

RESOLUTION NO.: 54-2020 (As revised June 9, 2020)

INTRODUCED BY: Alexander and Lentine

A RESOLUTION DETERMINING THAT THE ESTABLISHMENT OF THE BELLE OAKS NEW COMMUNITY AUTHORITY WILL BE CONDUCIVE TO THE PUBLIC SAFETY, CONVENIENCE, AND WELFARE AND IS INTENDED TO RESULT IN THE DEVELOPMENT OF A NEW COMMUNITY; DECLARING THE NEW COMMUNITY AUTHORITY TO BE ORGANIZED AS A BODY POLITIC AND CORPORATE; DEFINING THE BOUNDARY OF THE NEW COMMUNITY DISTRICT; AND DECLARING AN EMERGENCY.

WHEREAS, Belle Oaks Marketplace LLC, (the “Developer”) plans to develop an approximate 69-acre site located within the municipal corporate boundaries of the City of Richmond Heights, Ohio (the “City”), as a mixed-use development consisting of new retail, multi-family residential, commercial, and structured parking facilities and other complementary uses as described in Ohio Revised Code (“R.C.”) Chapter 349; (the “Development”);

WHEREAS, on February 18, 2020 the Developer submitted to the Council of the City, pursuant to R.C. Section 349.03, a “Petition for Establishment of the Belle Oaks New Community Authority under Chapter 349 of the Ohio Revised Code” (the “Petition”), as now on file with the Council;

WHEREAS, the Belle Oaks New Community District, as described in the Petition, is located entirely within the municipal corporate boundaries of the City, an Ohio municipal corporation, and this Council, as the legislative authority of the City, is therefore the “organizational board of commissioners” under R.C. Chapter 349 for purposes of the Petition;

WHEREAS, on March 3, 2020, pursuant to Revised Code Section 349.03, this Council adopted its Resolution No. 23-2020, and determined that the Petition is sufficient and complies with the requirements of R.C. Section 349.03 in form and substance;

WHEREAS, under R. C. Section 349.03, this Council held a public hearing on the Petition on May 12, 2020, notice of which was published as required in R.C. Section 349.03, and determined by this Council to have been timely held under the circumstances faced by the Council and the State of Ohio;

WHEREAS, this Council has determined that the Petition will be conducive to the public health, safety, convenience, and welfare, and is intended to result in the development of a new community.

NOW, THEREFORE, Be It Resolved by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1: Approval of Petition. The Petition is hereby accepted and shall be recorded, along with this Resolution, in the journal of this Council as the “organizational board of commissioners” for the purposes of R.C. Chapter 349.

Section 2: Findings by Council. Council hereby determines that the proposed Belle Oaks New Community Authority will be conducive to the public health, safety, convenience, and welfare, and is intended to result in the development of a new community as defined in R.C. Section 349.01(A).

Section 3: Corporate Authority, Name and Boundaries. Pursuant to the Petition, the Belle Oaks New Community Authority is hereby organized as a body politic and corporate with the corporate name designated in the Petition (that name being the “Belle Oaks New Community Authority”). The boundaries of the Belle Oaks New Community District (the “District”) are established as the boundaries described in the Petition (the permanent parcel numbers are identified in the Petition and replicated in Exhibit A to this Resolution), subject only to the condition regarding the boundaries of the District as stated in Section 5 of this Resolution.

Section 4: Board of Trustees of Belle Oaks New Community Authority. The Board of Trustees of the Belle Oaks New Community Authority shall be comprised of seven members selected and appointed as provided in the Petition. Pursuant to R.C. Section 349.04, there shall be posted for each member of the Board of Trustees a bond in the amount of \$10,000 for the faithful performance of his or her duties and the costs for the bonds shall be borne by the Developer until the Authority has the financial ability to assume the cost of the bonds and to reimburse the Developer at the Developer’s request. The bond shall be with a company authorized to conduct business within the State of Ohio as a surety and shall be deposited with and preserved by the Clerk of Council.

Section 5: Condition Regarding Boundaries of District. For any property located within the boundaries of the District included in the Petition but not currently owned in fee simple by the Developer, DealPoint Merrill, LLC, or any of its affiliates (the "Property"), this Council has determined that such Property will be conducive to the public health, safety, convenience, and welfare and is intended to result in the development of a new community as defined in R.C. Section 349.01(A), as long as the Developer obtains fee simple ownership of such Property within 120 days of the earliest of one of the following conditions to occur:

(a) A final, non-appealable decision is entered in the current litigation in Cuyahoga County Court of Common Pleas Case No. CV-20-931074, captioned *DealPoint Merrill, LLC v. Richmond Town Square Realty Holding, LLC, et al.* (the “Litigation”), wherein DealPoint Merrill, LLC is

seeking to enforce its legal rights under the existing purchase and sale agreement including, without limitation, specific performance, and which resolves all issues and claims asserted by all parties in the case; or

(b) A final settlement by the parties to the Litigation following the effective date of this Resolution;

accordingly, such Property will be included within the boundaries of the District without any further action of this Council if the Developer achieves fee simple ownership of such Property within the timeframes stated in this Section 5.

Section 6.

Limit on Authority. The Board of Trustees of Belle Oaks New Community Authority shall have no authority to fix, alter, impose, collect and receive charges or assessments on the income of residents and the profits of businesses within the District.

Section 7.

Capital Improvements: Maintenance, Repair and Replacement. The Board of Trustees of Belle Oaks New Community Authority shall provide for the continuing maintenance, repair and replacement of the improvements in the District and which were actually financed by the Authority, as needed, through the requirement of an adequately-funded capital sinking fund or similar capital reserve.

Section 8.

Open Meetings. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Resolution were taken in an open meeting of this Council, and that all deliberations of this Council were had in compliance with the law, including R.C. Section 121.22.

Section 9.

Emergency Enactment. This Resolution is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that in order to meet the Developer's need to close on its purchase in fee simple of a majority of the land within the District and to timely secure financing for the Development, this Resolution should go into immediate effect; 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:

June 9, 2020



David H. Roche

David H. Roche, Mayor

APPROVED: June 9, 2020

ATTEST: Betsy Traben
Betsy Traben
Clerk of Council

Eloise Cotton - Henry
Eloise Cotton-Henry
President of Council

EXHIBIT A

Phase I

PPN 662-27-048 owned by Richmond Heights Town Square Owner, LLC (an affiliate of DealPoint Merrill, LLC). In accordance with the Petition, Belle Oaks Marketplace LLC¹, has represented that it has an option to take title of this property that is currently owned by DealPoint Merrill, LLC and/or its affiliates.

Phase II

PPN 662-30-121 owned by Richmond Heights Town Square Owner, LLC (an affiliate of DealPoint Merrill, LLC). In accordance with the Petition, Belle Oaks Marketplace LLC, has represented that it has an option to take title of this property that is currently owned by DealPoint Merrill, LLC and/or its affiliates.

PPN 662-30-090 owned by Richmond Heights Owner, LLC (an affiliate of DealPoint Merrill, LLC). In accordance with the Petition, Belle Oaks Marketplace LLC, has represented that it has an option to take title of this property that is currently owned by DealPoint Merrill, LLC and/or its affiliates. As further detailed in the Petition, this property is subject to a pending Lot Split Application which will separate the existing CubeSmart building and adjacent limited parking field (approximately 2.9347 acres), which will not be included within the NCA District, from the balance of the property (approximately 5.7890 acres), which will be included within the NCA District.

PPNs 662-27-049 and 662-30-120 currently owned by Kohan. DealPoint Merrill, LLC is under contract to purchase from current owner. In accordance with the Petition, Belle Oaks Marketplace LLC, has represented that it has an option to take title of this property once owned and controlled by DealPoint Merrill, LLC and/or its affiliates.

PPN 662-30-098 currently owned by Valle Family Investments, LLC. DealPoint Merrill, LLC is under contract to purchase from current owner. In accordance with the Petition, Belle Oaks Marketplace LLC, has represented that it has an option to take title of this property once owned and controlled by DealPoint Merrill, LLC and/or its affiliates.

¹ DealPoint Merrill, LLC has represented that the Developer in the Petition, Belle Oaks Marketplace LLC, (a Single Purpose Entity) has been formed and that DealPoint Merrill, LLC is the Managing Member of Belle Oaks Marketplace LLC.