

RESOLUTION NO.: 90-2010
INTRODUCED BY: Mayor and All Members of Council

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A SETTLEMENT AND RELEASE AGREEMENT WITH TJX COMPANIES, INC., ET AL.; AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to an order of the Cuyahoga County Court of Common Pleas in Case No. CV-07-623693, certain funds were ordered to be held in trust by TJX Companies, Inc. ("TJX") for the benefit of the City of Richmond Heights pending the execution of a mutually agreeable release or trust agreement between TJX, the Office of the Cuyahoga County Prosecuting Attorney, and the City of Richmond Heights which was the result of the garnishment of funds from a forfeiture of monies in a separate Cuyahoga County Court of Common Pleas case (No. CR-05-475449); and

WHEREAS, TJX, the City of Richmond Heights and the County Prosecutor's Office have proposed a "Settlement and Release Agreement" in order to forward to the City of Richmond Heights the amount of \$500,000 from the proceeds of the aforesaid forfeiture and the settlement of the related civil garnishment proceeding in the Common Pleas Court; and

WHEREAS, Council has reviewed the proposed "Settlement and Release Agreement" and concurs with its terms, including but not limited to the obligation to disgorge, return, or transfer to a third party any portion of the funds to be received by the City in the event there is a proper legal order to do so and to consent for the City to be a party to any court action related to the disgorgement, return or transfer of said funds, and this Council has weighed the risks of such obligations in light of the fact that those persons interested in the subject funds have exhausted their rights of appeal as to their claims to the funds.

NOW, THEREFORE, Be It Resolved by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1: The Mayor is authorized to execute a certain "Settlement and Release Agreement" between the City of Richmond Heights, TJX Companies, Inc., and the Office of the Prosecuting Attorney of Cuyahoga County in a form substantially in accordance with the Agreement attached hereto and incorporated herein as Exhibit A.

Section 2: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and 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: This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety, and general welfare of the inhabitants and the employees of the City of Richmond Heights, such emergency being the need for the City to receive the funds which are the subject of this Resolution for continuance of critical City services at the earliest possible time and to meet its obligations; wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

PASSED: _____

Daniel J. Ursu, Mayor

APPROVED: _____

ATTEST: _____

Betsy Traben
Clerk of Council

David H. Roche
President of Council

EXHIBIT A

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Agreement") is entered into by THE CITY OF RICHMOND HEIGHTS ("RH"), THE OFFICE OF THE PROSECUTING ATTORNEY, CUYAHOGA COUNTY, OHIO (the "Prosecutor"), and TJX COMPANIES, INC., including its subsidiaries doing business as T.J. MAXX AND MARSHALL'S (collectively "TJX").

WITNESSETH

WHEREAS, on or about October 24, 2005, the Richmond Heights Police Department executed search warrants on Joan M. Hall's residence and several safety deposit boxes. \$1,978,429.63 (the "Cash Assets") were recovered as a result of the search warrant and subsequent orders to liquidate investment accounts;

WHEREAS, following their arrests, Joan M. Hall, Lisa M. Hall, and Roger J. Neff were convicted and sentenced to prison for, *inter alia*, engaging in a pattern of corrupt activity in Cuyahoga County Court of Common Pleas Case No. CR-05-475449 (the "Criminal Action");

WHEREAS, on or about March 10, 2008, TJX obtained a money judgment in the principal amount of \$6,171,787.66 against Defendants Joan M. Hall, Lisa M. Hall, and Roger J. Neff, jointly and severally, for engaging in a pattern of corrupt activity in Cuyahoga County Court of Common Pleas Case No. CV-07-623693 (the "Civil Judgment");

WHEREAS, in connection with the Criminal Action, the Cuyahoga County Court of Common Pleas Clerk of Courts ("Clerk of Courts") came into possession of the Cash Assets;

WHEREAS, TJX instituted a garnishment proceeding in Cuyahoga County Court of Common Pleas Case No. CV-07-623693 to obtain the Cash Assets in partial satisfaction of the Civil Judgment (the "Garnishment Proceeding");

WHEREAS, on or about January 8, 2009, the Honorable Nancy R. McDonnell entered an order (the "Garnishment Order") to the Clerk of Courts to immediately release \$1,858,017.96 of the Cash Assets to TJX in the Garnishment Proceeding, with \$500,000.00 to be held in trust for the benefit of RH pending the execution of a mutually agreeable release or trust agreement;

WHEREAS, on or about January 9, 2009, TJX received \$1,858,017.96 (the "Garnished Funds") from the Clerk of Courts pursuant to the Garnishment Order;

WHEREAS, TJX, through its counsel, has been holding \$500,000.00 of the Garnished Funds for the benefit of RH as contemplated in the Garnishment Order; and

WHEREAS, RH, the Prosecutor, and TJX have alleged competing interests in the Cash Assets.

NOW, THEREFORE, in consideration of effectuating the disbursement of the Garnished Funds and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, RH, the Prosecutor, and TJX agree as follows:

1. RH and the Prosecutor waive, release, and agree to forego all rights and interests now and in the future to \$1,358,017.96 of the total amount of Garnished Funds in favor of TJX. RH and the Prosecutor hereby release any claim or cause of action against TJX relating to \$1,358,017.96 of the total amount of Garnished Funds.
2. TJX agrees to pay the sum of Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) made payable to "The City of Richmond Heights" as payment in full settlement of any claims RH and the Prosecutor has to the Garnished Funds.
3. RH agrees that in the event TJX is ordered or otherwise required to disgorge, return, or transfer to any person or entity any portion of the Garnished Funds, then the amount to be disgorged, returned, or transferred shall come first from the \$500,000.00 transferred to RH, up and until this amount is exhausted. The amount disgorged, returned, or transferred shall be paid by RH directly to the person or entity to whom disgorgement, return, or transfer is ordered, up to the amount of \$500,000.00. RH further agrees that in the event any action is brought against TJX for the disgorgement, return, or transfer of any portion of the Garnished Funds, that TJX may join RH to the action as a third party defendant for purposes of effectuating this disgorgement agreement.
4. Nothing in this Agreement shall preclude TJX from collecting on the remainder of its Civil Judgment from other assets of Joan M. Hall, Lisa M. Hall, and/or Roger J. Neff that may exist or be discovered.

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5. This Agreement may be signed in counterparts, which taken together, shall constitute a single binding and enforceable agreement.

IN WITNESS WHEREOF, THE CITY OF RICHMOND HEIGHTS, THE OFFICE OF THE PROSECUTING ATTORNEY, CUYAHOGA COUNTY, OHIO, and TJX COMPANIES, INC., T.J. MAXX, AND MARSHALL'S executed this Agreement on the date hereunder:

THE CITY OF RICHMOND HEIGHTS

By: _____

As: _____

Date: _____

THE OFFICE OF THE PROSECUTING ATTORNEY, CUYAHOGA COUNTY, OHIO

By: _____

As: _____

Date: _____

TJX COMPANIES, INC., T.J. MAXX, AND MARSHALL'S

By: _____

As: _____

Date: _____

SWORN TO BEFORE ME and subscribed in my presence this _____ day of _____, 2010.

Notary Public