

RESOLUTION NO.: 62-2010  
INTRODUCED BY: Alexander

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A PURCHASE AGREEMENT FOR THE SALE OF PROPERTY AT 2547 HILLTOP ROAD.

WHEREAS, pursuant to the City's participation in the federal Neighborhood Stabilization Program, the City administration has recommended the sale of real property at 2547 Hilltop Road (PP #662-03-012) in the City under the grant Program;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1: The Mayor is authorized to enter into an agreement for the sale of the land at 2547 Hilltop Road in the City of Richmond Heights to Evenhuis Investco, LLC for a sale price of \$42,000.00 under the terms and conditions as generally set forth in the purchase agreement, attached hereto at "Exhibit A" and incorporated by reference herein, and the Mayor is authorizing to execute all necessary documents to close the sale of and transfer of title to the aforesaid property.

Section 2: The Director of Finance is authorized and directed to appropriate to a proper account up to \$1,500.00 for closing costs and other fees necessary to complete the transaction set forth in Section 1 above.

Section 3: 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 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 4: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_

\_\_\_\_\_  
Daniel J. Ursu, Mayor

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
David H. Roche

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
Betsy Traben  
Clerk of Council

\_\_\_\_\_  
David H. Roche  
President of Council

**EXHIBIT A**  
**PURCHASE AGREEMENT**

THIS PURCHASE AGREEMENT ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by and between the **City of Richmond Heights, Ohio**, an Ohio municipal corporation, located at 26789 Highland Road, Richmond Heights, Ohio 44143 ("City"), and **Evenhuis Investco, LLC**, a Florida limited liability company, with mailing address of 6950 Hunters Road, Naples, Florida 34109 ("Buyer"). (The City and Buyer hereinafter collectively referred to as the "Parties".) The Effective Date of this Agreement shall be the date of execution hereof by City and Buyer as authorized by Resolution of the City of Richmond Heights Council.

1. **THE PROPERTY.** The City agrees to sell, and Buyer agrees to buy, subject to the terms set forth in this Agreement, all of the City's interest at the time of "Closing", as defined in Section 8 below, in a parcel of vacant land commonly known as 2547 Hilltop Road, Richmond Heights, Cuyahoga County, Ohio (being Permanent Parcel No. ("PPN") 662-03-012) (the "Property"), and further described in the legal description attached hereto as Exhibit A. The Property shall include the interest in the land heretofore described, all easements, hereditaments, appurtenances, and structures thereon, if any.
2. **THE SELLER.** At the time of execution of this Agreement, the Property is owned by Eric J. Uchbar ("Uchbar") and the City does not have title to the Property.

The City represents and warrants to Buyer that the City has entered into an agreement with Uchbar to purchase the Property from Uchbar. The scheduled date for transfer of title to the Property to the City under the purchase agreement with the City is August 27, 2010.

The City shall notify Buyer of title transfer from Uchbar to the City, if title transfer occurs, within five (5) business days of said title transfer.

3. **PURCHASE PRICE.** The purchase price shall be Forty-Two Thousand Dollars (\$42,000.00) (the "Purchase Price"). Said Purchase Price shall be paid to the City as follows: (1) One Thousand Dollars (\$1,000.00) paid to the City in immediately available funds upon the Seller's execution of this Agreement, as an earnest money deposit ("Earnest Money Deposit"); and (2) Forty-One Thousand Dollars (\$41,000.00) in immediately available funds paid into escrow at Closing.

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

A. The City receiving sole fee simple interest in the Property before the Closing Date set forth in Section 8 herein; and

B. The City entering into a mutually acceptable development agreement with Uchbar and Buyer, on or before August 18, 2010, pertaining to the allocation and payment of the water and sanitary sewer lines construction costs and obtaining grants of

easements for the water and sanitary sewer lines necessary to bring those utilities to property known as 2545 Hilltop Road, Richmond Heights, Ohio (PPN 662-03-003) and property known as 2543 Hilltop Road, Richmond Heights, Ohio (PPN 662-03-004).

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 City may, at its sole discretion, elect to terminate this Agreement by notice to Buyer. If this Agreement is terminated by the City, the City shall refund the Earnest Money Deposit paid by Buyer.

5. **CONDITION OF THE PROPERTY: DISCLOSURES.**

A. **Purchase of the Property “As-Is”.** Except as provided to the contrary in this Agreement, the City and Buyer agree that the Property is being purchased and sold “AS-IS, WHERE-IS” without any warranties or representations.

After the City obtains title to the Property, but prior to the Closing Date herein, the City will declare perpetual easements on portions of the Property to the City of Richmond Heights and to the City of Cleveland for purposes of water, sanitary sewer and storm water facilities, together with the right to construct, operate, maintain, repair, replace and/or remove any facilities that may be necessary for water or sanitary sewer services or other public utilities, as follows:

a. An easement for water facilities granted to the City and the City of Cleveland in, under, over, and across of a ten-foot (10") wide tract of land adjacent to the entire westerly property line of the Property, abutting Hilltop Road; and

b. An easement for sanitary sewer and storm water facilities granted to the City in, under, over, and across of a twenty-foot (20) wide tract of land adjacent to the entire easterly property line and a ten-foot wide tract of land adjacent to the southerly property line of the Property.

The aforementioned easements shall not constitute a basis for objection under Section 6(D) of this Agreement. Buyer hereby acknowledges the potential for said easements on the Property and agrees to accept the Property subject to the aforementioned easements as part of the Property’s “AS-IS, WHERE-IS” condition, whether or not the easements are of record at the time of the Closing.

B. **Private Inspection.** Buyer shall have ten (10) days following the date of final execution of this Agreement (the “Inspection Deadline”) to cause the Property to be inspected by one or more persons of Buyer’s choosing. The City agrees to cooperate with such inspection(s) and to secure the permission of Uchbar for such inspection(s), if necessary. If Buyer is not satisfied, in its sole discretion, with any aspect of the transaction, including without limitation the results of the inspection(s) or any material reviewed by Buyer prior to the Inspection Deadline, 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 Property in its present, "AS-IS, WHERE-IS" condition, subject to the contingencies set forth in Section 4 of this Agreement.

6. TITLE.

A. The City shall convey marketable title to the Property to Buyer by limited 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 may obtain an ALTA Owner's Policy of Title Insurance (the "Title Policy") 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") upon notice of title transfer of the Property from Uchbar to the City. 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 ten (10) business days after Buyer's receipt of the Title Commitment.

D. If the Title Commitment shall disclose any defect in the City'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 the City shall have ten (10) days after receipt of the Title Objections, or until the day next preceding 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 the City and the Escrow Agent up to the day next preceding the Closing Date. 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 the City 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. Seller will 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 the City 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 September 17, 2010. The City 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 the City (1) the cost of removing or discharging any defect lien or encumbrance required for conveyance of the Property as required by this Agreement; (2) one-half of the escrow fee; and (3) the amount due to Buyer for any prorations or credits under this Agreement.

D. The Escrow Agent shall charge to Buyer (1) one-half of 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 the City 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 the City: Daniel J. Ursu, Mayor  
City of Richmond Heights  
26789 Highland Road  
Richmond Heights, Ohio 44143

If to Buyer Evenhuis Investco, LLC  
c/o Walter R. Evenhuis

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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 the City, 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 the City, then the City may terminate this Agreement and Buyer shall pay all title and escrow charges or the City may pursue any legal or equitable remedy. If the City 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 the City. 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 Property.

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

The City 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.

This Agreement is valid and enforceable against the City in accordance with its terms and each instrument to be executed by the City 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.

**THE CITY OF RICHMOND HEIGHTS,  
OHIO**

By: \_\_\_\_\_  
Daniel J. Ursu, Mayor

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

**EVENHUIS PROPERTIES, LLC,  
A Florida limited liability company**

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

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

Its: \_\_\_\_\_

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

Approved as to legal form  
and correctness:

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R. Todd Hunt, Director of Law

**ACCEPTANCE BY ESCROW AGENT**

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

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

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

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

Exhibit A

Situated in the City of Richmond Heights, County of Cuyahoga and State of Ohio and known as being part of Original Euclid Township Lot No. 25, in Tract No. 11, and bounded and described as follows:

Beginning at the intersection of the centerline of Georgetown Road (Old Highland Road) (60 feet wide) with the centerline of Hilltop Road (60 feet wide);

Thence South 03 degrees 09' 50" West along the said centerline of Hilltop Road a distance of 819.71 feet to a P.K. Nail set;

Thence South 86 degrees 50' 10" East a distance of 30.00 feet to an iron pin set in the easterly line of Hilltop Road, being the principal place of beginning of the land herein described;

Thence South 03 degrees 09' 50" West along the said easterly line of Hilltop Road a distance of 88.83 feet to an iron pin set;

Thence South 86 degrees 50' 10" East a distance of 245.18 feet to an iron pin set;

Thence North 03 degrees 09' 50" East a distance of 88.83 feet to an iron pin set;

Thence North 86 degrees 50' 10" West a distance of 245.18 feet to the principal place of beginning and containing an area of 0.500 acres of land be the same more or less, but subject to all legal highways and being further known as the southerly one-half of Sublot No. 9 in the Highland Subdivision according to the Survey made by Bauer Surveys Company, December 22, 1927.