

RESOLUTION NO. 47-2015

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND DIRECTOR OF FINANCE TO ENTER INTO A REAL ESTATE PURCHASE AGREEMENT TO SELL APPROXIMATELY 4.0 ACRES OF REAL PROPERTY LOCATED AT SOUTH WHEATLEY ROAD ACROSS FROM KINROSS LAKES PARKWAY IN THE VILLAGE; AND DECLARING AN EMERGENCY

WHEREAS, the Village owns certain real property along South Wheatley Road, Richfield, Ohio, across from Kinross Lakes Parkway which is presently comprised of certain acres of vacant land (the "Property"); and

WHEREAS, the Village desires to subdivide the Property and sell a sub-parcel consisting of approximately four (4.0) acres of the Property (the "Sub-Parcel") to the Development Finance Authority of Summit County, an Ohio port authority (the "DFA"); and

WHEREAS, it is contemplated that contemporaneously with the sale of the Sub-Parcel to the DFA, the DFA will then sell the Sub-Parcel to Nexen Tire America, Inc. (the "Nexen"); and

WHEREAS, the sale to Nexen is necessary to facilitate the relocation and expansion of Nexen's current business operations in the Village; and

WHEREAS, this Council has determined that it would be in the best interest of promoting economic development in the Village of Richfield, to sell the Sub-Parcel to the DFA to facilitate the relocation and expansion of Nexen's business operation in the Village; and

WHEREAS, this Council desires to authorize the Mayor and Director of Finance to enter into a Real Estate Purchase Agreement with the DFA for the sale of the Sub-Parcel, as further set forth herein.

NOW THEREFORE, BE IT RESOLVED by the Council of the Village of Richfield, Summit County, State of Ohio:

SECTION 1. That the Mayor and the Director of Finance be, and they hereby are, authorized and directed to enter into a Real Estate Purchase Agreement with the Development Finance Authority of Summit County, Ohio, for the sale of approximately four (4.0) acres of real property located on South Wheatley Road across from Kinross Lakes Parkway, Richfield, Ohio, under substantially the same terms as the Agreement attached hereto as Exhibit "A" and incorporated fully herein by reference, subject to final approval of the Director of Law.

SECTION 2. That the Mayor and the Director of Finance are hereby authorized to take all necessary actions to complete the sale of the aforesaid Sub-Parcel of land in accordance with the Real Estate Purchase Agreement.

SECTION 3. That there be or has been appropriated from the Land Building Fund, Cost of Operations, the sum of _____ to cover the cost of the expenses, including any legal and engineering fees associated with the transaction.

SECTION 4. 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 5. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary in order to have property ownership transfer at the earliest possible time for purposes of allowing the relocation and expansion of Nexen's operations within the Village to move forward forthwith; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 7-7-15

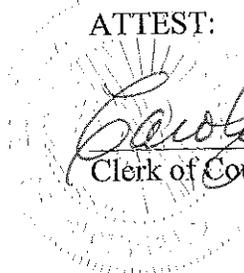
Rick Hudak
President of Council

Bohlio Basham
Mayor

Dated: 7/7/15

ATTEST:

Carolyn E. Sullivan
Clerk of Council



Draft 07/02/15

**REAL ESTATE PURCHASE AGREEMENT
FOR VACANT LAND**

**Nexen Tire America, Inc.
dba Nexen Tire America Technology Center**

**(Village to DFA)
(Village Purchase Agreement)**

THIS REAL ESTATE PURCHASE AGREEMENT FOR VACANT LAND (“Agreement”) is entered into on _____, 2015 (“Effective Date”), by and between the Village of Richfield, Ohio (“Seller”), an Ohio political subdivision with its principal place of business located at 4410 W. Streetsboro Road, P.O. Box 387, Richfield, Ohio 44286-9201 and the Development Finance Authority of Summit County (“Purchaser”), an Ohio port authority, with its principal place of business located at 47 North Main Street, Suite 407, Akron, Ohio 44308.

WHEREAS, the Village currently owns the Property (herein defined); and

WHEREAS, the Purchaser and Nexen Tire America, Inc. dba Nexen Tire America Technology Center, a California corporation registered to do business in Ohio, with an address at 4150 Highlander Parkway, Suite 400, Richfield, Ohio 44286 (“Nexen”) have contemporaneously entered into a separate real estate purchase agreement in which Nexen agrees to purchase the Property from the Purchaser pursuant to the terms and conditions of that agreement (“Nexen Purchase Agreement”) as authorized by the Development Finance Authority of Summit County Resolution No. 2015-____, which was passed on July ____, 2015; and

WHEREAS, in order to consummate the transactions contemplated in the Nexen Purchase Agreement, the Seller agrees to sell and the Purchaser agrees to purchase the Property pursuant to the terms and conditions provided in this Agreement and as authorized by Village Council Resolution No. ____-2015, which was passed on _____, 2015.

NOW THEREFORE, IN CONSIDERATION of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

**DESCRIPTION OF PROPERTY;
AGREEMENT OF PURCHASE AND SALE**

1.1 Purchase and Sale; Property. In exchange for the consideration described in Section 2.1 herein and pursuant to the terms and conditions of this Agreement, the Seller agrees to convey to Purchaser the following:

Approximately 174,240 sq. ft./4.0 acres of vacant land, Permanent Parcel No. _____, otherwise known as _____ Wheatley Road, Richfield, Ohio 44286, as further described in the legal description which is attached hereto and incorporated herein by reference as Exhibit A ("Property").

PURCHASE PRICE

2.1 Purchase Price. The total purchase price for the Property, subject to prorations and adjustments as provided in this Agreement shall be Two Hundred Thousand Dollars (\$200,000.00) ("Purchase Price"), payable in cash or by other immediately available funds on the Closing Date.

2.2 Determination of Purchase Price. The Village determined the fair market appraised value, as of January 1, 2015, for Property is Four Hundred Thousand Dollars (\$400,000.00) without improvements and the same shall be reflected on the real property records of the Summit County Fiscal Officer.

TITLE AND SURVEY; INSPECTION

3.1 Title. Seller shall, at Closing, convey to Purchaser title to the Property by limited warranty deed.

3.2 Title Commitment. Within ten (10) days after the Effective Date, Seller shall obtain a commitment ("Title Commitment") for an Owner's Policy of Title Insurance for the Property in the amount of the fair market appraised value as of January 1, 2015 which is Four Hundred Thousand Dollars (\$400,000) ("Title Policy") issued by NorthStar Title Services, LLC, 1406 West 6th Street, Suite 400, Cleveland, Ohio 44113 ("Title Company") setting forth the condition of title to the Property. Purchaser shall have fifteen (15) days after receipt of the Title Commitment ("Title Review Period") to review the condition of title to the Property. If during the Title Review Period the Purchaser or Nexen determines that there is any matter or condition in the Title Commitment which, in Purchaser or Nexen's reasonable opinion, renders the Property unfit for Nexen's intended use, Purchaser or Nexen shall provide written notice to Seller on or before the expiration of the Title Review Period of any such matter or condition ("Purchaser's Title Objection Notice"). Seller shall have no obligation to correct or cure such objections, but may at its sole option, elect to cure or correct such objections. Within ten (10) days after receipt of Purchaser's Title Objection Notice, Seller shall advise Purchaser in writing whether or not Seller will correct or cure such matter or condition ("Seller's Response"). If Seller elects to correct or cure such matter or condition, Seller shall commence such cure with due diligence and shall have the right to extend the Closing for a reasonable period of time to complete such cure. If Seller elects not to correct or cure such matter or condition, Purchaser shall have the right, upon written notice to Seller within three (3) days after receipt of Seller's Response, to either (a) agree to waive any objection to such matter or condition and proceed to Closing without any cure of such matter or condition and without any reduction in the Purchase Price; or (b) elect to terminate this Agreement in which event the parties shall have no further obligations hereunder, except for Nexen's obligations of indemnification under the Nexen Purchase Agreement. Purchaser's failure to deliver Purchaser's Title Objection Notice on or before the expiration of the Title Review Period shall constitute a waiver by Purchaser of any

right to object to any matter or condition relating to the Title Commitment or the condition of title to the Property and any right to terminate this Agreement based upon the same, with all such matters or conditions becoming a Permitted Encumbrance.

3.3 Due Diligence. For a period commencing upon the execution of this Agreement and continuing until August 15, 2015 ("Inspection Period"), Nexen and Purchaser, together with its agents, employees, and authorized representatives ("Purchaser's Agents"), shall have the right, at Nexen's sole cost and expense, to enter upon the Property to conduct such inspections and other tests as Nexen or Purchaser may desire and to determine the condition of the Property, the suitability for Nexen's intended use, whether the Property is in compliance with all applicable federal, state, or local laws, rules, ordinances, regulations, and codes, and any other matters which Purchaser or Nexen desires to inspect ("Inspections").

(a) Seller shall provide Nexen and the Purchaser's Agents with reasonable access to the Property upon reasonable advance written notice from Purchaser or Nexen to Seller. Seller shall have the right to have its representative present at the Property during any Inspections conducted by Purchaser or Nexen. In no event shall Nexen or Purchaser's Agents make any intrusive physical testing of the Property without the prior written consent of Seller which consent shall not be unreasonably withheld. Purchaser shall have Nexen promptly restore the Property to the condition existing prior to the Inspections and repair any damage to the Property resulting from any of the Inspections conducted by or on behalf of Purchaser or Nexen.

(b) If during the Inspection Period the Purchaser or Nexen determines from the Inspections that there is any matter or condition which, in Purchaser or Nexen's reasonable opinion, renders the Property unfit for Nexen's intended use, Purchaser shall provide written notice to Seller on or before the expiration of the Inspection Period of any such matter or condition, together with a copy of any applicable report or survey describing such matter ("Purchaser's Objection Notice"). Seller shall have no obligation to correct or cure such objections but may, at its sole option, elect to cure or correct such objections. Within ten (10) days after receipt of Purchaser's Objection Notice, Seller shall advise Purchaser and Nexen in writing whether or not Seller will correct or cure such matter or condition ("Seller's Response"). If Seller elects to correct or cure such matter or condition, Seller shall commence such cure with due diligence and shall have the right to extend the Closing for a reasonable period of time to complete such cure. If Seller elects not to correct or cure such matter or condition, Purchaser shall have the right, upon written notice to Seller within three (3) days after receipt of Seller's Response, to either (a) agree to waive any objection to such matter or condition and proceed to Closing without any cure of such matter or condition and without any reduction in the Purchase Price; or (b) elect to terminate this Agreement in which event Purchaser shall deliver to Seller all originals and copies of any tests, surveys, or written reports generated as a result of the Inspections, and the parties shall have no further obligations hereunder, except for Nexen's obligations of indemnification under the Nexen Purchase Agreement. Purchaser's failure to deliver Purchaser's Objection Notice on or before the expiration of the Inspection Period shall constitute a waiver by Purchaser of any right to object to any matter or condition of the Property and any right to terminate this Agreement based upon the same, with any such matter or condition becoming a Permitted Encumbrance.

(c) Purchaser acknowledges and agrees that any tests, surveys, reports, or other documents relating to the Inspections or otherwise delivered by Seller to Purchaser or Purchaser's Agents ("Reports") are confidential and Purchaser or Purchaser's Agents shall not disclose or reveal the Reports to any other person, entity, governmental authority or other association without the prior written consent of Seller, except as may be required by law or in a court of competent jurisdiction. In the event this Agreement is terminated for any reason, Purchaser or Purchaser's Agents shall promptly return to Seller all originals and copies of the Reports. Purchaser acknowledges receipt of the Reports provided by the Seller including without limitation that certain Summary Appraisal Report for the Property dated ____, ____, 201__.

3.4 PURCHASER ACKNOWLEDGES AND AGREES THAT THE SALE OF THE PROPERTY PURSUANT TO THIS AGREEMENT IS AND WILL BE MADE ON AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE BY SELLER, INCLUDING WITHOUT LIMITATION THE CONDITION OR VALUE OF THE PROPERTY OR THE SUITABILITY OF THE PROPERTY FOR PURCHASER'S INTENDED USE. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT SELLER HAS AFFORDED PURCHASER THE OPPORTUNITY FOR FULL AND COMPLETE INVESTIGATIONS, EXAMINATIONS AND INSPECTIONS OF THE PROPERTY AND THAT PURCHASER WILL ACQUIRE THE PROPERTY SOLELY ON THE BASIS OF PURCHASER'S OWN REVIEW AND INSPECTION OF THE PROPERTY. BY EXECUTING THIS AGREEMENT, PURCHASER EXPRESSLY ACKNOWLEDGES AND AGREES TO THE FOREGOING PROVISIONS OF THIS PARAGRAPH, WHICH ARE MATERIAL, NEGOTIATED TERMS OF THIS AGREEMENT WITHOUT WHICH SELLER WOULD NOT ENTER INTO THIS AGREEMENT WITH PURCHASER.

CONDITIONS TO CLOSING

4.1 Conditions. The obligations of the parties to close the transaction contemplated by this Agreement are subject to the following conditions:

(a) The representations and warranties of the parties contained in Section 5 of this Agreement shall be true on the date of Closing as though those representations and warranties were made on that date.

(b) Neither Purchaser nor Seller shall have breached any affirmative covenant contained in this Agreement to be performed by them on or before to the date of Closing.

(c) Purchaser shall have approved all of the matters set forth in Section 3 in respect to which Purchaser has, under provisions of this Agreement, a right of inspection and/or approval; or, in the event Purchaser has delivered written objections to Seller in respect to any of those matters, Seller has elected to and has remedied Purchaser's objections prior to Closing in the manner and within the time period provided in this Agreement or if Seller has not remedied Purchaser's objections prior to Closing, then Purchaser has waived said objections.

(d) Seller shall have timely delivered to Purchaser in satisfactory form the documents and all other items referred to in Section 6 below.

(e) The Title Company shall at Closing have delivered or irrevocably committed itself in writing to deliver the Title Policy.

(f) The Purchaser shall have delivered the Purchase Price to the Title Company for distribution to Seller, and/or shall have executed and delivered such documents and agreements as may be necessary or required in the reasonable opinion of Seller's counsel.

(g) Purchaser shall have consummated the transaction with Nexen under the Nexen Purchase Agreement.

REPRESENTATIONS, WARRANTIES, INDEMNITY

5.1 Seller's Representations. Seller makes the following representations to Purchaser as of the date of this Agreement and the date of the Closing:

(a) Seller is a village and political subdivision duly organized and validly existing under the laws of the State of Ohio and has all necessary power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

(b) Seller has duly authorized the execution, delivery and performance of this Agreement.

(c) There are no suits, actions, or proceedings pending or, to the best of Seller's knowledge, contemplated against or concerning the Property.

(d) Seller's execution, delivery and performance of this Agreement will not constitute a default under any agreement, lease, indenture, order or other instrument or document by which Seller or the Property may be bound.

5.2 Purchaser's Representations. Purchaser makes the following representations to Seller as of the date of this Agreement and the date of the Closing:

(a) Purchaser is a port authority duly organized and validly existing under Chapter 4582 of the Ohio Revised Code, and has all necessary power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

(b) Purchaser has duly authorized the execution, delivery and performance of this Agreement.

(c) There are no suits, actions, or proceedings pending or, to the best of Purchaser's knowledge, contemplated against or concerning the Purchaser which would have a material and adverse impact upon Purchaser's ability to enter into and perform this Agreement.

(d) Purchaser's execution, delivery and performance of this Agreement will not constitute a default under any agreement, lease, indenture, order or other instrument or document by which Purchaser may be bound.

5.3 Nexen's Indemnification. Under the Nexen Purchase Agreement, Nexen shall indemnify, defend and hold Seller and Purchaser harmless from and against any and all claims, demands and causes of action. Nexen's Indemnification obligations more fully set forth in the Nexen Purchase Agreement, at Section 5.3, are incorporated herein by reference as if fully set forth herein.

5.4 Survival. Each of the covenants, warranties, representations and agreements contained in this Agreement and Nexen's obligations of indemnification under the Nexen Purchase Agreement shall be made as of the date hereof and shall be deemed renewed on the Closing Date and shall survive the Closing Date, the payment of the Purchase Price and the filing of the Deed for record and shall not be merged therein.

CLOSING AND TRANSFER OF TITLE

6.1 Closing. Unless extended by written agreement of the parties, the closing ("Closing") for the delivery of Seller's deed, payment of the Purchase Price, plus or minus Closing adjustments, and delivery of the other instruments provided for in this Agreement, shall be on September 30, 2015, provided that all the Conditions to Closing under Section 4 have been satisfied, or within seven (7) days after the Conditions to Closing have been satisfied, whichever is later, at a time and place mutually agreeable to Purchaser and Seller. The Title Company shall serve as escrow agent for the Closing of the transaction.

6.2 Seller's Documents; Other Deliveries. At Closing, Seller shall execute and/or deliver to the Title Company the following:

- (a) A limited warranty deed to the Property;
- (b) Such other documents or instruments as may be reasonably requested by Purchaser, required by other provisions of this Agreement or reasonably necessary to effectuate the Closing. All of the documents and instruments to be delivered by Seller shall be in the form and substance reasonably satisfactory to counsel for Purchaser.

6.3 Purchaser's Documents; Other Deliveries. At Closing, Purchaser shall deliver to the Title Company for distribution to Seller the Purchase Price, together with such other documents or instruments as may be reasonably requested by Seller, required by other provisions of this Agreement or reasonably necessary to effectuate Closing. All of the documents and instruments to be delivered by Purchaser shall be in form and substance reasonably satisfactory to counsel for Seller.

POSSESSION

7.1 Seller shall deliver exclusive possession of the Property to Nexen at Closing.

PRORATIONS AND EXPENSES

8.1 Real Estate Taxes and Assessments. Real property taxes, general and special assessments, and assessments for sewer, water, and other utilities, shall be prorated between the Seller and Nexen as of the date of Closing, using the rate and valuation shown on the most recent tax information available.

8.2 Closing Costs. Nexen shall pay for the following costs and expenses: (a) costs and fees for the Title Commitment and the Title Policy; (b) the real property transfer taxes and conveyance fees for the Property, if any; (c) all recording fees for the deeds; (d) all of the escrow fee; (e) the costs and fees for the Inspections; (f) all costs and expenses relating to Nexen's financing; (g) ½ of Purchaser's transaction fee in the amount of Five Thousand Dollars and No Cents (\$5,000.00); and (h) all of Nexen's legal fees plus Purchaser's legal fees in connection with this Agreement not to exceed Two Thousand Five Hundred Dollars and No Cents (\$2,500.00); and (i) the costs and fees related to any surveys, legal descriptions, lot split, easement and any other costs necessary to effectuate this Agreement. Additionally, Nexen shall pay for the costs delineated in (a) through (i) above with respect to the Closing of the transactions contemplated under the Nexen Purchase Agreement between the Nexen and the Purchaser. The Village shall pay for the following costs and expenses: (a) ½ of Purchaser's transaction fee in the amount of Five Thousand Dollars and No Cents (\$5,000.00); and (b) Purchaser's legal fees in connection with this Agreement not to exceed Two Thousand Five Hundred Dollars and No Cents (\$2,500.00). At Closing, the parties shall execute and deliver to each other an agreed-upon closing statement which reflects the allocation of costs, adjustments due to credits or prorations, and disbursement of the Purchase Price, all as set forth more fully in this Agreement.

8.3 Utility Expenses. The Property is vacant; therefore, there are no utility expenses. Nexen shall be responsible for making all arrangements to obtain utility services.

NOTICES

9.1 All notices permitted or required under this Agreement shall be in writing and shall be deemed properly delivered immediately upon hand delivery or three business days after being deposited in the United States mail sent certified with return receipt requested, postage prepaid, addressed to the parties at their respective addresses set forth below, or by email immediately upon delivery, or as they may otherwise specify by written notice delivered in accordance with this Section:

As to Purchaser: Christopher J. Burnham, President
Development Finance Authority of
Summit County
47 North Main Street, Suite 407
Akron, Ohio 44308
[Email]

With copies to: Roetzel & Andress
222 South Main Street

Akron, Ohio 44308
Attn: Justin Markey, Esq.
[Email]

As to Seller: Bobbie Beshara, Mayor
Village of Richfield
4410 W. Streetsboro Road
P.O. Box 387
Richfield, Ohio 44286
bbeshara@richfieldvillageohio.org

As to NEXEN: George Kamvouris, _____
Nexen Tire America, Inc.
4150 Highlander Parkway, Suite 400
Richfield, Ohio 44286
[Email]

MISCELLANEOUS

10.1 Damage or Destruction. The Property is vacant land, therefore, there are no buildings or other improvements on the Property that could be substantially damaged or destroyed prior to the Closing. However, if the vacant land suffers damage prior to Closing, Purchaser shall have the option within ten (10) days of notice by the Seller: (a) to proceed with Closing without reduction of the Purchase Price and receive the proceeds of any insurance payable in connection with the damage; or (b) to immediately terminate this Agreement by providing Seller written notice. If Purchaser terminates this Agreement pursuant to clause (b), both parties shall be released from all further obligations under this Agreement.

10.2 Entire Agreement. This Agreement constitutes the entire contract between the parties and supersedes all prior understandings, oral agreements, written agreements, promises, conditions, representations or terms of any kind. There are no conditions or inducements relied upon by either party prior to the execution of this Agreement. Any subsequent conditions, representations, warranties or agreements shall not be valid and binding upon the parties unless in writing and signed by both parties.

10.3 Successor and Assigns; Assignment. This Agreement shall be binding and inure to the benefit of the heirs, successors, agents, representatives and assigns of the parties hereto, provided however that, neither party may assign its rights hereunder without the prior written consent of the other which consent shall not be unreasonably withheld.

10.4 Counterparts. This Agreement may be executed by all parties in counterparts, each of which shall be deemed an original, but all of such counterparts taken together shall constitute one and the same Agreement.

10.5 Governing Law. This Agreement shall be construed, and the rights and obligations of the parties shall be determined, in accordance with the laws of the State of Ohio.

10.6 Waiver. The waiver of or failure to enforce any provision of this Agreement shall not be a waiver of any further breach of such provision or of any other provision hereof.

10.7 Modifications. No change or addition to this Agreement or any part hereof shall be valid unless in writing and signed by each of the parties.

10.8 Headings. The headings in this Agreement are for convenience only and shall not be used to interpret this Agreement.

10.9 Time; Calculation of Time Periods. Time is of the essence in the performance of this Agreement. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m., Akron, Ohio time.

IN WITNESS WHEREOF, the parties below have executed this Agreement effective as of the date hereinabove.

SELLER:

PURCHASER:

VILLAGE OF RICHFIELD

DEVELOPMENT FINANCE AUTHORITY
OF SUMMIT COUNTY

By: _____
Bobbie Beshara Date
Mayor

By: _____
Christopher J. Burnham Date
President

And: _____
Sandy Turk, Finance Director Date

Approved as to form:

By: _____
William R. Hanna, Law Director

7/2/2015 7:20 PM

Resolution 47-2015
EXHIBIT A

EXHIBIT A

Legal Description for Property

7/2/2015 7:20 PM

Resolution 47-2015
EXHIBIT A

EXHIBIT B

Plat Survey for Property