that the Closing occurs but due in the year that the Closing occurs but payable after the Closing Date shall be the responsibility of Seller, and Buyer shall receive a credit against the portion of the Purchase Price payable at the Closing for such taxes, assessments, levies, and charges. All taxes, assessments, levies or charges assessed with respect to the Real Property in the year that the Closing occurs but due and payable in the year following the year that the Closing occurs shall be prorated through the date of Closing based on the most recently available tax bill. All prorations shall be final.

b. Seller shall pay:

- i. Seller's attorneys' fees;
- ii. all state and county transfer taxes and conveyance fees;

iii. one-half (1/2) of all closing and escrow fees charged by the Title Company and one-half (1/2) of the recording fees for the easements called for in this Agreement;

iv. the recording fees for recording any release of lien or other document of record which Seller has agreed to release prior to Closing; and

c. Buyer shall pay:

(i) the premium for an owner's title insurance policy in the amount of the Purchase Price;

(ii) one-half (1/2) of all closing and escrow fees charged by the Title Company and one-half (1/2) of the recording fees for the easements called for in this Agreement;

(iii) Buyer's attorneys' fees and all due diligence costs and expenses;

(iv) the cost of any Endorsements to the title policy requested by Buyer or its lender;

(v) the cost of the Survey, if any and all other due diligence expenses incurred by Buyer, including the cost of any environmental site assessments or testing including Phase I; and

(vi) the recording fees for recording a Limited Warranty Deed to the Buyer or its nominee and all fees and charges relating to any mortgage or other financing by Buyer.

11. Assignment. Buyer may freely assign its rights and obligations under this Agreement to an entity under its control, but such assignment shall not relieve Buyer of its obligations or liabilities under this Agreement. Alternatively, Buyer may, without assigning this Agreement, direct Seller to convey title to the Real Property to an entity or entities other than Buyer, but such direct deeding shall not relieve Buyer of its obligations or liabilities under this Agreement.

12. Brokers. Buyer and Seller represent and warrant to one another that they have neither contracted nor dealt with any real estate broker or finder with respect to this Agreement or the transactions contemplated hereby. Therefore, no real estate broker or other person claiming through Buyer or Seller is entitled to any commission or finder's fee.

13. Applicable Law. This Agreement and the transactions herein shall be construed and enforced in accordance with the general contract laws of the State of Ohio. Any claim, action, suit, or proceeding seeking to enforce any provision of or based on any matter arising out of or in connection with this Agreement or the transactions contemplated hereby shall be brought only in the State of Ohio and each of the parties hereto hereby consents to the jurisdiction of such court and irrevocably waves to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the venue of any such claim, action, suit, or proceeding in any such court

or that any such claim, action, suit, or proceeding that is brought in any such court has been brought in an inconvenient forum.

14. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, oral or written are superseded hereby.

15. Time of Essence. Buyer and Seller hereby agree that time is of the essence with regard to the terms and conditions of this Agreement.

16. Binding Effect. All of the terms, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

17. Notices. All notices which are required or permitted under this Agreement must be in writing and shall be deemed to have been given, delivered or made, as the case may be (notwithstanding lack of actual receipt by the addressee), (a) when delivered by personal delivery, or (b) one business day after having been deposited with an expedited, overnight courier service, in each case addressed to the party to whom notice is intended to be given at the address set forth below:

If to Seller:

With a copy to:

If to Buyer:

City of Monroe
PO Box 330
Monroe, OH 45050
Attn: William Brock, City Manager

With a copy to:

Phillip Callahan, Attorney at Law
202 E. Central Avenue
Miamisburg, OH 45342

or to such other address as any party may from time to time designate by notice in writing to the other. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section 17 shall constitute delivery.

18. Waiver. The failure of either party to exercise any right given hereunder or to insist upon strict compliance with any term, condition or covenant specified herein, shall not constitute a waiver of such party's right to exercise such right or to demand strict compliance with such term, condition, or covenant.

19. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

20. Amendment. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived, or discharged either orally or by any course of dealing, but only by an instrument in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.

21. Counterparts, Separate Signature Pages and Facsimile Signatures. This Agreement may be executed in several counterparts, by separate signature pages, and/or by either emailed or facsimile signatures, each of which may be deemed an original, and all such counterparts, separate signature pages, and facsimile signatures together shall constitute one and the same Agreement.

22. Calculation of Days. In the event that any date described in this Agreement for the performance of an action required hereunder by Seller, Buyer and/or the Title Company falls on a Saturday, Sunday or federal legal holiday, such date shall be deemed postponed until the next business day thereafter.

23. Confidentiality. INTENTIONALLY OMITTED.

24. Interpretation. This Agreement and any related instruments shall not be construed more strictly against one party than against the other by virtue of the fact that initial drafts were made and prepared by counsel for one of the parties, it being recognized that this Agreement and any related instruments are the product of extensive negotiations between the parties hereto and that both parties hereto have contributed substantially and materially to the final preparation of this Agreement and all related instruments.

25. Captions. The captions of the various paragraphs herein contained are solely for the convenience of the parties hereto and shall not be construed to interpret or limit the content of any provision or paragraph of this Agreement.

26. No Recordation. Neither this Agreement nor any memorandum of the terms hereof shall be recorded or otherwise placed of public record.

27. Attorneys' Fees. In the event legal action is instituted by any party to enforce the terms of this Agreement or which arises out of the execution of this Agreement, the prevailing party in such legal action will be entitled to receive from the other party the prevailing party's

reasonable attorneys' fees and costs and expenses, including the costs of appeal, as may be determined and awarded by the court, or the arbitrator as the case may be, in which the action is brought. For purposes of this Agreement, "prevailing party" shall include, without limitation, a party obtaining substantially the relief sought, whether by compromise, settlement or otherwise. The right to attorneys' fees shall survive the termination of this Agreement or the Closing.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BUYER:

City of Monroe,
an Ohio municipal corporation

By:

Its: _____

SELLER:

Munafa Seven, Inc.
an Ohio corporation

By:

Its: _____

Ofanum Partners
an Ohio partnership

By:

Its: _____

Exhibit A

Legal Description

Butler County Parcel Number C1800 008 000 054

and

Butler County Parcel Number C1800 008 000 055