

RESOLUTION NO. 58-2013  
(AMENDED 10/01/13)

Offered by All of Council

**A RESOLUTION AUTHORIZING THE MAYOR AND DIRECTOR OF FINANCE TO ENTER INTO AN AGREEMENT TO PURCHASE APPROXIMATELY 6.2 ACRES OF REAL PROPERTY LOCATED AT 3928 BRECKSVILLE ROAD IN THE VILLAGE; AND DECLARING AN EMERGENCY**

WHEREAS, Patricia J. Novak, Trustee owns a parcel of real property commonly known as 3928 Brecksville Road, Richfield, Ohio, which is presently comprised of approximately 11.66 acres of land ("Novak Property");

WHEREAS, the northwesterly portion of the Novak Property abuts the Fairview Cemetery owned by the Village of Richfield;

WHEREAS, Ms. Novak desires to subdivide the Novak Property and sell to the Village a sub-parcel consisting of approximately 6.17 acres adjacent to the Fairview Cemetery ("Subject Sub-Parcel");

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 cemetery purposes; and

WHEREAS, this Council desires to authorize the Mayor and Director of Finance to enter into a purchase agreement with Ms. Novak for 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 Patricia J. Novak, Trustee for the purchase of approximately 6.17 acres of real property located at 3928 Broadview Road, Richfield, Ohio, under substantially the same terms and in substantially the same form as the Purchase 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 purchase of the aforesaid parcel of land in accordance with the Purchase Agreement.

SECTION 3. That there be appropriated from the Cemetery Fund, Cost of Operations, \$77,000.00 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 cemetery operational purposes; 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: October 1, 2013

*Rick Marshall*  
President of Council

*Pauline Bealman*  
Mayor

Dated: 10/1/13

ATTEST:

*Juan Spraggins*  
Clerk of Council

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") is made by and between Patricia J. Novak, Trustee of The George B. Novak Trust dated December 9, 1998 and Patricia J. Novak, Trustee of the Patricia J. Novak Trust dated December 9, 1998 (collectively, "Seller"), whose mailing address is c/o Mary Davis and Gary Ebert, Seeley, Savidge, Ebert & Gourash Co., LPA 26600 Detroit Road, 3<sup>rd</sup> Floor, Cleveland, OH 44145, and the Village of Richfield, Ohio, or nominee (the "Purchaser") whose mailing address is \_\_\_\_\_ . The Effective Date of this Agreement shall be the date this Agreement is signed by Seller, if Seller is the last to sign, or by Purchaser, if Purchaser is the last to sign. The Closing Date shall be the date defined in Section 11 of this Agreement.

### RECITALS

WHEREAS, Seller owns a parcel of real property commonly known as 3928 Brecksville Road, Richfield, Ohio, and presently comprised of approximately 11.66 acres of land ("Seller's Parcel");

WHEREAS, Seller desires to subdivide Seller's Parcel into four separate sub-parcels, and further desires to sell a certain sub-parcel, as described in Section 1 hereof, to Purchaser, to sell another certain sub-parcel to a third-party ("Third-Party Purchaser"), and to retain the remaining sub-parcel; and

WHEREAS, Purchaser and Seller agree to the terms and conditions of the sale set forth herein.

NOW, THEREFORE, in consideration of the promises, covenants, conditions and representations contained in this Agreement, the parties hereto agree as follows:

SECTION 1 - THE PROPERTY. Seller agrees to sell and Purchaser agrees to purchase:

the land known as the western approximately 6.17 acres of the lot now known as 3928 Brecksville Road, Richfield, Ohio and identified as No. 3 on the aerial photo attached as Exhibit A, which is attached hereto and incorporated herein by reference ("the Property"); the legal description shall be created by a survey to be performed.

SECTION 2 - PURCHASE PRICE. Purchaser agrees to pay Seller, as the purchase price of the Property, the sum of Seventy-Three Thousand Five Hundred and One Dollars (\$73,501.00) ("Purchase Price"). The Purchase Price shall be paid as follows:

(a) Five Thousand Dollars (\$5,000.00) as Earnest Money to be deposited with the Escrow Agent named in Section 4 hereof concurrently with Purchaser's execution and delivery of this Agreement to Seller.

(b) Sixty-Eight Thousand Five Hundred and One Dollars (\$68,501.00) shall be

deposited in immediately available funds with the Escrow Agent on or prior to the Closing Date.

SECTION 2.1 – SALE AT BARGAIN PURCHASE PRICE

The Purchase Price shall be allocated as follows: \$73,500.00 shall be allocated to the northern 4.17 acres of the Property. \$1.00 shall be allocated to the southern 2.0 acres of the Property, which is a sale at bargain purchase price. The market value of the southern two acres, based on the adjacent parcels being sold contemporaneously, is \$17,500.00 per acre.

SECTION 3 - TITLE COMPANY AND ESCROW AGENT. City Title Agency, 5599 Pearl Road, Cleveland, OH 44125, (440) 888-6100, is hereby designated as the Title Company in connection with this transaction. Immediately following the Effective Date, Purchaser shall open an escrow at the Title Company.

SECTION 4 - TITLE COMMITMENT. Purchaser shall order a title commitment ("the Commitment") from the Title Company immediately after the Effective Date, and the Title Company shall be instructed to deliver a copy of the Commitment to both Purchaser and Seller. Within ten (10) days after receipt of the Commitment, Purchaser will notify Seller of any easements, conditions, or restrictions disclosed in the Commitment which are objectionable to Purchaser. In the event Purchaser objects to easements, conditions, or restrictions disclosed in the Commitment, Seller shall have a period of thirty (30) days after notification from Purchaser to cure or remove such items. Upon expiration of such thirty (30)-day period, the Title Company shall notify Seller and Purchaser as to whether it will issue a revised commitment without showing the items to which Purchaser has objected. If the Title Company notifies the parties that it will issue a revised commitment, this transaction shall be consummated in accordance with the terms and provisions contained herein, provided that subsequent examination of title at the point of closing discloses no further exceptions to title arising subsequent to the date of such revised commitment. If the Title Company notifies the parties that it will not issue such revised Commitment, Purchaser may either terminate this Agreement and receive back all funds deposited hereunder, including the Earnest Money, or accept title to the Property in its reported condition. In the event of termination, the parties shall be fully released and discharged from any liability or obligation herein, except Seller shall pay all accrued escrow charges and the cost of the Commitment.

SECTION 5 - FORM OF CONVEYANCE. At least two business days prior to the Closing Date, Seller shall deliver to the Escrow Agent a fiduciary deed conveying to Purchaser fee simple marketable title to the Property.

At least four business days prior to the Closing Date, a copy of the proposed deed shall be submitted by Seller to Purchaser for approval as to form.

Marketability of title shall be determined by the Standards of Title Examination adopted by the Ohio State Bar Association and in effect at the time of the Effective Date.

SECTION 6 - EVIDENCE OF TITLE. The Title Company shall issue to Purchaser an owner's title insurance policy in the amount of the total purchase price of the Property and issued by the Title Company insuring fee simple title to the Property to be in Purchaser as of the filing of the

deed for record. The Seller and Purchaser shall each pay one-half of the premium for the owner's title insurance policy. The Seller will supply any documents needed to eliminate the standard exceptions shown in the owner's policy regarding mechanic's liens, encroachments, and parties in possession.

SECTION 7 - ESCROW INSTRUCTIONS. This Agreement shall serve as escrow instructions and shall be subject to the usual conditions of acceptance of the Escrow Agent, insofar as the same are not inconsistent with any of the terms hereof. Provided that all money and documents required by this Agreement have been deposited in escrow on the Closing Date, the Escrow Agent shall direct that the deed and other instruments be filed for record and that the title guaranty, or the owner's title insurance policy if requested by Purchaser, be issued as provided for herein.

SECTION 8 - PRORATION. Real estate taxes and assessments, both general and special, shall be prorated by the Escrow Agent as of the Closing Date, with the Closing Date being treated as a day of ownership by Seller. Taxes and assessments shall be prorated on the basis of the latest available rates and valuations furnished for the Property by the taxing authorities. Should actual rates and valuations subsequently appear to be at variance with the rates and valuations used for such proration, the parties shall readjust the proration. The Escrow Agent shall not withhold any money to secure payment of water and sewer charges, as the Property is undeveloped.

SECTION 9 - COSTS TO BE PAID BY SELLER. Seller shall pay or be charged with the following costs and expenses in connection with the transaction:

- (a) any and all state transfer taxes and conveyance fees on the sale and transfer of the Property; however, the parties expect the Property to transfer tax-exempt, as the Purchaser is a governmental entity;
- (b) the cost of examining the title to the Property and one-half of the premium for the owner's title insurance policy;
- (c) one-half the escrow fee;
- (d) the cost of clearing any liens on the Property, including any mortgage;
- (e) all costs associated with the submission of the lot split and consolidation plat to the Village of Richfield, and its Planning Commission, and the approval thereof, and all costs for recording the plat with the County of Summit, to the extent such costs are not paid by the Third-Party Purchaser as contemplated in Section 16(a) hereto.

SECTION 10 - COSTS TO BE PAID BY PURCHASER. Purchaser shall pay the following costs and expenses in connection with the transaction:

- (a) the cost of recording the deed;
- (b) one-half the escrow fee; and

- (c) one-half the premium of the owner's title insurance policy.

SECTION 11 - POSSESSION AND CLOSING. Unless the parties otherwise agree in writing, this transaction shall be closed and the deed filed for record on August 15, 2013. The time and date of such closing is referred to herein as "the Closing Date." Unless otherwise provided herein, all documents necessary for closing shall be deposited in escrow at least two (2) business days prior to the Closing Date, and all funds shall be deposited in escrow on or prior to the Closing Date. Seller shall deliver exclusive possession of the Property to Purchaser on the Closing Date. In the event that the Lot Split contemplated in Section 16(a) has not been completed by August 15, 2013, the Closing Date shall be extended until no later than thirty (30) days following the completion of the Lot Split.

SECTION 12 - SELLER'S WARRANTIES. Seller warrants and represents to Purchaser that, as of the Closing Date:

The Seller has not been involved in the day-to-day operation of the Property and does not have any first hand knowledge of the Property.

SECTION 13 - NO BROKER. Each party represents to the other that such party has not dealt with any real estate broker or solicitor or with any finder in connection with this transaction.

SECTION 14 - INSURANCE. Seller shall keep in force through the Closing Date insurance on the Property in at least those amounts currently maintained. Until the Closing Date, Seller shall maintain the Property in the same condition as existed on the date of Purchaser's execution hereof.

SECTION 15 - PHYSICAL INSPECTION. At any reasonable time within thirty (30) days after the Effective Date ("Inspection Period"), Purchaser, at its own expense, may have the Property inspected by reputable persons (which may, but need not, include appropriate representatives of the municipality having jurisdiction over the Property) to determine the environmental condition of the Property and to determine soil suitability for Purchaser's intended purpose or other inspections that the Purchaser deems necessary. Seller will provide reasonable access to Purchaser to undertake inspections. Purchaser shall return the Property to its current condition following the inspection.

Purchaser may terminate the Purchase Agreement by providing written notice of termination to Seller within five (5) days following the expiration of Inspection Period. If no such notice is provided, the Purchaser shall be required to complete the purchase.

SECTION 16 - OTHER CONTINGENCIES. In addition to the contingency stated in Section 15, the parties agree that the closing of this transaction is contingent upon:

- (a) The completion of a survey for the lot split and consolidation of Seller's Parcel in accordance with Exhibit A hereto, acceptable to Seller and Purchaser, and approved by the Village of Richfield Planning Commission and Village Council. The survey and lot split are being undertaken by the Third-Party Purchaser and neither Seller nor Purchaser will be responsible for paying any costs associated with

such survey and lot split.

(b) The approval of this Purchase Agreement, and appropriation of all necessary funds hereunder, by legislative action of the Village of Richfield Council.

SECTION 17 - DEFAULT. In the event of default hereunder by Seller, Purchaser may elect to terminate this Agreement, in which event Seller shall refund to Purchaser the entire amount of the Earnest Money paid to it, as complete and sufficient liquidated damages to Purchaser, and all obligations of Purchaser hereunder shall terminate. In the event of default hereunder by Purchaser, Seller shall retain the Earnest Money deposited as complete and sufficient liquidated damages to Seller, and all obligations of Seller hereunder shall terminate.

SECTION 18 - TIME OF THE ESSENCE. The parties agree that time is of the essence and that the failure of a party to perform any act on or before the date specified herein for performance thereof shall be deemed cause for the termination hereof by the other party, without prejudice to other remedies available for default hereunder. Unless this Agreement is executed by Seller within five (5) days after it is executed by Purchaser, this offer shall be deemed terminated, Purchaser shall be released from any liability hereunder, and any funds deposited or paid by Purchaser shall be returned to Purchaser.

SECTION 19 - COMMUNICATIONS. Communications concerning Seller shall be addressed to Seller at the address set forth above. Communications concerning Purchaser shall be addressed to Purchaser at the address set forth above. Communications may be sent via certified mail, overnight courier, or by verified electronic means.

SECTION 20 - PARTIES BOUND. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, successors, and assigns of the parties hereto. The representations and warranties contained in this Agreement shall survive the filing of the deed for record. The Escrow Agent shall have no duty to verify or enforce such representations and warranties on behalf of either party.

SECTION 21 - RELIANCE AND SURVIVAL. Each party is relying on the foregoing warranties and representations made by the other, and they are a material inducement to such relying party's entering into this Agreement. Said warranties and representations shall survive the consummation of this transaction.

SECTION 22 - NO ADDITIONAL WARRANTIES OR REPRESENTATIONS. Each party acknowledges that no warranties or representations, express or implied, have been made to such party other than those contained herein.

SECTION 23 - ASSIGNMENT. Purchaser shall not assign this Agreement without Seller's prior written consent, which shall not be unreasonably withheld. No assignment shall relieve Purchaser of primary responsibility hereunder for the payment of the purchase price.

SECTION 24 - COMPLETE AGREEMENT. This Agreement, together with the attached exhibits, contains all of the terms and conditions of the agreement between the parties, and any and all prior and contemporaneous oral and written agreements are merged herein.

IN WITNESS WHEREOF, the parties have executed multiple counterparts of this Agreement on the dates set opposite their respective signatures.

SELLER:

BUYER:

\_\_\_\_\_  
Patricia J. Novak, Trustee of the  
George B. Novak Trust dated  
December 9, 1998

RICHFIELD VILLAGE

By: Bobbie Beshara  
Bobbie Beshara, Mayor

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

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

\_\_\_\_\_  
Patricia J. Novak, Trustee of the  
Patricia J. Novak Trust dated  
December 9, 1998

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

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

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

Adopted by Resolution No. \_\_-2013  
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 Patricia J. Novak, Trustee of The George B. Novak Trust dated December 9, 1998 and Patricia J. Novak, Trustee of the Patricia J. Novak Trust dated December 9, 1998 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

EXHIBIT A



# Village of Richfield

4410 W. STREETSBORO ROAD  
P.O. BOX 387  
RICHFIELD, OHIO 44286-0387  
330-659-9201

BOBBIE BESHARA, Mayor  
RICK HUDAK, Council President

SANDY TURK, Finance Director  
MELANIE A. BAKER, Service Director

## Memorandum

**TO:** Bobbie Beshara, Mayor  
and Richfield Village Council Members

**FROM:** Brian M. Frantz and Melanie Baker

**SUBJECT:** Property Purchase - Fairview Cemetery

**DATE:** August 20, 2013

Attached is an aerial photograph that illustrates the existing Fairview Cemetery property in relation to the existing Columbus Equipment site and an adjacent 10.02 acre property (both owned by Novak). As you know, the Village was approached by Novak to sell a portion of the 10.02 acre site for future cemetery land. This potential land purchase was discussed by the Cemetery Committee and Council earlier this year. As I understand it, Village Council directed the administrative staff to negotiate the terms and conditions of the sale. This process is significantly complete and the property owner has arranged for a professional survey of the properties. One of the final steps in this property acquisition process is for Village Council to formerly approve legislation that authorizes purchase of the land.

Also attached to this memorandum is a "conceptual" drawing that identifies the approximate location of property lines that will likely request from the property acquisition. The following is a description of the conceptual drawing provided by the applicant.

Parcel 3 (as identified on the Bock & Clark conceptual survey) is a 6.17 acre parcel that will be created (and attached to the existing cemetery property) from the existing 10.02 acre parcel owned by Novak. Of the 6.17 acre parcel, four acres are being purchased by the Village the remaining 2.17 acres of land are being donated to the Village. The entire parcel 3 will be "attached" the existing cemetery property and a new legal description will be created that combines the properties.

Parcel 2A (existing Columbus Equipment site) is purchasing parcel 2B and both parcels will be combined to create an approximate 7.63 acre site owned by Columbus Equipment.

Parcel 1 is being retained by Novak Trust and is proposed to be slightly larger than two acres. To create this parcel, the owner is filing a request with the Board of Zoning Appeals seeking a variance to permit a 2.16 acre parcel instead of the required four acres required by Code.

If you have any questions, please do not hesitate to contact me.



