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STATUS, CONTRACT AND DEED, STATE OF OHIO, THROUGH DIRECTOR OF PUBLIC WORKS, WITH CLARENCE E. KILLINGER, ET AL., DESIGNATED PROPERTY, GREEN TOWNSHIP, SUMMIT COUNTY, OHIO, NIMISILA RESERVOIR PROJECT, PURCHASE PRICE, \$2,000.00.

COLUMBUS, OHIO, January 10, 1939.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval certificates of title, warranty deed, contract encumbrance record No. 46 and other files relating to the purchase by the State of Ohio in connection with the construction of the Nimisila Reservoir Project of a tract of land which is owned of record by Clarence E. Killinger, Edwin S. Killinger, Howard Killinger, Lloyd Killinger, Marvin W. Killinger, Rudolph Killinger, Minnie Killinger Dole and Elta Rininger Ries, in Green Township, Summit County, Ohio, which tract of land is a part of the

southwest quarter of Section No. 29 in said township and county and is more particularly described as follows:

Beginning at a stone set in the center line of Christman Road and on the southwest corner of Section No. 29; thence along the center line of Christman Road and the west line of Section No. 29; N. $6^{\circ} 45' 30''$ E. eighteen hundred and no hundredths (1800.00) feet to a stake; then S. $83^{\circ} 12' 00''$ E. parallel with the south line of Section No. 29, two hundred and no hundredths (200.00) feet; thence S. $6^{\circ} 45' 30''$ W. thirteen hundred and no hundredths (1300.00) feet; thence S. $83^{\circ} 12' 00''$ E. three hundred and no hundredths (300.00) feet; S. $6^{\circ} 45' 30''$ W. three hundred and no hundredths (300.00) feet to a stake; thence S. $83^{\circ} 12' 00''$ E. two hundred fifty and no hundredths (250.00) feet; thence N. $6^{\circ} 45' 30''$ E. five hundred and no hundredths (500.00) feet to a stake; thence S. $83^{\circ} 12' 00''$ E. two hundred fifty-four and fifty-two hundredths (254.52) feet to a stake in the west line of lands of K. & J. Nemes; thence along said west line S. $6^{\circ} 45' 30''$ W. seven hundred and no hundredths (700.00) feet to the north line of F. & J. Geig's property; thence along Geig's north line N. $83^{\circ} 12' 00''$ W. ten hundred four and fifty-two hundredths (1004.52) feet to the place of beginning and containing sixteen and ninety-five hundredths (16.95) acres of land as surveyed May 25, 1936 by Francis Stafford.

Upon examination of the certificate of title submitted to me, I find that Clarence E. Killinger and the other persons above named have as tenants in common a good and indefeasible fee simple title to this tract of land and that they own and hold this property free and clear of all encumbrances other than the following which are here noted as exceptions to the title in and by which said above named persons own and hold this property:

1. On September 23, 1918, Albert Killinger and Nora Killinger, predecessors in title to the above named persons who now own and hold this property, executed an instrument in deed form in and by which they granted to The Northern Ohio Traction and Light Company the right to construct, operate and maintain an electric transmission line or lines, consisting of towers, wires and all necessary appliances, for the transmission and distribution of electricity over and across a seventy-five-acre tract of land then owned and held by them and which included the tract of land above described. No information is presented in the certificates of title or otherwise in the files submitted to me to indicate what, if anything, was done by The Northern Ohio Traction and Light Company pursuant to the easement granted to it for the purpose above state. I assume, however, that you or your engineers and other representatives in charge of the Nimisila Reservoir Project are familiar with this power line, if one

was constructed pursuant to this easement, and as to the manner in which such power line will affect the use which your department desires to make of this property. However, this easement is here noted for the reason that the same is, or may be, an encumbrance upon the property here in question.

2. On January 20, 1936, Clarence E. Killinger and the other persons above named, together with their respective spouses, executed an oil and gas lease to The East Ohio Gas Company in and by which said company was given the right to drill and operate for oil and gas and the constituents thereof in and upon a sixty-seven-acre tract of land owned by said persons above named in Section 29 of Green Township, which tract of land included that here under investigation. This lease was one for a stated term of three years from March 31, 1936, and so much longer as oil or gas or their constituents might be found on said premises in paying quantities. I am not advised by anything contained in the certificates of title or in any of the other files submitted to me as to what, if anything, has been done by The East Ohio Gas Company in the development of this property or any part of the same under the oil and gas lease above referred to. The same is here noted as an encumbrance with which you and your field men engaged in the construction of the Nimisila Reservoir Project, are doubtless familiar.

3. On May 25, 1934, The Citizens Savings and Loan Company of Akron, Ohio, obtained a judgment by the consideration of the Common Pleas Court of Summit County against said Elta G. Ries and Clarence F. Ries, her husband, for the sum of \$4684.98, with interest on such judgment at the rate of six per cent from April 1, 1934. It further appears that on July 27, 1936, the sum of \$3811.91 was paid on said judgment and receipted for on the docket of the case in which such judgment was obtained. And on February 10, 1937, a certificate of such judgment was filed with the Clerk of Courts of Summit County. It further appears that under date of December 16, 1937, the costs in this case amounting to the sum of \$6.50 were paid. However, there is no notation in these certificates of title of any payment of the balance due on said judgment and the accrued interest thereon. And assuming that Elta G. Ries, the judgment debtor above named, is one and the same person as Elta Rininger Ries above referred to as one of the tenants in common in the ownership of this property, the balance remaining unpaid on said judgment amounting to the sum of \$873.07, together with interest thereon, is a lien upon the undivided interest and estate of said Elta Rininger Ries in and to the above described property. Needless to say, the balance due on this judgment in the amount above stated should be paid before the transaction for the purchase of this property is closed or the tract of land hereinabove described, which the State is purchasing and acquiring for use in connection with the Nimisila Reservoir Project, should be released from the operation of this judgment.

4. The taxes on the above described property for the year 1938 are included in the taxes on a tract of 66.45 acres owned by the above named persons and these taxes, the amount of which is not stated in the certificate of title, are, of course, a lien upon this property.

Upon examination of the warranty deed which has been tendered to the State of Ohio by said Clarence E. Killinger, Edwin S. Killinger, Howard Killinger, Lloyd Killinger, Marvin W. Killinger, Rudolph Killinger, Minnie Killinger Dole and Elta Rininger Ries, I find that said deed has been properly executed and acknowledged by said grantors and by their respective spouses; and that the form of this deed is such that the same is legally sufficient to convey the above described property to the State of Ohio by fee simple title free and clear of the dower interests of the respective wives and husbands of said grantors. I further find that said deed is legally effective to convey to the State of Ohio an easement or right of flowage over other property of said grantors which is described in said deed as a marginal strip of land adjoining the waters of the Nimisila Reservoir over, along and between the spillway crest elevation of 1000 feet and elevation of 1005 feet, both above mean sea level; said land affected by said easement being further described as being along the north and east boundaries of the tract of land above described and on the east shore line of Nimisila Reservoir. In accepting this deed the State of Ohio by a provision therein contained agrees that no well or wells shall be drilled for the purpose of exploring for gas or oil, nor shall any wells be drilled for the purpose of producing gas or oil on the above described premises.

Inasmuch as this deed contains a provision that this property is to be conveyed to the State free and clear of all encumbrances whatsoever, I assume that before the transaction for the purchase of this property is closed, provision will be made for the payment of the 1938 taxes on this property and for the satisfaction and release of the balance due on the judgment above referred to.

Upon examination of contract encumbrance record No. 46, I find that the same has been properly executed and that there is shown thereby a sufficient balance, properly encumbered, in the appropriation account to the credit of your department for the acquisition of land in the Nimisila Reservoir Basin, to pay the purchase price of the property and easements above described, which purchase price is the sum of \$2,000.00. It further appears by way of recital in said contract encumbrance record that the purchase and acquisition of the above described property and easements has been approved by the Controlling Board and that said Controlling Board released from the appropriation account to the credit of your department the moneys necessary to pay for said property.

Subject to the exceptions above noted, I am approving the title of Clarence E. Killinger and the other persons above named as the owners of this property and I am likewise approving the warranty deed, con-

tract encumbrance record and other files submitted in connection with the purchase of this property, all of which files are herewith enclosed for your further attention in closing the transaction for the acquisition of this property.

Respectfully,

THOMAS J. HERBERT,
Attorney General.