



ROSS TOWNSHIP RESOLUTION

RESOLUTION NUMBER 2015-041

RESOLUTION AUTHORIZING THE SALE OF THE PROPERTIES LOCATED AT 2575 CINCINNATI BROOKVILLE ROAD AND 4334 HAMILTON CLEVES ROAD, AUTHORIZING AND DIRECTING THE TOWNSHIP ADMINISTRATOR TO TAKE STEPS NECESSARY TO SATISFY THOSE CONTINGENCIES TO BE PERFORMED BY ROSS TOWNSHIP AND TO EXECUTE ALL NECESSARY CLOSING DOCUMENTS

WHEREAS, the Board of Trustees finds that the Township owned properties located at 2575 Cincinnati Brookville Road and 4334 Hamilton Cleves Road are parcels identified as no longer essential for public purpose; and

WHEREAS, applicable sections of the Ohio Revised Code authorize the Board of Trustees to sell property identified as no longer essential for public purpose; and

WHEREAS, the Board desires to accept an offer to sell and to enter into a Real Estate Purchase Agreement for the sale of properties located at 2575 Cincinnati Brookville Road And 4334 Hamilton Cleves Road.

BE IT RESOLVED, by the Trustees of Ross Township, Butler County, Ohio, pursuant to the applicable provisions of the Ohio Revised Code, as follows:

SECTION 1 -A:

That the Board accepts an offer to sell its real estate and enter into an agreement substantially in the form of the attached Real Estate Purchase Agreement with Dearborn Land Investment, LLC, 14600 Detroit Avenue, Suite 1500, Lakewood, Ohio 44107 for the properties located at 2575 Cincinnati Brookville Road And 4334 Hamilton Cleves Road in the amount of \$400,000.00, on the terms and conditions of the agreement attached hereto as Exhibit "A", subject to modifications approved by the Township Trustees and its Legal Council on terms not adverse to the Township.

SECTION 1-B:

That the Township Administrator be and hereby is authorized and directed to take all steps necessary to satisfy those contingencies to be performed by the Township pursuant to the terms and conditions of the Real Estate Purchase Agreement.

SECTION 1-C:

That the Township Administrator be and hereby is authorized and directed to execute any and all documentation necessary to consummate the purchase in accordance with the terms of the Real Estate Purchase Agreement as authorized herein.

This resolution shall take effect on July 2, 2015, upon the filing of this resolution with the Ross Township Fiscal Officer.

SECTION 3:

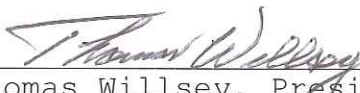
It is hereby determined that all formal actions of the Board of Trustees relating to the adoption of this Resolution were taken in an open meeting of the Board of Trustees and that all deliberations of such Board of Trustees were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

INTRODUCTION AND VOTE RECORD:

Trustee Willsey introduced the foregoing Resolution and moved its adoption, Trustee Wurzelbacher seconded the Motion. The roll being called upon the question of adoption of the Resolution by the Township Fiscal Officer, the vote resulted as follows:

Trustees: Willsey AYE Wurzelbacher AYE Yordy AYE

Adopted at the meeting of the Ross Township Board of Trustees this 2nd day of July, 2015.



Thomas Willsey, President



Raymond Wurzelbacher, Vice President



Ellen Yordy, Trustee

AUTHENTICATION

This is to certify that this resolution was duly adopted by the Board of Trustees, and filed with the Ross Township Fiscal Officer, this 2nd day of July, 2015.



Judy Hoffman
Ross Township Fiscal Officer

THE REMAINDER OF THIS PAGE INTENTIONALLY

DRAFT

REAL ESTATE PURCHASE AGREEMENT

This Agreement is made as of the Acceptance Date (defined in Paragraph 2) by and between ROSS TOWNSHIP BOARD OF TRUSTEES ("Seller"), and DEARBORN LAND INVESTMENT, L.L.C., an Ohio limited liability company, or its nominee ("Buyer").

1. Property. Seller owns and desires to sell to Buyer, and Buyer desires to purchase from Seller, the .825+ acres of real property located at 4334 Hamilton-Cleves Rd. and 2575 Cincinnati-Brookville Rd., Ross Township, Ohio, and identified by Tax Parcel Numbers K4630058000075 and K4630058000074, and shown by hatching on Exhibit "A" attached hereto and made a part hereof, together with all improvements now located on or in such real property, all rights, privileges, and easements appurtenant to such real property, and all of Seller's right, title and interest in and to any adjacent streets, alleys, and rights of way (collectively, the "Property"), on the terms and conditions contained in this Agreement.

2. Purchase Price. The purchase price for the Property shall be \$400,000. Earnest money of \$5,000 (the "First Deposit") will be deposited with Chicago Title Insurance Company, 2300 Computer Avenue, Suite G-5, Willow Grove, Pennsylvania 19090, Email: gundlingj@cti.com, Facsimile Number: (215) 830-1394, Attn: Jon R. Gundling, Vice President (the "Escrow Agent") within fourteen (14) business days after the Acceptance Date and applied toward the purchase price. For purposes of this Agreement, the "Acceptance Date" shall be that day upon which this Agreement has been both (a) fully executed by Buyer and Seller, and (b) delivered to Buyer.

3. Title Defects.

(a) Buyer will be responsible for ordering a commitment for an owner's policy of title insurance with respect to the Property (the "Commitment"). The Commitment shall be in a form satisfactory to Buyer and shall commit to insure good and marketable title in fee simple, free and clear of all liens, encumbrances, easements, conditions or restrictions, except those that are acceptable to Buyer ("Permitted Exception(s)").

(b) If an exception to title not acceptable to Buyer appears on the Commitment, Buyer shall give Seller notice of the exception within thirty (30) days after receipt of both the Commitment and a current survey of the Property. Seller shall have a reasonable period, not to exceed thirty (30) days after notice from Buyer (the "Cure Period"), to remove the exception. If Seller cannot do so within the Cure Period, then Buyer shall have the right (but not the obligation) to either (i) accept title to the Property subject to the exception, which shall then become a Permitted Exception, without reduction in the purchase price; or (ii) cancel and terminate this Agreement and receive a refund of all sums deposited pursuant to this Agreement. For purposes of clarification, in no event shall an exception that has been removed from the Commitment thereafter be deemed a Permitted Exception hereunder. Seller shall be required to remove at Closing (hereinafter defined) those exceptions that can be removed by paying an ascertainable sum of money such as mortgages, land contracts, liens, unpaid taxes, and special assessments.

4. Conveyance. Seller shall convey the Property to Buyer or its nominee by General Warranty Deed (the "Deed"), in recordable form, subject only to the Permitted Exceptions.

5. Closing. The closing of the purchase of the Property (the "Closing") shall be through escrow with Escrow Agent and shall occur within thirty (30) days after Buyer's delivery of a written closing notice to Seller and Escrow Agent. If the Closing Conditions (defined in Paragraph 7) have not been satisfied in Buyer's sole discretion within six (6) months after the Acceptance Date (the "First Review Period") and Buyer is proceeding diligently in its investigations with respect to the Property, Buyer may extend such Review Period for one (1) additional Review Period of six (6) months (the "Second Review Period") by delivering written notice of such election to Seller and Escrow Agent in accordance with Paragraph 15 hereof and simultaneously delivering to Escrow Agent an additional earnest money deposit of \$5,000.00. (The First Deposit and the Second Deposit are sometimes hereinafter referred to collectively as

the "Deposits".) The Deposits shall be applied to the purchase price. Buyer's making the Second Deposit shall render the First Deposit nonrefundable except as otherwise specifically set forth in this Agreement. If at the end of the Second Review Period, Buyer has pursued but not obtained all final, non-appealable, zoning, traffic, DOT Permits and any other land use designations, approvals and permits as are necessary or required by any governmental or quasi-governmental entities for Buyer's intended use of the Property, all as determined in Buyer's sole discretion (collectively, the "Approvals"), Buyer may extend the Review Period for up to three (3) additional Review Periods of one (1) month each by delivering written notice of each such election to Seller and Escrow Agent and simultaneously delivering to Escrow Agent an additional earnest money deposit of \$1,000 for each such extension, which sums shall be nonrefundable and applicable to the purchase price. If Buyer elects, prior to the expiration of the First Review Period, not to proceed under the Agreement, Buyer shall be entitled to terminate the Agreement, for any reason or for no reason, in which event the First Deposit shall be returned to Buyer.

The following are the conditions for Chicago Title Insurance Company's service as Escrow Agent:

(a) Escrow Agent is not a party to, and is not bound by, or charged with notice of any agreement out of which this escrow may arise, other than this Agreement.

(b) Escrow Agent is acting solely as a stakeholder and depository, and is not responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of the subject matter of the escrow, or for the identity or authority of any person executing or depositing it. Except for a breach of this Agreement by Escrow Agent, Buyer and Seller agree to jointly and severally indemnify, defend and hold harmless Escrow Agent from and against any loss, cost, damage, expense and attorney's fee in connection with or in any way arising out of this Agreement, other than expenses resulting from Escrow Agent's own gross negligence or willful misconduct. Escrow Agent shall not be liable hereunder unless notice of claim in writing is received by Escrow Agent within one year from the date of the Closing.

(c) Escrow Agent shall be protected in acting upon any written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other document Escrow Agent in good faith believes to be genuine and what it purports to be. Escrow Agent may, at its own expense, consult with legal counsel in the event of any dispute or questions as to the construction of any provisions hereof or its duties hereunder, and it shall be fully protected in acting in accordance with the opinion or instructions of such counsel.

(d) In the event of a dispute between Buyer and Seller, Escrow Agent may continue to hold the Deposits pursuant to the terms hereof, or may, at the joint and several cost of Buyer and Seller, deposit the same in a court of competent jurisdiction. Escrow Agent may dispose of the Deposits in accordance with a court order, and it shall be fully protected if it acts in accordance with any such court order.

(e) Deposits made pursuant to these instructions may be invested on behalf of any party or parties hereto; provided that any direction to Escrow Agent for such investment shall be in writing and contain the consent of all other parties to this escrow and a completed, signed W-9 Form accompanies it. Chicago Title Insurance Company is not to be held responsible for the loss of principal or interest on any investment made pursuant to the aforesaid instruction or in the redemption thereof.

(f) Except as to the deposits of funds for which Escrow Agent has received written instructions as set forth in Subparagraph (c) hereinabove, the funds may be commingled with other escrowed funds in a non-segregated escrow account of Chicago Title Insurance Company.

6. Survey and Investigations. After the Acceptance Date, Buyer and its designated agents may enter the Property, at reasonable times, for the purpose of making surveys, inspecting the physical condition of the Property, and making soil and environmental tests or borings, provided that such operations are solely at Buyer's expense and do not damage the Property. Seller agrees to cooperate with Buyer in its investigations and in its efforts to satisfy any contingencies with respect to its development of the Project, including the execution of related

documentation. Within ten (10) days after the Acceptance Date, Seller shall deliver to Buyer, without charge, copies of all information in its possession relating to the Property, including, without limitation, any leases encumbering the Property; surveys; utility location information; soil and engineering studies or reports; environmental or hazardous waste audits; notices of violation or noncompliance with any environmental or hazardous substance requirements; and any other reports, studies, site plans and development information pertaining to the Property.

7. Conditions. Notwithstanding anything to the contrary contained in this Agreement, if the following items (collectively, the "Closing Conditions") have not been satisfied in favor of and to Buyer's satisfaction, as determined by Buyer at any time between the expiration of the First Review Period and Closing, Buyer shall be entitled to terminate this Agreement, in which event all refundable Deposits shall be returned to Buyer and all nonrefundable Deposits shall be released to Seller. Said return and/or release shall be initiated by Buyer's written notice to Seller and Escrow Agent in accordance with Paragraph 15 and, within seven (7) days thereafter, Escrow Agent shall disburse the Deposits pursuant to the previous sentence and the parties hereto shall thereafter be released from any and all obligations under this Agreement. The Closing Conditions are: (a) a lease with a major tenant acceptable in all respects to Buyer for space within Buyer's intended development upon the Property (the "Project"); (b) zoning, site plan approval, and all other approvals required for the Project; (c) availability and adequacy of utilities, either public or private; (d) absence of wetlands, hazardous wastes, or other adverse environmental or physical conditions; (e) annexation of the Property, if necessary; (f) approval from applicable governmental authorities of full access to Hamilton-Cleves Road and Cincinnati-Brookville Road from the Project; (g) Seller's acquisition of adjacent property located at 4330 Hamilton-Cleve Road, which Buyer intends to purchase from Seller in addition to the Property.

In the event that Buyer notifies Seller at any time prior to Closing that the Property contains underground storage tanks ("UST's"), or is contaminated or threatened with contamination by hazardous materials and/or asbestos containing materials, and Buyer's notice is accompanied by a report from an engineering company with experience in evaluating such matters, then Seller agrees, at Seller's sole cost and expense, to perform such acts as may be necessary to remove the UST's, and/or the hazardous and/or asbestos containing materials, and cause the Property to be in compliance with all federal, state, local and regional environmental laws, rules and regulations. In the event that Seller fails to perform such acts, then Buyer, at Buyer's sole discretion, may (i) postpone Closing for such period of time as may be necessary for Seller to do so, and Seller shall do so; (ii) proceed to Closing and thereafter undertake such actions as may be necessary or desirable to fulfill Seller's obligations hereunder (Buyer shall then receive a credit against the purchase price for the estimated expenses to be incurred by Buyer in so fulfilling Seller's duties hereunder, such expenses not to exceed ten percent (10%) of the purchase price, and any amount remaining shall be returned to Seller.); or (iii) terminate this Agreement by notice to Seller and Escrow Agent, whereupon Buyer shall be entitled to the prompt return of all deposits made hereunder.

8. Covenants of Seller.

(a) Seller, at its sole expense, shall deliver possession of the Property to Buyer at Closing, free from any rights of possession of anyone whomsoever.

(b) From and after the Acceptance Date, Seller shall not: (i) suffer or permit any third party to adversely affect Seller's title to or interest in the Property, and will not suffer or permit to be created any exceptions to the title of the Property other than the Permitted Exceptions; or (ii) enter into any contracts or agreements pertaining to the Property.

9. Representations and Warranties of Seller. In order to induce Buyer to enter into this Agreement, Seller represents and warrants to Buyer that: (a) fee simple ownership of the Property is vested solely in Seller and no other person or entity has any right, title, or interest in or to the Property; (b) no proceedings of any type (including condemnation or similar proceedings), to Seller's knowledge, are being contemplated against the Property or any part thereof; (c) the Property is not subject to any leases (written or oral), unrecorded easements, options to purchase, rights of first purchase or refusal, or any other agreement or contract to use, lease, or purchase the Property; (d) to the best of Seller's knowledge, (i) no hazardous substances

have been stored or used on the Property, and (ii) there are presently no hazardous substances in, on, or under the Property; and (c) Seller agrees to fill the Property to bring the Property out of flood plain status prior to Closing, provided that Buyer agrees to reimburse Seller the actual and reasonable cost for such work. Seller agrees that Buyer shall have the right to monitor Seller's work and Seller will provide Buyer with copies of bids and contracts for the aforesaid work. All representations and warranties contained in this Paragraph 9 or elsewhere in this Agreement shall be deemed remade as of Closing and shall survive Closing.

10. Provisions with Respect to Closing. On or before the date of Closing: (a) Seller shall deliver to Escrow Agent (i) the Deed, (ii) all necessary executed state, county and municipal real estate transfer declarations (if any), (iii) a "Seller's Affidavit", as required by the title insurer, (iv) a "Non-Foreign Seller Affidavit", in compliance with Section 1445 of the Internal Revenue Code, and (v), in the event Seller is a business entity, Seller's formation documents, incumbency certificate, and evidence of authority to consummate this Agreement; and (b) Buyer shall deliver to Escrow Agent the purchase price, less the Deposits and any other deductions permitted by this Agreement. Provided that both parties have timely delivered to Escrow Agent the foregoing items, the time provided for Closing in Paragraph 5 shall automatically extend for such time as the Escrow Agent reasonably needs to complete the Closing process (e.g., filing of deeds or other documents, obtaining governmental approval of legal descriptions, etc.).

11. Adjustments at Closing. Adjustments to the purchase price between Seller and Buyer shall be made by Escrow Agent for the following items, prorated on a per diem basis as of 11:59 p.m. of the day preceding the date of Closing: (a) real estate taxes and other state or city taxes, charges and assessments, not yet due and payable, on the basis of the calendar year for which the same are levied or assessed (if the rate of any such taxes, charges or assessments shall not be fixed before the date of the Closing, the adjustment thereof at the Closing shall be calculated in accordance with local custom) and there shall be no later re-prorations; and (b) water and sewer rents, fees, and charges with respect to the Property. Seller shall pay in full, by deduction from the purchase price, any assessments, either general or special, whether material or immaterial, for improvements completed prior to Closing, the amount of any stamp tax, state, county, or local transfer tax, and similar fees imposed upon the conveyance of real property by applicable law, any rollback tax or other assessment due pursuant to any agricultural property tax recoupment program, and the cost of an owner's policy of title insurance in the amount of the purchase price with respect to the Property. All bills for utility services to the Property shall also be paid in full by Seller as of the Closing, and all such utility services shall be transferred by Seller into Buyer's name.

12. Waiver. The exercise (or failure to exercise) of any one of Buyer's rights or remedies under this Agreement shall not be deemed to be in lieu of, or a waiver of, any other right or remedy contained herein or provided by law, except to the extent inconsistent herewith.

13. Remedies.

(a) If Seller defaults in any of its obligations under this Agreement, then provided Buyer is not in default hereunder (and provided Buyer has notified Seller of the specific nature of the default and allowed Seller a ten (10) day period to cure such default (the "Remedy Period")), Buyer may either: (i) declare this Agreement terminated, in which event all the Deposits shall be returned to Buyer and thereafter all rights and obligations of the parties hereunder shall be terminated; or (ii) enforce specific performance of Seller's obligations under this Agreement.

(b) If Buyer defaults in any of its obligations under this Agreement, then provided Seller is not in default hereunder (and provided Seller has notified Buyer of the specific nature of the default and allowed Buyer the Remedy Period), Seller may declare this Agreement terminated, in which event the Deposits shall be forfeited to Seller as liquidated damages and as Seller's sole and exclusive remedy, and all other rights and obligations of the parties hereunder shall be terminated.

14. Commissions. Seller shall pay at Closing a real estate brokerage commission of four percent (4%) of the purchase price to Chris Diver of Equity Real Estate ("Broker") in connection with this transaction. Seller represents that it has not dealt with any brokers other than Broker and hereby agrees to indemnify and hold Buyer and CVS harmless with respect to any claim, including the cost of counsel fees, made by any other real estate broker in connection

herewith. If at Closing there remain leases or third party interests which affect the Property, Broker's commission shall be held in escrow until all such leases and/or interests have been terminated pursuant to Paragraph 19.

15. Notices. All notices, requests, waivers, and other communications under this Agreement shall be in writing and shall be deemed properly served upon delivery (a) by hand; (b) by sender to the applicable carrier if sent postage prepaid by United States Registered or Certified Mail, Return Receipt Requested; (c) by sender to a nationally recognized overnight express mail courier; or (d) by electronic transmission (facsimile with notification of receipt or email) to the following street or email addresses or facsimile numbers:

(a) If intended for Buyer: to Dearborn Land Investment, LLC, 14600 Detroit Avenue, Suite 1500, Lakewood, Ohio 44107, Attn: Susan K. Albers, Legal Department, Email: salbers@zarembagroup.com, Facsimile Number: (216) 227-1786, with a copy to Escrow Agent;

(b) If intended for Seller: to Robert Bass, Ross Township Administrator, 3133 Hamilton-Cleves Rd., Ross Township, OH 45013, Email: rbass@rosstwp.org, with a copy to Escrow Agent;

or to such other addresses or facsimile numbers as Seller or Buyer shall have given notice of to the other as herein provided.

16. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

17. Assignment. Seller hereby agrees that Buyer may, at any time after the date hereof, assign or otherwise transfer all of Buyer's right, title and interest in and to this Agreement.

18. Married Seller. If Seller is married, Seller's spouse shall also sign this Agreement and join in the conveyance.

IN WITNESS WHEREOF, the parties have executed this Agreement.

SELLER:

ROSS TOWNSHIP BOARD OF
TRUSTEES

Thomas Willsey, Trustee

Date: _____

Raymond Wurzelbacher, Trustee

Date: _____

Ellen Yordy, Trustee

Date: _____

BUYER:

DEARBORN LAND INVESTMENT, L.L.C.,
an Ohio limited liability company

By: _____

Al Sulin

Its: Vice President

Date: _____

ESCROW AGENT:

CHICAGO TITLE INSURANCE COMPANY

By: _____

Its: _____

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EXHIBIT A
SITE PLAN

