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APPROVAL—CONTRACT PROPOSED PURCHASE BY PRESIDENT AND TRUSTEES OF MIAMI UNIVERSITY, PARCEL OF LAND OWNED BY FRANCES L. RIGLING, SECTION 23, TOWN 5, RANGE 1, EAST OF MOUTH OF GREAT MIAMI RIVER IN OXFORD TOWNSHIP, BUTLER COUNTY, OHIO.

COLUMBUS, OHIO, August 26, 1938.

HON. W. P. ROUDEBUSH, *Secretary, Board of Trustees, Miami University, Oxford, Ohio.*

DEAR SIR: You have submitted for my examination and approval an abstract of title, warranty deed and contract encumbrance record No. 1663, relating to the proposed purchase by the President and Trustees of Miami University of a parcel of land which is owned of record by perpetual leasehold interest by one Frances L. Rigling in Section 23, Town 5, Range 1 east of the meridian line drawn northwardly from the mouth of the Great Miami River in Oxford Township, Butler County, Ohio, and being a part of Lot No. 4 of Miami University lands in said section, and being bounded and described as follows:

Beginning at an iron stake in the southerly line of said lot No. 4, 16 chains and 96 links west of the southeast corner of said lot, the said southerly line being also the northerly line of Sycamore Street of the Village of Oxford; thence from said beginning point, and following along the present easterly line of the Miami University Golf Course, northwardly to the iron stake at the southwest corner of a 2.16 acre tract of land owned by Helen S. Ruder; thence eastwardly along Ruder's southerly line and the easterly prolongation thereof, 213.46 feet to a point; thence South 2° 40' East 178.04 feet to a point; thence South 12° 45' West 129.84 feet to a point; South 11° 55' East 109.83 feet to a point in said southerly line of said Lot 4, which is also the northerly line of Sycamore Street of the Village of Oxford, the said last described point being less than 66 feet west of the northeast corner of the present incorporated Village of Oxford; thence westwardly, following the southerly line of Lot 4 and the northerly line of Sycamore Street, 210.08 feet to the point of beginning, containing 1.97 acres.

In connection with the proposed purchase of the parcel of land above described, the President and Trustees of Miami University are acquiring

certain easements in other lands of said Frances L. Rigling contiguous or adjacent to that above described, which easements are set out and described in the warranty deed tendered by Frances L. Rigling as follows:

Also an easement over a strip of ground 20 feet in width between parallel lines lying eastwardly from and adjoining the easterly line of the land herein conveyed and extending from the northerly line to the southerly line thereof, for roadway purposes and for ingress and egress by the grantee.

An easement over a strip of ground 20 feet in width between parallel lines taken evenly off of the easterly side of the above described tract and extending from the northerly to the southerly line thereof is hereby perpetually reserved by the grantees, their successors and assigns, for roadway right-of-way purposes and for the construction and maintenance thereon of a roadway and appurtenant structures, and for the installation of public utility and service lines, and the same shall be subject to the dedication to the public for public use at such time as the owners of land to the north and east of said right-of-way deem such dedication necessary or desirable, or at such time as the said area to the north and east of said right-of-way shall be included within the corporate limits of any village, it being provided however that the said owners of land to the east of the above described tract shall dedicate to the public a similar strip of land 20 feet in width and lying east of the east line of the tract herein conveyed.

Upon examination of the abstract of title submitted to me, which abstract of title is certified by the abstracter under date of July 26, 1937, I find that the above described parcel of land which is to be purchased by the President and Trustees of Miami University, as well as the particular parcels of land covered by the easements above referred to and described, is a part of larger tracts of 15.08 and 46.58 acres, respectively, and all of which are included in lot 4 of Miami University lands which under date of January 10, 1825, was sold and conveyed by the President and Trustees of Miami University to one James Cooley by lease for the term of ninety-nine years, renewable forever.

From said James Cooley, the title to the property here in question has come down to the present owner of record by mesne conveyances, which, for the most part, were warranty deeds in proper form.

From the abstract of title it appears that in the year 1924, when by its terms the original lease executed to James Cooley expired, the title to the property here in question and to the larger tracts of which the same

is a part, under said lease was in one Josephine Rigling. In this situation, it does not appear that there was any formal renewal of said lease by the execution of a new lease of the lands thus owned and held by her in said original Lot No. 4 above referred to; nor does it appear that any application for such renewal lease was ever made by Josephine Rigling or by any of her successors in title. However, it does appear that said Josephine Rigling and her successors in title continued to hold and occupy said lands as a matter of right under the original lease and under subsequent proceedings pursuant to law by which subdivided parcels of said original Lot 4 were held under said lease by a number of different persons and by an allocation to the different tracts of land of the several parts of the ground rent to be charged against said several tracts of land. And it appears further in this connection that Josephine Rigling and her successors in title have regularly paid to the Treasurer of Miami University that part of the total amount of the ground rent originally chargeable against said Lot 4 which is now chargeable to the lands now owned by Frances Rigling.

In this situation, I am quite clearly of the opinion that Frances Rigling has every right, title and interest in the lands here in question and in the larger tracts of which they are a part that she would have had if she were holding under a formal renewal lease executed to her or to any of her predecessors in title covering such lands. Touching this question, the Court of Appeals of Hamilton County in the First Appellate District, in the case of *Gross vs. Clauss*, 6 O. App., 140, held:

"A lease for a term with a privilege or option in the tenant of a renewal or extension for a further term, upon the same terms and conditions, is a present demise as to the renewal to begin at a future time, and under such covenant no new lease need be required, but any indication on the part of the tenant of his intention to avail himself of his privilege operates to extend to him the right of the additional term."

This rule is stated by many other authorities which might be cited in this connection.

I am of the opinion, therefore, that said Frances Rigling has a good and indefeasible perpetual leasehold interest in the above described property which is being acquired by the President and Trustees of Miami University, and that she owns and holds the same free and clear of all encumbrances other than those which are here noted as exceptions to the title in and by which she holds these lands:

1. On March 18, 1927, Josephine Rigling, who then owned and held a tract of 48.74 acres of land in said Lot No. 4, above referred to,

and which included the property here under investigation, executed a mortgage on said larger tract of land, her husband William Rigling joining with her in the instrument, to Don W. Fitton and E. G. Ruder, partners, doing business as Fitton & Ruder. This mortgage, which was executed to secure the payment of certain promissory notes, aggregating in amount the sum of \$6500.00, has not been canceled of record and the same stands as a lien on the property covered by said mortgage, including that here under investigation, to the extent of the amount remaining unpaid on the notes secured by the mortgage and interest thereon.

2. Under date of June 9, 1937, one Harry F. Walsh executed a mortgage to Don W. Fitton and E. M. Rudder on a 46.58-acre tract of land, including that here under investigation, which was then owned and held by him and which is now owned and held by said Frances Rigling. This mortgage, which was executed to secure the payment of a promissory note of even date therewith in the sum of \$6452.94, payable on or before one year after date, has not been canceled of record; and the same is a lien on the above described and other property covered by said mortgage to the extent of the amount of money remaining unpaid on the note secured by said mortgage, together with accrued interest thereon.

3. The above described tract of 46.58 acres was conveyed by Harry F. Walsh to Frances L. Rigling by deed under date of June 30, 1937. Prior to this time, however, to wit, under date of June 8, 1937, Frances L. Rigling and William Rigling, her husband, who apparently at this time owned and held some equity in this property, executed a mortgage on this tract of land to one Mary Pater to secure the payment of a note under date of February 4, 1938, with interest at four per cent per annum, payable on demand. This mortgage was not filed for record until February 16, 1938; and it is probable that as between said parties it was not intended that this mortgage should be effective until the date of the note which was after Frances Rigling obtained title to the property by deed of conveyance from said Harry F. Walsh. However this may be, this mortgage is not canceled of record and the same is a lien on the lands therein described, including that here under investigation, to the extent of the amount of money remaining unpaid on the note secured by said mortgage, and accrued interest thereon.

4. On February 4, 1938, Frances L. Rigling, her husband William R. Rigling joining with her in the instrument, executed a mortgage to one Katherine Rice on the 46.58-acre tract of land above referred to, which, as above noted, includes the lands here under investigation. This mortgage, which was executed for the purpose of securing the payment of a promissory note of even date therewith in the amount of \$5,000.00, has not been canceled of record and the same is a lien on the property here under investigation and other lands therein described to the extent

of the amount of money remaining unpaid upon the promissory note secured by the mortgage.

With respect to the first mortgage above referred to, to wit, that executed by Josephine Rigling and William Rigling, her husband, to Don W. Fitton and E. G. Ruder, partners, doing business as Fitton & Ruder, it may be observed that this mortgage was a lien on this property at the time of the death of Josephine Rigling, June 21, 1936, and was apparently before the Probate Court of Butler County for consideration in Case No. 15696 on the docket of said court, the same being an action by William Rigling, as executor of the estate of Josephine Rigling, to sell the tract of land covered by said mortgage to pay the debts of the estate of said Josephine Rigling. In this action, Don W. Fitton and E. M. Ruder and The First National Bank and Trust Company of Hamilton, Ohio, as administrators of the estate of E. G. Ruder, deceased, were made parties defendant to the action; and inasmuch as it appears that in and by this court proceeding the lands covered by this mortgage were sold to Harry F. Walsh, the purchaser thereof, free and clear of all mortgages and other liens upon the property, it is quite probable that all rights under this mortgage and the notes secured thereby were and are barred by the sale of this property in this court proceeding, and that an order should be made by said court directing the cancellation of the mortgage. However, this has not been done and, as before noted, the same stands of record as a lien on the property. Needless to say, this mortgage, as well as the other uncanceled mortgages above referred to, should be satisfied and canceled before the transaction for the purchase of this property is closed; or, in any view, the property here in question should be released from the operation and effect of these mortgages and of each of them.

In addition to the mortgage liens above referred to, it appears that the 46.58-acre tract of land above referred to, including that here under investigation, is subject to the lien of taxes which are set out in the abstract as follows:

“State, County, Township, School and Corporation Tax.....	\$62.92
Total taxes and assessments due Dec., 1937 .....	31.46
Total tax—1937 .....	62.92
10% Penalty on Dec., 1937, Delinquent general tax.....	3.15
Total taxes and assessments due June, 1938 .....	66.07”

Upon examination of the warranty deed tendered by Frances L. Rigling, I find that the same has been properly executed and acknowledged by said grantor and by William Rigling, her husband, who thereby releases his right and expectancy of dower in the lands and property here under investigation. I further find that the form of this deed is such that

the same is legally sufficient to convey to the President and Trustees of Miami University all of the right, title and interest which said Frances L. Rigling owns and holds in this property; and that upon their acceptance of this deed, the President and Trustees of Miami University, as a body corporate under the laws of the State of Ohio, will own and hold the fee simple title to the parcel of land therein described and will own and hold valid and effective easements on the other lands therein set out and described for the purposes therein stated.

Upon examination of contract encumbrance record No. 1663, which has been submitted to me as a part of the files relating to the purchase of this property, I find that the same has been properly executed and that there is shown thereby a sufficient balance in the appropriation account to the credit of Miami University to pay the purchase price of this property, which purchase price is the sum of \$2250.00. Inasmuch as the purchase price of this property is to be paid out of land rents standing to the credit of Miami University, and not otherwise, no approval of this purchase by the Controlling Board was or is necessary.

Pursuant to the usual practice of this office, I am forwarding this opinion, together with the abstract of title, warranty deed and contract encumbrance record, to the Auditor of State; and I am forwarding to you a copy of this opinion.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

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APPROVAL — CONTRACT PRESIDENT AND TRUSTEES,  
MIAMI UNIVERSITY, WITH ADMINISTRATOR OF ES-  
TATE OF ANNA BURTON, PARCEL LAND, VILLAGE OF  
OXFORD, BUTLER COUNTY, OHIO.

COLUMBUS, OHIO, August 26, 1938.

HON. W. P. ROUDEBUSH, *Secretary, Board of Trustees, Miami University,  
Oxford, Ohio.*

DEAR SIR: You have submitted for my examination and approval an abstract of title, administrator's deed and contract encumbrance record No. 1664, relating to a certain parcel of land in the village of Oxford, Butler County, Ohio, which was owned of record by one Anna Burton, late of said village of Oxford, Ohio, who died intestate on April 14, 1935,