

ORDINANCE NO. 2-2017

AN ORDINANCE BY THE COUNCIL OF THE CITY OF NEW PHILADELPHIA, OHIO, TO AUTHORIZE THE MAYOR OF THE CITY OF NEW PHILADELPHIA TO ENTER INTO A DONATION AGREEMENT FOR THE CONIGLIO PROPERTY ACQUISITION AND TRAIL PROJECT, AND DECLARING AN EMERGENCY.

WHEREAS, Joseph J. Coniglio and Cheryl M. Coniglio desire to donate commercial real property to the City of New Philadelphia, Ohio for purposes of recreational and tourist development; and

WHEREAS, the real estate is now available for said purposes and a real property donation agreement is attached hereto.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NEW PHILADELPHIA, OHIO, AS FOLLOWS:

SECTION 1. The Mayor of the City of New Philadelphia, Ohio is hereby authorized to enter into the attached real property donation agreement with Joseph J. Coniglio and Cheryl M. Coniglio for the real estate located at 530 South Broadway, New Philadelphia, Ohio 44663 for the purposes indicated herein.

SECTION 2. This Ordinance is hereby declared to be an emergency measure and its immediate passage is necessary in order to preserve, protect and maintain the health, safety and welfare of the citizens of the City of New Philadelphia, Ohio.

SECTION 3. This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: February 13, 2017

ATTEST:

Julie Courtright
JULIE COURTRIGHT
CLERK OF COUNCIL

Sam R. Hitchcock
SAM R. HITCHCOCK
PRESIDENT OF COUNCIL

APPROVED:

Joel H. Day
MAYOR JOEL H. DAY

SPONSORED BY: PARKS AND CEMETERY COMMITTEE

REAL PROPERTY DONATION AGREEMENT

THIS REAL PROPERTY DONATION AGREEMENT, (“Agreement”), is made and entered into at Tuscarawas County, Ohio, by and between JOSEPH J. CONIGLIO and CHERYL M. CONIGLIO, husband and wife, being the donors, (individually and collectively the “donor”); and, THE CITY OF NEW PHILADELPHIA, an Ohio municipal corporation, being the donee, (“Donee”).

RECITALS:

1. Donor owns the commercial real property located at 530 South Broadway, New Philadelphia, Tuscarawas County, Ohio, and being tax parcel number 43-07649-000, (“Property”).
2. Donor wants to donate the Property to Donee subject to and upon the terms and conditions of this Agreement, (“Terms”).
3. Donee wants to accept and obtain the Property as a donation from Donor.

NOW, THEREFORE, in consideration of the Terms, Donor and Donee agree as follows:

1. Recitals: Donor and Donee incorporate the Recitals herein by reference and ratify and confirm the same.
2. Donation: Donor will donate the Property to Donee and Donee will accept the Property from donor, (“Donation”), upon and subject to the Terms.
3. Inclusions/Exclusions: Included in this Agreement for all purposes as part of the “Property” are any and all: (a) easements and/or rights-of-way benefiting and/or appurtenant to the Property; and, (b) improvements, structures and/or fixtures located upon or at the Property (if and to the extent Donor owns the same). Donor specifically excludes from the “Property” under and for purposes of this Agreement any and all contents/personal property at the Property belonging to Donor.
4. Appraisal: Donee shall (at Donee's expense) immediately engage a duly qualified MAI appraiser, (“Appraiser”), to issue/furnish a formal written appraisal of/for the Property, (“Appraisal”), to Donor and Donee prior to closing, (“Closing”), providing a fair market valuation of the Property as of a date within forty-five (45) days of Closing. Donee shall obligate the Appraiser to promptly execute IRS Form 8283 for donor upon Donor’s presentation of the same to the Appraiser (to therein accurately report/confirm the Appraiser’s valuation of/for the Property).
5. Closing and Possession: Closing shall occur on or before the earlier of June 15, 2016 or ten (10) days after the date of the Appraisal, (“Closing Date”). Time is of the essence. Alban title, LLC, (Title Company”), shall close the Donation. Donor shall deliver full possession of the Property to Donee at Closing.

6. Title Evidence: Prior to the closing Date, Donee shall at Donee's sole expense obtain any and all title evidence and/or title insurance coverage pertaining to the Property and Donor's record title thereto, ("Title"), that Donee may want.
7. Deed: At Closing, donor shall make, execute and deliver to Donee a Quit-Claim Deed, "(Deed)", which such Deed shall be in the form and substance of the same which is attached hereto as Exhibit "A" and is made part hereof.
8. Taxes, Assessments and Other Charges: Prior to closing, Donor shall assume and pay/satisfy and all real estate taxes/assessments (together with any applicable penalties/interest); including, without limitation, delinquent real estate taxes/assessments. Real estate taxes/assessments due or to become due for the year of closing shall not be pro-rated. Donor shall be responsible for any and all real estate tax/assessment liabilities, water/sewer charges, tap-in fees and/or any recoupment (delinquent, due and/or assessable).

Donee shall pay any applicable conveyance fee/transfer tax which the Tuscarawas County Auditor assesses upon donor's donation of the Property to Donee. Donee shall pay the recording fee for the Deed. Donee shall pay all Closing costs of the Title Company.

Donee shall pay for an MAI appraisal of the property, a phase one EPA study and the deed transfer fee.

9. Warranties and Representations: As of the Closing Date, Donee will have examined the Property and will accept the Property in the condition thereof, **AS IS and WHERE IS**. Donor has not made and does not make any representations and/or warranties (express and/or implied) to Donee relating in any manner whatsoever to the Property. Donee does not and will not rely on any representation or warranty made by donor and/or Donor's agent(s) and/or representative(s), whether express or implied, relating to the physical condition of the Property or the suitability of the Property for any purpose(s) for which Donee may desire to use, occupy, build upon and/or develop the same. Donee is relying and will rely solely upon Donee's examination/inspection of the Property respecting the condition, character and size of the Property (inclusive of all surface and subsurface soil conditions) and any and all appurtenances/rights benefiting the same.
10. Donee's Contingency: Prior to the Closing Date, Donee may (at Donee's sole expense) review, inspect and/or evaluate the Property and/or donor's title thereto, (Review(s)). Donee's obligation to accept and close the Donation is and shall be contingent upon "Donee's satisfaction with the finding(s)/results(s) of Donee's Review(s) as Donee shall reasonably determine. If Donee is not satisfied with any such Review (s), Donee may elect to terminate this Agreement upon written notice to donor prior to the Closing Date.
11. Severability: If any Term(s) of this Agreement is/are held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the Terms of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or otherwise invalidated.

12. Notices: Any notice(s) required or permitted to be given pursuant to this Agreement shall be given by: (i) personal delivery; or, (ii) Federal Express (or other readily traceable to overnight delivery service) to donor and/or to Donee as follows:

To Donee: 150 East High Avenue
New Philadelphia, Ohio 44663
Attention: _____

To Donor: John J. Rambacher, Esq.
(being Donor's counsel)
825 South Main Street
North Canton, OH 44720

14. Execution: Donor and/or Donee may execute and deliver this Agreement in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same Agreement. The signature(s) of donor and/or Donee upon this Agreement may be made by facsimile or via e-mail in the "PDF" format, with any such facsimile or "PDF" format signature(s) to be fully valid and effective for any and all purposes hereof.

15. Commission(s): Donor and Donee both acknowledge and represent that no real estate broker(s) or agent(s) has/have been involved with respect to this Agreement and/or the Donation. Each party shall hold the other harmless from and against any and all loss, cost, damage or expense arising out of or resulting from any act(s) of such party which give rise to any claim of any broker/realtor relative to this Agreement and/or the donation. The forgoing provisions shall survive Closing and the execution, delivery and/or recordation of the Deed.

16. Waiver/Modification: Non of the Terms can be waived, modified and/or amended unless and until Donor and Donee prepare and sign a written waiver and/or modification, which such waiver and/or modification must incorporate this Agreement by reference therein and must otherwise ratify and reaffirm the same (subject to the waiver/modification).

17. Successors and Assigns: the Terms of this Agreement shall extend to and be binding upon the respective successor(s) and/or assign(s) of both Donor and Donee.

18. Governing Law: This Agreement shall be governed by and construed in accordance with Ohio Law. The Tuscarawas county, Ohio common Pleas court shall have the sole jurisdiction and venue over and respecting any claims, causes of action, liabilities and/or disputes which arise among and between Donor and Donee relating in any manner whatsoever to this Agreement, the donation and/or the Property. The forgoing provisions shall survive Closing and the execution, delivery and/or recordation of the Deed.

19. Acceptance of Deed: Unless otherwise provided within this Agreement to the contrary, Donee's acceptance of the Deed from Donor shall be deemed to be the full performance and discharge of each and every duty and obligation of donor as contained or expressed herein.

20. Effective Date: The effective date, (Effective Date"), of this Agreement shall be the latest date upon which Donor and/or Donee shall sign the same.

21. Damage or Destruction of Property: Donor shall assume the risk of loss to the Property from fire or other casualty until Closing; provided, however, that if the Property is materially damaged or destroyed by fire or other casualty prior to closing, both donor and Donee may elect to terminate this Agreement upon written notice directed to the other. If Donor and/or Donee elect(s) to terminate this Agreement, Donor and/or Donee shall notify the other party of such

election in writing within fourteen (14) days after any such damage or destruction occurs. The failure by Donor and/or Donee to timely notify the other party in writing of termination shall constitute the election to proceed with Closing.

22. Offer: Donee must sign and return this Agreement to Donor within five (5) calendar days after Donor has signed the same.

23. Time of the Essence: Time is of the essence as to and/or upon any and all Terms.

25. Entire Agreement: There are no covenants, representations, warranties, agreements or conditions, either express or implied, which in any way affect, form a part of, or relate to this Agreement except for those set forth herein. This Agreement constitutes the entire understanding and agreement between Donor and Donee (and none of the Terms can be orally waived, changed, modified or altered).

IN WITNESS WHEREOF, Donor and Donee have executed this Agreement on the date(s) set forth herein below.

THE CITY OF NEW PHILADELPHIA, an
Ohio municipal corporation, ("Donee"),

JOSEPH J. CONIGLIO, ("Donor")

Dated: _____, 2016

By: _____
Its: _____

Dated: _____, 2016

CHERYL M. CONIGLIO, ("Donor")

Dated: _____, 2016