

RESOLUTION NO. 15-2013

Offered by All of Council

**A RESOLUTION AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT TO PURCHASE TWO (2) ACRES OF LAND ON WEST STREETSBORO ROAD FOR CONSTRUCTION OF A SEWER PUMP STATION AND OTHER PUBLIC PURPOSES; AND DECLARING AN EMERGENCY**

WHEREAS, Council and the Mayor desire to construct a sewer pump station in the area of West Streetsboro Road and Interstate 77 in order to provide sewer service to the Briarwood neighborhood and other areas within and outside of the Village;

WHEREAS, in connection with this sewer project and for other public purposes, the Village desires to purchase two (2) acres of undeveloped land (the "Property"), being a portion of the parcel generally known as 3981 West Streetsboro Road (PPN 5001869); and

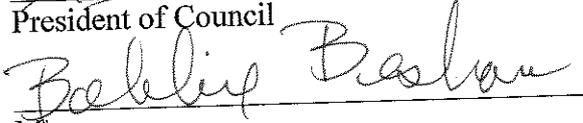
WHEREAS, this Council authorizes the Mayor and the Finance Director to enter into a Purchase Agreement for purchase of the Property.

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 Finance Director be, and they hereby are, authorized and directed to enter into a Purchase Agreement for purchase of the two (2) acre Property with terms substantially the same as those set forth in "Exhibit A" attached hereto.
- SECTION 2. That the Mayor and Finance Director be, and they hereby are, authorized and directed to execute any other documents and take any other actions necessary or helpful to effectuate the terms of the Purchase Agreement.
- SECTION 3. That there be appropriated from the Sewer Operations Fund: Cost of Operations an amount equal to Thirty-Five Thousand Four Hundred Dollars (\$35,400.00) to cover the costs of the transaction described above.
- 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 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

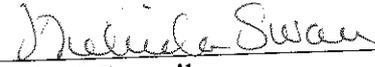
reason that it is immediately necessary in order to effectuate the property purchase at the earliest possible time in the interest of providing sewer service to Village residents; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, 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: 3-19-2013

  
President of Council  
  
Mayor

Dated: 3-19-2013

ATTEST:

  
Clerk of Council

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between **Daniele Costanzo**, unmarried, residing at \_\_\_\_\_, Ohio \_\_\_\_\_ ("Seller"), and the **Village of Richfield, Ohio**, an Ohio municipal corporation, located at 4410 Streetsboro Road, Richfield, Ohio 44286 ("Buyer") (Seller and Buyer hereinafter collectively referred to as the "Parties"). The Effective Date of this Agreement shall be the date of execution hereof by Seller and Buyer as authorized by Resolution of the Village of Richfield.

1. **THE PROPERTY.** Seller is the owner, in fee simple, of a parcel of land commonly known as 3981 West Streetsboro Road, Village of Richfield, Summit County, Ohio consisting of approximately four and one half (4.5) acres (being Permanent Parcel No. ("PPN") 5001869) and further described in the legal description attached hereto as "Exhibit A" (the "Seller's Parcel"). Seller agrees to sell, and Buyer agrees to purchase a portion of the Seller's Parcel, consisting of an approximate two (2) acres of land, being generally depicted in "Exhibit B" and further described in the legal description attached hereto as "Exhibit C" (the "Subject Property"). The Subject Property shall include the interest in the land heretofore described, all easements, hereditaments, appurtenances, and structures thereon.

3. **PURCHASE PRICE.** The total purchase price for the Subject Property shall be Thirty-Five Thousand Dollars (\$35,000.00) (the "Purchase Price"). Said Purchase Price shall be paid at Closing in immediately available funds. Seller agrees that Purchase Price shall be remitted by the Escrow Agent to Ocwen, a mortgagee of the Subject Property, in exchange for Ocwen's release of its mortgage as to the Subject Property.

4. **CONTINGENCIES.** This Agreement is contingent upon all of the following events:

(a.) Prior to Closing, the Seller shall cause a lot split of the Seller's Parcel, 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 Fiscal Officer.

(b.) The Subject Property becomes free and clear of all liens, mortgages and other security interest 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 Subject Property will cause such liens, mortgages, or security interests released as to the Subject Property on or at 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.

5. CONDITION OF THE PROPERTY: DISCLOSURES.

A. Purchase of the Property "As-Is". Except as provided to the contrary in this Agreement, Buyer and Seller agree that the Property is being purchased and sold in its present condition, "AS IS, WHERE IS" without any warranties or representations.

B. Private Inspection. Buyer shall have twenty (20) days following the effective date this Agreement ("Inspection Deadline") to cause the Subject Property to be inspected by one or more persons of Buyer's choosing. Seller agrees to cooperate with such inspection(s). If Buyer is not satisfied, in its sole discretion, with any aspect of the transaction, including without limitation the results of the inspections or any material reviewed by Buyer prior to the Inspection Deadline, including any extensions thereto, the Buyer may terminate this Agreement with no penalty and the Parties shall have no further obligation to each other hereunder, except such obligations that survive termination of this Agreement. If the Buyer does not terminate this Agreement prior to the Inspection Deadline, Buyer shall be deemed to accept the Subject Property in its present, "AS IS, WHERE IS" condition, subject to the contingencies set forth in Section 4 of this Agreement.

6. TITLE.

A. Seller shall convey marketable title to the Subject Property to Buyer by general warranty deed (the "Deed"), 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; (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 shall obtain an ALTA Owner's Policy of Title Insurance (the "Title Policy") issued by Chicago Title Insurance Company, 1360 East 9th Street, Suite 500, Cleveland, Ohio 44114, 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 a copy of the commitment for such title policy (the "Title Commitment") as soon as such is available. 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.

D. If the Title Commitment shall disclose any defect in Seller's Title or any lien, or other encumbrance other than the Permitted Exemptions 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, or until the Closing Date, whichever is earlier, 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. If a 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 in which event such matter shall be deemed to be a Title Objection.

7. ESCROW. 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.

8. CLOSING AND DELIVERY OF POSSESSION. All documents and funds and/or financial institution commitments for funds necessary to complete this transaction shall be placed in escrow in sufficient time to permit transfer of title on the Closing Date. The Escrow Agent shall file the Deed for record (the "Closing") and complete this transaction in accordance with the provisions of this Agreement on such other date as Buyer and Seller may mutually agree in writing (the "Closing Date"), provided that the Escrow Agent has received all funds and documents required to be deposited with it for the Closing and Chicago Title Insurance Company is in a position to issue the Title Policy. Notwithstanding the foregoing, the Closing Date shall be no later than \_\_\_\_\_. Seller shall deliver possession of the Property to Buyer on the Closing Date.

9. PRORATIONS, CHARGES AND CREDITS.

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; (3) the cost for the title search; (4) the conveyance fee and transfer taxes, if any; (5) the cost of recording the Deed; and (6) the amount due to Seller for any prorations or credits under this Agreement.

10. NOTICE. All notices given pursuant to this Agreement shall be communicated in writing (by facsimile, overnight delivery or registered or certified mail) and shall be deemed given upon actual receipt, whether between the Parties as listed below or their respective counsel:

If to Buyer: Mayor Bobbie Beshara  
Village of Richfield  
4410 Streetsboro Road  
Richfield, Ohio 44286

If to Seller: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. TERMINATION. If a party has performed its obligations under this Agreement and, being entitled to do so, that Party has elected to terminate this Agreement, then that Party shall give the other Party and the Escrow Agent written notice of the termination not later than the date specified herein for such notice. Except as otherwise specified in this Agreement, upon any such permitted termination, the Escrow Agent shall promptly return all funds and documents to the Party which deposited them, whereupon Seller, Buyer and the Escrow Agent shall be relieved of any liability hereunder, except that the terminating Party shall be liable for any title and escrow charges incurred prior to the termination unless the liability for such charges is specifically placed upon a certain Party by this Agreement.

12. DEFAULT; REMEDIES. Time is of the essence of this Agreement. If Buyer fails to make payment of the Purchase Price promptly when the same shall become due, or defaults in the performance of any covenant or agreement herein contained, and such failure or default continues for five (5) days following written notice from Seller, then Seller may terminate this Agreement and Buyer shall pay all title and escrow charges or Seller may pursue any legal or equitable remedy. If Seller fails to perform any obligation imposed by this Agreement and such failure continues for five (5) days following written notice from Buyer, Buyer may elect to terminate this Agreement or to pursue any legal or equitable remedy.

13. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties. No other conditions, representations, warranties or agreements, expressed or implied, have been made or relied upon by Buyer or Seller. The representations, warranties and agreements contained in this Agreement shall merge in the deed and not survive the transfer of title unless expressly provided otherwise in this Agreement.

14. PARTIES BOUND AND BENEFITED. This Agreement shall bind and benefit the parties hereto and their respective heirs, personal representatives, successors and assigns.

15. REAL ESTATE BROKER. The Parties represent and warrant to one another that no real estate broker is owed a commission in connection with the sale of the Subject Property. The Party breaching this warranty shall indemnify, defend and hold harmless the nonbreaching Party from any cost, damage or expense ensuing out of the breach of this representation and warranty.

16. REPRESENTATIONS AND WARRANTIES. Seller represents and warrants to Buyer that the following are true and correct as of the date hereof:

A. Seller is not a party to any agreement or commitment to sell, convey, assign, transfer, provide rights of first refusal or other similar rights with respect to, or otherwise dispose of any part of the Property other than this Agreement.

B. This Agreement is valid and enforceable against Seller in accordance with its terms and each instrument to be executed by Seller as the case may be, pursuant hereto or in connection herewith will, when executed and delivered, be valid and enforceable, in accordance with its terms, subject only to the exercise of judicial discretion in the granting of equitable relief.

C. The foregoing representations and warranties shall expire at Closing and be deemed merged into the Deed.

[THIS SPACE INTENTIONALLY LEFT BLANK]

**SELLER:**

DANIELE COSTANZO

\_\_\_\_\_  
Date: \_\_\_\_\_

**BUYER:**

VILLAGE OF RICHFIELD, OHIO

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

Date: \_\_\_\_\_

Adopted by Resolution No. \_\_\_\_\_  
on \_\_\_\_\_, 2013

Approved as to legal form  
and correctness:

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

FISCAL OFFICER'S CERTIFICATE

I, as Director of Finance for the Village of Richfield, Ohio, certify that the money required for the within Purchase Agreement between Daniel E. Costanzo and the Village of Richfield, Ohio, is in the treasury, to the credit of the fund from which it is to be drawn, or in the process of collection, and not appropriated for any other purpose.

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Sandy Turk, Director of Finance

**ACCEPTANCE BY ESCROW AGENT**

The Escrow Agent hereby accepts this Agreement in accordance with Paragraph 7 of this Agreement.

\_\_\_\_\_

Signed by: \_\_\_\_\_

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

Date: \_\_\_\_\_

**EXHIBIT A**  
**Legal Description of**  
**Seller's Parcel**

Situated in the Village of Richfield, County of Summit and State of Ohio: and known as being part of Lot 1, Tract 4 in said Township and more fully described as follows:

Beginning at a cross in the paving at the center of Richfield. Said cross is at the intersection of the centerline of the Richfield-Hudson Road and 7 feet East of the present centerline of the Cleveland-Massillon Road, said point being on the old Tract line.

Thence along the centerline of the Richfield-Hudson Road due East 1861.98 feet to the true place of beginning, said point being the Southeast corner of the M.R. Doyle 1.85 acre parcel.

Thence continuing along the centerline of the Richfield-Hudson Road due east 497.05 feet to the Southwest corner of Margaret Carroll's 4.12 acre parcel. Thence along the West line of said 4.12 acre parcel N. 1° 52' W., 407.94 feet. Thence due West 838.97 feet to the Northeast Corner of the C.W. & M. Boyd 3.42 acre parcel. Thence along Boyd's East line S. 2° 15' E., 143.94 feet to the Northwest corner of M.R. Doyle's 1.85 acre parcel. Thence along Doyle's North line N. 88° E., 86.44 feet. Thence S. 71° 45' E., 260.70 feet. Thence S. 51° 15' E., 28.38 feet to the Doyle's Northeast corner. Thence along Doyle's East line S. 2° 15' W., 167.64 feet to the centerline of the Richfield-Hudson Road and the true place of beginning.

Containing 5.98 acres more or less as surveyed by E. A. Hand in August 1952. Be the same more or less, but subject to all legal highways.

**EXCEPTING THEREFROM THE FOLLOWING:**

Situated in the Village of Richfield, County of Summit and State of Ohio: and known as being part of Lot 1, Tract 4 of original Richfield Township and more fully described as follows:

Commencing at the intersection of the original centerline of Cleveland-Massillon Road with the centerline of West Streetsboro Road; Thence due EAST, along the said centerline of West Streetsboro Road (60' wide), 1523.40 to a point;

Thence N. 2° 15' 00" W., along the west line of lands now or formerly owned by Douglas and Rosalie Simon and recorded in Volume 5732, Page 378, of the Summit County Records, 263.34 feet to the True Place of Beginning for the parcel herein described;

Thence continuing N. 2° 15' 00" W., 143.94 feet to an iron pin set;

Thence due EAST a distance of 361.76 feet to an iron pin set;

Thence due SOUTH a distance of 240.22 feet to an iron pin set at the northeast corner of the said Simon property;

Thence along the northerly line of the said Simon property by the following bearings and distances;

N 51° 15' 00" W., 28.38 feet to a point;  
 N 71° 45' 00" W., 260.70 feet to a point;

S. 88° 00' 00" W., 86.44 feet to the True Place of Beginning and containing about 1.4415 acres of land based on a survey made by Dean M. Culp, Registered Surveyor No. 6811 in September 1989 and subject to all easements of record.

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Resolutioun No 15-2013 | EXHIBIT "A"

**EXHIBIT B**  
**Depiction of the**  
**Subject Property**

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Resolutioun No 15-2013 | EXHIBIT "A"

**EXHIBIT C**  
**Legal Description of the  
Subject Property**

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