

RESOLUTION NO.: 122 -2016
INTRODUCED BY: Mayor Roche

A RESOLUTION ACCEPTING THE DONATION TO THE CITY OF THREE PARCELS OF VACANT LAND ON CHARDON ROAD IN RICHMOND HEIGHTS.

WHEREAS, Willis Road Associates, LLC, the owner of three residentially-zoned, vacant land parcels on Chardon Road in the City of Richmond Heights (Permanent Parcel Nos. 661-02-164, 661-02-165, and 661-02-166), wishes to donate the parcels to the City of Richmond Heights;

WHEREAS, for charitable contribution purposes, the owner has proposed a sale for value to the City and a donation of the sale proceeds back to the City through an agreement that will be handled through an escrow agent, Chicago Title Insurance Co.;

WHEREAS, this Council determines that the acceptance of these parcels furthers the public health, safety and general welfare of the community;

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

Section 1: The City of Richmond Heights hereby accepts the donation of the three vacant land parcels on Chardon Road (Permanent Parcel Nos. 661-02-164, 661-02-165, and 661-02-166) (collectively referred hereafter as the "Property") from Willis Road Associates, LLC, through a limited warranty deed and further authorizes the Mayor to sign a "Land Sale and Donation Agreement" in a form reasonably similar to the agreement which is attached hereto and incorporated herein by reference as "Exhibit 1", and to execute all other necessary documents to consummate the transfer of title to the Property to the City and to pay any ancillary costs associated with the transfer, such as title insurance and recording costs.

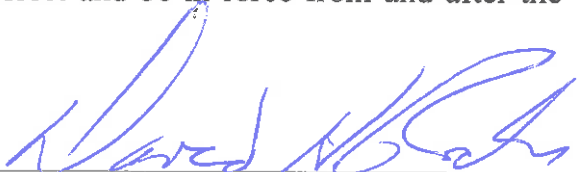
Section 2: The lands which are the subject of this Resolution are accepted by this Council for public purposes.

Section 3: 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 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 4: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: Dec. 13, 2016



David H. Roche, Mayor

APPROVED: Dec. 13, 2016

ATTEST: Betsy Trabren
Betsy Trabren
Clerk of Council



Eloise Cotton-Henry
President of Council

EXHIBIT 1

LAND SALE AND DONATION AGREEMENT

This LAND SALE AND DONATION AGREEMENT ("Agreement") is made this ____ day of _____, 2016 ("Effective Date"), by and between Willis Road Associates, L.L.C., an Ohio limited liability company ("Donor"), and the City of Richmond Heights, an Ohio municipal corporation ("Donee").

WITNESSETH:

WHEREAS, Donor owns certain lands located on Chardon Road in the City of Richmond Heights, Ohio, as designated by the Cuyahoga County Fiscal Officer as Permanent Parcel Nos. 661-02-164, 661-02-165, and 661-02-166, and more thoroughly described in the attached Exhibit A (collectively, the "Properties"); and

WHEREAS, Donor wishes to sell and Donee wishes to purchase the fee simple interest in the Properties; and

WHEREAS, Donor wishes to donate the net proceeds realized from the sale of the Properties to Donee, and Donee wishes to accept the net proceeds from the Properties.

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the parties hereto agree as follows:

1. Agreement to Transfer Title to Properties

Donor shall convey unto Donee on the terms and conditions contained in this Agreement the Properties with all improvements thereon, if any, and all rights appertaining thereto, if any.

2. Consideration and Payment

Donee shall pay to Donor the amount of Fifty-Seven Thousand Nine Hundred and 00/100 Dollars (\$57,900.00) as consideration for the Properties at Closing and Donor shall donate the amount of \$57,900.00 realized from the sale to Donee as a gift to Donee in order to advance, encourage, and promote the civic development and public health, safety and general welfare of the City of Richmond Heights.

3. Tax Consequences

The sales price of the Properties shall serve as the basis for a tax deduction for Donor. Donor understands and acknowledges that Donee makes no other representations as to the tax consequences of the transaction as contemplated by this Agreement.

4. Appraisal

Donor shall obtain an appraisal of the Properties at Donor's sole cost and expense if Donor deems an appraisal necessary.

5. Closing Date

Closing for the delivery of Donor's deeds, donation of the net proceeds from the Properties, and delivery of the other instruments and documents provided in this Agreement shall be held at a date mutually agreed upon by the parties but prior to January 1, 2017, unless otherwise agreed to in writing by Donee and Donor ("Closing Date").

6. Representations

Donor represents, to the best of its knowledge, that it has not received any notice from any party that the Properties, or the current use, occupation or condition thereof, violates: (i) any governmental statute, law ordinance, rule or regulation applicable (or allegedly applicable) to the Properties, including without limitation any land use or environmental laws, regulations or ordinances; (ii) any order of any governmental agency relating to the Properties and/or the use and/or legal occupancy thereof; (iii) any applicable deed restrictions or other covenant, easement or agreement pertaining to the Properties (including, without limitation, any of the Permitted Exceptions); or (iv) any government approvals pertaining to the Properties. Donor represents, to the best of its knowledge, that the Properties, and the current use and occupation thereof, if any, does not violate any statute, law, or ordinance.

7. Cooperation

At all times during the term and pendency of this Agreement, and thereafter, if applicable, Donor will cooperate fully with Donee (but with no obligation to incur cost or expense in connection therewith) in all reasonable manner to provide books, records and other documentation for review, including, without limitation, surveys, appraisals, engineer's reports, environmental reports, correspondence, service contracts, real estate tax receipts, and annual and monthly operating statements relating to the Properties, and in the possession of, or reasonably available to Donor. Donor will provide access to the Properties for all physical inspections required by Donee. Donee shall conduct itself and its examinations in a manner to minimize disruption to the Properties.

8. Condition of Properties

Donee agrees to accept the Properties on the Closing Date in an "AS-IS" condition.

9. Title

If Donee so chooses, Donee shall obtain at its expense from Chicago Title Insurance Company ("Title Company"), a commitment to issue an owner's title insurance policy and a title insurance policy for the Property. The Title Company shall also act as the escrow agent for this

transaction. Donor agrees to be responsible for the cost of any escrow fee charged by the Title Company.

10. Conveyance

Donor shall deliver to the Title Company by the Closing Date the following:

- (a) Properly executed limited warranty deed conveying marketable title to the Properties in fee simple, free and clear of all encumbrances and covenants, restrictions and easements except for: (i) zoning ordinances, (ii) easements, restrictions, covenants, and reservations of record, and (iii) real estate taxes and assessments which are a lien but not yet due and payable as of the Closing Date (collectively, the "Permitted Exceptions");
- (b) Any and all documents required by Donee to remove any and all mortgages and/or liens from the Permitted Exceptions for the Properties; and
- (c) Any and all Closing documents as may be required by the Title Company for Closing.

Donee shall deliver to the Title Company by the Closing Date the following:

- (a) The purchase price in the amount of \$57,900.00; and
- (b) Any and all Closing documents as may be required by the Title Company for Closing.

11. Due Diligence

Donee's Due Diligence. Following the Effective Date, Donee and Donee's employees, agents, and contractors shall have the right to enter upon and fully inspect the Properties, including, but not limited to, surveys, soil borings or other tests, appraisals, engineering reports and environmental studies, and to make such other legal and factual investigations relating to the Properties as may be required by Donee. From the Effective Date until the Closing Date, Donor shall give Donee access to the Properties during normal business hours and shall provide all information concerning the Properties which Donee may reasonably request.

Donor's Due Diligence Materials. Without limiting any other section in this Agreement, within five (5) days of the Effective Date, Donor shall provide, if in the possession of Donor, to Donee all documents, materials and items, or copies thereof, relating to the Properties, including, but not limited to, all of the following (collectively, "Donor's Due Diligence Materials"): environmental reports and/or studies, including any chain of title

for the Properties; engineering/inspection reports and/or studies; notices received from any governmental authority; surveys; and other documents relating to the operation of the Properties or which would have a material effect on Donee's decision to purchase the Properties.

12. Remedies for Default

Notwithstanding anything to the contrary herein contained, Donor and Donee hereby agree that in the event Donor defaults or fails to perform any of Donor's obligations under this Agreement, Donee shall elect, as its sole and exclusive remedy, either to (i) terminate this Agreement, in which event neither Donee nor Donor shall have any further obligation to the other under this Agreement, or (ii) demand specific performance of this Agreement.

Notwithstanding anything to the contrary herein contained, Donee and Donor hereby agree that in the event Donee defaults or fails to perform any of its obligations under this Agreement, Donor shall elect, as Donor's sole and exclusive remedy to terminate this Agreement.

13. Prorations and Charges

- (a) The Title Company shall prorate real estate taxes and assessments, both general and special, as of the close of business on the Closing Date using the rates and valuation shown on the latest available tax duplicate. Donor shall deposit a check or wire transfer to the Title Company for the prorated amount as mutually determined by the parties, and Title Company shall disburse the prorated amount to Donee at Closing.
- (b) Donee shall be charged the following amounts on the Closing Date: (i) the cost of the title commitment and any endorsements thereon, (ii) the cost of any title insurance or guaranty required by Donee, and (iii) recording costs.
- (c) On the Closing Date, Donor shall be responsible for: (i) its prorated share of taxes as set for the in (a) above, and (ii) the cost of any and all state or local real or personal property transfer taxes, fees or other charges relating to the transfer of the Properties.
- (d) Donor shall be charged with any escrow fee assessed against the parties by the Title Company.
- (e) Each party shall directly pay its own legal and consultant fees.
- (f) Donor and Donee each represent and warrant to the other that it has not dealt with any real estate broker in connection with the sale/donation of the Properties.

- (g) On the Closing Date, Title Company shall deliver to Donee the net proceeds due Donor.

14. Notices

Any notice required or permitted to be given hereunder by the parties shall be delivered in person or served by certified or registered mail, return receipt requested, or sent via overnight carrier to the parties at the addresses as set forth below, unless different addresses are given by one party to the other:

As to Donor: Willis Road Associates, L.L.C.
6267 Stumph Road, #1-A
Parma Heights, Ohio 44130
Attention: Martin J. Cohen, Managing Member

With a copy to: Irwin M. Frank, Esq.
5910 Landerbrook Drive, Suite 200
Mayfield Heights, Ohio 44124

As to Donee: City of Richmond Heights
26789 Highland Road
Richmond Heights, Ohio 44143
Attention: David H. Roche, Mayor

With a copy to: Walter | Haverfield LLP
1301 East 9th Street, Suite 3500
The Tower at Erieview
Cleveland, Ohio 44114
Attention: R. Todd Hunt, Director of Law

Such notice shall be deemed effective upon receipt.

15. Miscellaneous

- (a) This Agreement contains a complete expression of the agreement between the parties as to the subject matter of the Agreement and there are no promises, representations, inducements or understandings, oral or otherwise, except as are provided or referenced herein.
- (b) This Agreement may not be amended or modified except by a writing signed by the parties hereto.
- (c) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

- (d) If any provisions of this Agreement or the application thereof to any part or circumstances shall, to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent of the law.
- (e) The paragraph headings contained in this Agreement are for reference purposes only, and shall not affect in any way the meaning or interpretation of this Agreement.
- (f) This Agreement shall be interpreted according to the laws of the State of Ohio.
- (g) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document.

The parties hereto have signed this Agreement as of the dates set forth below.

DONOR:

WILLIS ROAD ASSOCIATES, LLC

By: _____
Martin J. Cohen, *Managing Member*

Date: _____

DONEE:

CITY OF RICHMOND HEIGHTS

By: _____
David H. Roche, *Mayor*

Date: _____

EXHIBIT A

Parcel No. 1

Situated in the City of Richmond Heights, County of Cuyahoga and State of Ohio: and known as being part of Original Euclid Township, Tract No. 13 and being known as Sublot No. 1 in the Frank Berzin Subdivision as recorded in Volume 212, Page 26 of Cuyahoga County Map Records, be the same more or less, but subject to all legal highways.

Parcel No. 2

Situated in the City of Richmond Heights, County of Cuyahoga and State of Ohio: and known as being part of Original Euclid Township, Tract No. 13 and being known as Sublot No. 2 in the Frank Berzin Subdivision as recorded in Volume 212, Page 26 of Cuyahoga County Map Records, be the same more or less, but subject to all legal highways.

Parcel No. 3:

Situated in the City of Richmond Heights, County of Cuyahoga and State of Ohio: and known as being Sublot No. 3 in the Frank Berzin Subdivision of Original Euclid Township Tract No. 13, and more particularly bounded and described as follows:

Being a parcel of land situated on the Southerly side of Chardon Road (60 feet wide) having a frontage of 75.00 feet and extending back between parallel lines a distance of 502.00 feet on the Easterly side of 521.71 feet on the Westerly side and having a split rear line of 58.09 feet and 51.07 feet respectively, according to the Survey made in April 1973, by Frank N. Riley, Registered Professional Engineer and Surveyor, be the same more or less, but subject to all legal highways, as shown now by the recorded plat in Volume 212 of Maps, Page 26 of Cuyahoga County Records.

Property Tax ID: 661-02-164, 661-02-165, 661-02-166
Property Address: 24776 Chardon Road
Richmond Heights, OH 44143