

RESOLUTION NO. 32-2015

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND DIRECTOR OF FINANCE TO ENTER INTO AN AGREEMENT TO PURCHASE APPROXIMATELY .0233 ACRES OF REAL PROPERTY LOCATED AT 3871 BROADVIEW ROAD IN THE VILLAGE; AND DECLARING AN EMERGENCY

WHEREAS, Dolores J. Heinle, Trustee owns a parcel of real property commonly known as 3871 Broadview Road, Richfield, Ohio, which is presently comprised of certain acres of land upon which Comprehensive Health Services does business (“Heinle Property”); and

WHEREAS, the easterly portion of the Heinle Property abuts a parcel owned by the Village of Richfield upon which access to the Richfield Branch Library is located (“Village Property”); and

WHEREAS, Ms. Heinle desires to subdivide the Heinle Property and sell to the Village a sub-parcel consisting of approximately .0233 acres adjacent to the Village Property (“Subject Sub-Parcel”); and

WHEREAS, this Council has determined that it would be in the best interest of the health, safety and welfare of the citizens of the Village of Richfield to purchase the Subject Sub-Parcel for public use, including for purposes of full and complete access to the Village Property and the Richfield Branch Library; and

WHEREAS, this Council desires to authorize the Mayor and Director of Finance to enter into a purchase agreement with Ms. Heinle for the purchase of the Subject 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 an agreement with Dolores J. Heinle, Trustee of the Dolores J. Heinle Trust, for the purchase of approximately .0233 acres of real property located at 3871 Broadview Road, Richfield, Ohio, under substantially the same terms as the Agreement of Purchase and Sale 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 purchase of the aforesaid Subject Sub-Parcel of land in accordance with the Agreement of Purchase and Sale.

SECTION 3. That there be appropriated from the Land Building Fund, Cost of Operations, \$6,500.00 to cover the cost of the property purchase and other 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 full and complete access to the Village Property and the Richfield Branch Library; 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: 5-5-15

*Rick Haddock*  
President of Council

*Balduin Bestman*  
Mayor

Dated: 5-5-15

ATTEST:

*Carolyn E. Sullivan*  
Clerk of Council

## AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE ("Agreement"), dated this \_\_\_\_ day of \_\_\_\_\_, 2015 by and between Dolores J. Heinle, Trustee of the Dolores J. Heinle Trust, an Ohio Trust Agreement (the "Seller") and the Village of Richfield, Ohio, an Ohio municipal corporation ("Buyer").

### WITNESSETH:

In consideration of the mutual covenants and promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Agreement to Buy and Sell. Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, all of Seller's right, title, estate and interest in and to that real property located in the Village of Richfield, County of Summit, State of Ohio, and more particularly described on Exhibit A, annexed hereto and incorporated herein by reference, together with any buildings, improvements, appurtenant rights, privileges and easements, including all right, title and interest of Seller in and to any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining said real property, to the centerline thereof (the "Property").

2. Consideration. The purchase price for the Property (the "Purchase Price") shall be Five Thousand Dollars (\$5000.00), payable in cash at Closing (as hereinafter defined).

3. Evidence of Title.

- (a) Seller shall convey marketable title to the Property to Buyer by general warranty deed (the "Deed"), with release of dower, if any, free and clear of all liens and encumbrances except the "Permitted Exceptions," defined as follows: (1) real estate taxes and assessments which are not yet due and payable; (2) zoning ordinances, if any, which do not materially and adversely affect Buyer's intended use of the Property; (3) restrictions, conditions, reservations, and easements of record, if any; and (4) any liens or encumbrances created by the acts of Buyer or waived by Buyer (collectively, the "Permitted Exceptions").
- (b) Buyer may obtain, at its own cost, an ALTA Owner's Policy of Title Insurance (the "Title Policy") issued by Chicago Title Insurance Company, 1111 Superior Avenue East, Suite 1100, Cleveland, Ohio 44114 ("Title Company"), insuring title to the Property to be good in Buyer as of the filing of the deed for record, subject only to the Permitted Exceptions. Buyer may request such endorsements to the Title Policy as Buyer desires if they are available in the State of Ohio, but all such endorsements shall be at Buyer's sole cost.
- (c) Buyer shall obtain, at its own cost, a copy of the commitment for such Title Policy (the "Title Commitment") as soon as such is available. Title Company shall deliver to Buyer copies of all documents referred to as exceptions to title together with the Title Commitment. Any restriction, condition, reservation or easement of record

shown in the Title Commitment shall be deemed approved by Buyer unless objected to by Buyer in writing within fifteen (15) business days after Buyer's receipt of the Title Commitment of the Survey, if any, whichever is later.

- (d) If the Title Commitment shall disclose any defect in Seller's title or any lien, or other encumbrance other than the Permitted Exceptions to which Buyer objects in writing as described in Section 6(c). (the "Title Objections"), then Seller shall have ten (10) days after receipt of the Title Objections to provide Buyer with evidence to Buyer's satisfaction that the Title Objections have been removed or will be removed at Closing, failing which, Buyer may elect to (1) accept title subject to the Title Objections without reduction in the Purchase Price and such defect shall become a Permitted Exception, or (2) terminate this Agreement by giving written notice to Seller and the Escrow Agent within ten (10) days after such 10-day period has expired. If Buyer shall fail to timely elect to terminate, then Buyer shall be deemed to have waived the Title Objections. The provisions of this subparagraph d shall survive the Closing.
- (e) Promptly after the date of this Agreement, Buyer, at Buyer's cost, may cause a registered surveyor to make a survey for the Property (the "Survey"). If the survey shall disclose any matter which materially and adversely affects the use or value of the Property, then Buyer may so notify Seller and the Escrow Agent in writing, within fifteen (15) business days of receipt of the Survey or Title Commitment, whichever is later, in which event such matter shall be deemed to be a Title Objection.

4. Deed and Escrow Agent. Seller shall convey to Buyer marketable title to the Property in fee simple by transferable and recordable general warranty deed, free and clear of all liens and encumbrances except those set forth in Section 3, the Permitted Exceptions.

The Escrow Agent for this transaction shall be Chicago Title Insurance Company. Buyer shall deliver to the Escrow Agent a copy of this Agreement which shall serve as its escrow instructions for this transaction. The Escrow Agent may accept this escrow subject to its standard conditions of acceptance of escrow, to the extent they are not inconsistent with this Agreement.

5. Taxes, Assessments and Other Closing Adjustments.

- (a) Real estate taxes and assessments (general and special) shall be prorated as of the Closing Date based upon the latest available tax duplicate. The Escrow Agent is instructed to contact the local governmental taxing authority, verify the correct tax value of the Property as of the date of title transfer and pay the current taxes due to the date of title transfer. Buyer acknowledges that the latest available tax duplicate may not accurately reflect the amount of taxes and assessments that will be owed. Buyer agrees to pay directly outside of escrow for any increase in valuation and the cost of all past or levied but not yet certified taxes and assessments, if any, prorated to the date of title transfer.
- (b) Each party shall pay its own attorney's fees.

(c) The Escrow Agent shall charge to Seller (1) the cost of removing or discharging any defect lien or encumbrance required for conveyance of the Property as required by this Agreement; and (2) the amount due to Buyer for any prorations or credits under this Agreement.

(d) The Escrow Agent shall charge to Buyer (1) the escrow fee; (2) the premium for the Title Policy, if any; (3) the cost for the title search and Title Commitment; (4) cost of the Survey, if any; (5) the conveyance fee and transfer taxes, if any; (6) the cost of recording the Deed; and (7) the amount due to Seller for any prorations or credits under this Agreement.

6. Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows:

(a) Seller is the Trustee of the Dolores J. Heinle Trust and is duly authorized and qualified to do all things required of it under this Agreement. Seller has full capacity and authority to enter into this Agreement and to consummate the transactions contemplated hereby. This Agreement and all agreements, instruments and documents necessary or desirable to consummate the transactions contemplated hereby to be executed by Seller are, and on the Closing Date will be duly authorized, executed and delivered by, and binding upon, Seller.

(b) Seller has obtained all consents and permissions relating to the transactions contemplated hereby and required under any covenant, agreement, encumbrance, law or regulation to transfer title as set forth in this Agreement and to perform its obligations hereunder.

(c) Neither the execution of this agreement nor the consummation of the transactions contemplated hereby will constitute a default under any term or provision of any agreement to which Seller is a party.

(d) The Representations and Warranties of Seller set forth in this Paragraph 6 shall be deemed renewed at the time of Closing.

7. Representations and Warranties of Buyer. Buyer represents and warrants to Seller as follows:

(a) Buyer is a municipality, duly organized, validly existing and in good standing under the laws of the State of Ohio and is duly authorized and qualified to do all things required of it under this Agreement. Buyer has full capacity and authority to enter into this Agreement and to consummate the transactions contemplated hereby. This Agreement and all agreements, instruments and documents necessary or desirable to consummate the transactions contemplated hereby to be executed by Buyer are, and on the Closing Date will be, duly authorized, executed and delivered by, and binding upon, Buyer.

(b) Buyer has obtained all consent and permissions relating to the transactions contemplated hereby and required under any covenant, agreement, encumbrance, law or

regulation to acquire title as set forth in this Agreement and to perform its obligations hereunder.

(c) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will constitute a default under any term or provision of any agreement to which Buyer is a party.

(d) The Representations and Warranties of Buyer set forth in this Paragraph 7 shall be deemed renewed at the time of Closing.

8. Real Estate Commission. Buyer and Seller each warrant and represent to the other that neither party has used the services of a real estate licensee, agent or broker in connection with the purchase and sale of the Property, and no broker's commission, finder's fee or other like charges are or shall be payable with respect to the transactions contemplated hereby. Each party hereby agrees to indemnify and hold the other party harmless from and against any and all liability, claims, demands, damages or expenses of any kind, including attorneys' fees, arising from or connected with any broker's commission, finder's fee or other like charges claimed to be due any person arising from such party's conduct with respect to the transactions contemplated hereby. The provisions of this Section 8 shall survive Closing.

9. Closing. The consummation of the transactions contemplated hereby ("Closing") shall be accomplished when the parties have satisfied or waived all conditions precedent set forth herein (the "Closing Date") but in no event later than 60 days from the effective date of this Agreement.

10. Instruments of Conveyance.

(a) On or prior to the Closing Date, Seller shall provide to Buyer the following fully executed documents:

(i) the general warranty deed, conveying title to the Property to Buyer;

(ii) a certificate in the form acceptable to the Title Company as to the non-foreign status of Seller;

(iii) a certificate, in form reasonably satisfactory to Seller and Buyer ("Seller's Certificate"), dated as of the Closing Date and duly executed by Seller, stating that there is no default under the covenants, representations and warranties of Seller contained in this Agreement and, in addition, that all such representations and warranties are true and correct without exception as of the Closing Date as if made on and as of the Closing Date (or specifying in reasonable detail any defaults or exceptions that may then exist, provided that Seller shall not take any action or omit to take any action that would result in any such default or exception);

(iv) a certified copy of the Trust Agreement of Seller authorizing the transactions contemplated hereby;

- (v) counterpart closing statements;
  - (vi) an affidavit of title and other instruments as may be reasonably requested by the Title Company in connection with the issuance of an owner's fee policy of title insurance, which shall be paid for by Buyer; and
  - (vii) such other documents as are reasonably necessary for the Title Company to insure in Buyer fee simple title to the Property described in Section 3 hereof.
- (b) On or prior to the Closing Date, Buyer shall provide to the Seller the following fully executed documents and funds:
- (i) the Purchase Price;
  - (ii) a certified resolution or other written documentation of Buyer authorizing the transactions contemplated hereby;
  - (iii) a certificate, in form reasonably satisfactory to Buyer and Seller ("Buyer's Certificate"), dated as of the Closing Date and duly executed by Buyer, stating that there is no default under the covenants, representations and warranties of Buyer contained in this Agreement and, in addition, that all such representations and warranties are true and correct without exception as of the Closing Date as if made on and as of the Closing Date (or specifying in reasonable detail any defaults or exceptions that may then exist, provided that Buyer shall not take any action or omit to take any action that would result in any such default or exception);
  - (iv) counterpart closing statements; and
  - (v) such other documents as are reasonably necessary for the Title Company to insure in Buyer fee simple title to the Property described in Section 3 hereof.

11. Conditions Precedent to Closing.

- (a) Buyer's obligations to perform hereunder are expressly contingent and conditional upon the satisfaction of the following:
- (i) Seller shall have provided to Buyer all documents required of Seller to be provided to Buyer hereunder; and
  - (ii) The representations and warranties of Seller set forth in Section 6 shall be true and correct as of the Closing Date.

- (b) Seller's obligations to perform hereunder are expressly contingent and conditional upon the satisfaction of the following:
  - (i) Buyer shall have provided to Seller all documents required of Buyer to be provided to Seller hereunder; and
  - (ii) The representations and warranties of Buyer contained in Section 7 shall be true and correct as of the Closing Date.
- (c) The parties acknowledge that the conditions precedent set forth in subsection (a) above are for the benefit of Buyer and that the conditions precedent set forth in subsection (b) above are for the benefit of Seller.
- (d) If conditions precedent set forth in subsection (a) or subsection (b) above are not satisfied, the party for whose benefit the condition precedent exists shall have the right to waive satisfaction thereof, in which event this Agreement shall proceed to Closing as otherwise provided herein.

12. CONTINGENCIES. The Closing is contingent upon the occurrence of all of the following events:

- (a) Prior to Closing, the Seller shall cause a lot split of the Seller's Parcel, mutually acceptable to Buyer and Seller, thereby creating the Subject Parcel as an independent parcel with its own Permanent Parcel Number, which shall be approved by the Summit County Engineer, and all other necessary governmental entities, and duly filed with the Summit County Fiscal Officer.
- (b) The Property becomes free and clear of all liens, mortgages and other security interests on or before Closing. At least fifteen (15) days prior to Closing, the Seller shall provide Buyer with assurances, sufficient to the Buyer, that any and all parties that hold a lien, mortgage, or other security interests in the Property will cause such liens, mortgages, or security interests to be released as to the Property on or at Closing.
- (c) Buyer shall have received and approved the Survey (as defined in Section 3(e) herein), if any, the Title Commitment and any other inspection reports.
- (d) Seller shall have delivered all instruments and documents required to be delivered to Buyer by Seller at the Closing.

The foregoing contingencies must be satisfied or complied with by the dates set forth above. If the contingencies listed above are not satisfied or complied with, the Buyer may, at Buyer's sole discretion, elect to terminate this Agreement by written notice to Seller on or before the date of Closing and neither party shall have any further liability or obligations to the other.

13. Notices. All notices and demands required or permitted by either party under this Agreement shall be served upon the other party by personal delivery, by registered or certified

United States Mail, postage prepaid, return receipt requested, or by nationally recognized overnight courier (such as FedEx or UPS), addressed to the respective parties at their respective addresses and by email as set forth below:

To Seller: Dolores J. Heinle Trustee of the  
Dolores J. Heinle Trust

Richfield, Ohio 44286-9745

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Buyer: Village of Richfield  
4410 West Streetsboro Road  
P. O. Box 387  
Richfield, Ohio 44286-0387  
Attn: Mayor

with a copy to:

William R. Hanna, Esq.  
Law Director  
Walter | Haverfield LLP  
The Tower at Erieview  
1301 East Ninth Street, Suite 3500  
Cleveland, Ohio 44114-1821  
[whanna@walterhav.com](mailto:whanna@walterhav.com)

Delivery shall be deemed complete on the earlier of actual receipt, duly receipted for, if personally delivered, or two (2) postal delivery days after mailing, or one (1) business day after deposit with an overnight courier. The addresses to which notices and demands shall be delivered or sent may be changed from time to time, by notice served as hereinabove provided by either party upon the other party.

14. Possession. Possession of the Property shall be delivered to Buyer on the Closing Date.

15. Time of Essence. Time is of the essence hereof.

16. Intentionally Left Blank.

17. Default.

(a) If Buyer defaults under this Agreement, Seller shall have the right to pursue any remedy available at law or in equity as a result of such default

including, without limitation, the right to recover damages against Buyer for Buyer's default and/or to demand specific performance of this Agreement.

- (b) In the event that Seller fails to consummate this Agreement for any reason other than Buyer's default, Buyer shall be entitled to enforce specific performance of Seller's obligation to execute the documents required to convey the Property to Buyer, it being understood and agreed that the remedy of specific performance shall not be available to enforce any other obligation of Seller hereunder.

18. Governing Law. The parties hereto expressly agree that the terms and conditions of this Agreement, and the subsequent performance hereunder, shall be construed and controlled in accordance with the laws of the State of Ohio. Any court of competent jurisdiction within Summit County, State of Ohio shall be the proper forum for bringing an action to enforce or construe the provisions of this Agreement. If any court of competent jurisdiction is unable to construe any provision of this Agreement or holds any part thereof to be invalid, such holding shall in no way affect the validity of the remainder of this Agreement.

19. Assignment. This Agreement may not be assigned by either party without the written consent of the other, and any attempted assignment shall be deemed null and void.

20. Section Headings. All section headings and other titles and captions herein are for convenience only, do not form a substantive part of this Agreement and shall not restrict or enlarge any substantive provisions hereof.

21. Authority. The person executing this Agreement on behalf of each of the parties hereto warrants and represents to the other party that such person is duly authorized to execute this Agreement on behalf of such party, and that the execution hereof by such person on behalf of such party shall fully bind and obligate such party.

22. Pronouns. All pronouns and variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or persons may require.

23. Counterparts. This Agreement may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement.

24. Further Assurances. Each party agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, Buyer shall, if requested by Seller, execute acknowledgments of receipt with respect to materials delivered by Seller by Buyer with respect to the Property. The provisions of this Section 24 shall survive Closing.

25. Council Approval. Seller acknowledges that Buyer's authority to enter into this Agreement is specifically contingent upon and subject to, at Buyer's sole discretion, the approval of necessary legislation by Buyer's Council.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

SELLER:

DOLORES J. HEINLE, TRUSTEE OF THE  
DOLORES J. HEINLE TRUST

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

BUYER:

VILLAGE OF RICHFIELD, OHIO

By: \_\_\_\_\_  
Bobbie Beshara, Mayor

And: \_\_\_\_\_  
Sandy Turk, Finance Director

Approved as to form:

\_\_\_\_\_  
William R. Hanna  
Director of Law, Village of Richfield

**FISCAL OFFICER'S CERTIFICATE**

The undersigned fiscal officer of the Village hereby certifies that the moneys required to meet the obligations of the Village during the year 2015 under this Agreement have been lawfully appropriated by the Council of the Village for such purposes and are in the treasury of the Village or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Revised Code.

\_\_\_\_\_  
Director of Finance, Sandy Turk

\_\_\_\_\_  
Date

DRAFT