

FAIRFIELD TOWNSHIP
RESOLUTION NO. 17- 41

**RESOLUTION AUTHORIZING THE ADMINISTRATOR TO EXECUTE
AN AGREEMENT OF SALE.**

WHEREAS, Graceworks Lutheran Services and Fairfield Township, Butler County, Ohio have negotiated and intend to enter into an Agreement of Sale whereby Graceworks Lutheran Services agrees to sell to Fairfield Township the real property located at the intersection of Gilmore Road and Hamilton Mason Road, identified as Butler County Auditor's Parcel Nos. A0300012000037, A0300021000042 and A0300025000008; and

WHEREAS, the Agreement of Sale will promote economic development and the health, safety and welfare of the residents of Fairfield Township;

NOW, THEREFORE, BE IT RESOLVED by the Fairfield Township Board of Trustees, as follows:

Section 1. The Board hereby authorizes the Township Administrator to execute the Agreement of Sale attached hereto as Exhibit A.

Section 2. That it is found and determined that all formal actions of the Board concerning and relating to the adoption of this Resolution were adopted in an open meeting of the Fairfield Township Trustees and that all deliberations of the Board that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

Section 3. This Board upon majority vote does hereby dispense with the requirement that this Resolution be read on two separate days, pursuant to Section 504.10 of the Ohio Revised Code and hereby authorizes the adoption of this Resolution upon its first reading.

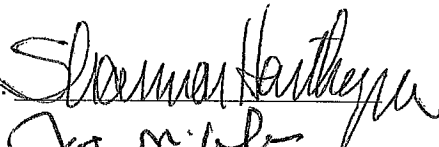
Section 4. This resolution is the subject of the general authority granted to the Board of Trustees through the Ohio Revised Code and not the specific authority granted to the Board of Trustees through the status as a Limited Home Rule Township.

Section 5. This Resolution shall be effective on the earliest date allowed by law.

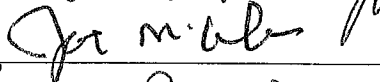
Adopted: April 12, 2017

Board of Trustees

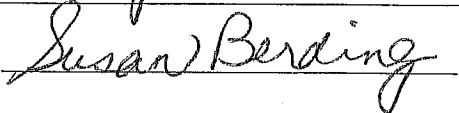
Shannon Hartkemeyer:



Joe McAbee:



Susan Berding:



Vote of Trustees

yes

yes

yes

AUTHENTICATION

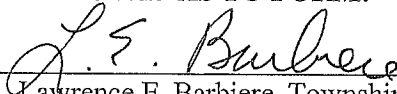
This is to certify that this is a resolution which was duly passed, and filed with the Fairfield Township Fiscal Officer this 12th day of April, 2017.

ATTEST:



Nancy Boek, Fairfield Township Fiscal Officer

APPROVED AS TO FORM:



Lawrence E. Barbieri, Township Law Director

AGREEMENT OF SALE

GRACEWORKS LUTHERAN SERVICES hereinafter called "Seller," agrees to sell to, FAIRFIELD TOWNSHIP, BUTLER COUNTY hereinafter called "Buyer," and Buyer agrees to purchase from Seller, the real Property located at the intersection *Gilmore Rd & Hamilton Mason Rd.*, (Butler County Auditor's Parcel Identification Nos. A0300012000037, A0300021000042 and A0300025000008 Fairfield Township, Butler County, Ohio, consisting of land area as shown in Exhibit A attached hereto, hereinafter called "the Property," as to be further defined in a Limited Warranty Deed.

ARTICLE 1. PURCHASE PRICE

1.01 Amount. The Seller and Buyer hereby agree to a purchase price for the Property of **One Million Four-Hundred and Fifty Thousand (\$1,450,000.00) Dollars** (the Purchase Price) for the above described Property, contingent upon final authorization and funding being approved and provided to Buyer by the Fairfield Township Board of Trustees. The purchase price includes the purchase of the Group Home which is on parcel numbers A0300021000042 and A0300012000037. The amount of the purchase price attributed to the Group Home is \$200,000.

ARTICLE 2. CONDITIONS OF SALE

2.01 The Buyer's obligation to purchase the Property pursuant to this Agreement is conditioned on the completion of these items to the Buyer's satisfaction:

A) Marketable Title - The conveyance to Buyer of good and marketable title to the Property. Marketability of title will be determined in accordance with the Title Standards approved by the Ohio State Bar Association. It is understood and agreed that the Property is being sold by Seller to Buyer hereunder free and clear of all liens, claims and encumbrances except for the Permitted Exceptions, and it is further understood and agreed that the conveyance by Limited Warranty Deed to be delivered by Seller pursuant thereto shall be subject only to said Permitted Exceptions which are as follows:

- (1) Any and all provisions of any ordinance, municipal regulation, or public law;
- (2) Easements, restrictions and legal highways of record;
- (3) Installments of real estate taxes and assessments, a lien upon the Property, but not yet due and payable.

Any mortgages or other monetary liens on the Property at Closing shall be discharged by Seller at the time of Closing out of the Purchase Price.

B) Delivery of Possession - Delivery of possession of said Property to Buyer, immediately on closing, free and clear of all uses and occupancies by closing, notwithstanding any and all existing structures, which are to remain, except for the Group Home and its tenants listed in Section 2.04.

C) Environmental examination - Buyer may at Buyer's expense conduct an examination of the Property to determine whether the Property; (A) is contaminated by toxic waste or hazardous substance; (B) contains asbestos; (C) appears on the Federal CERCLA (Comprehensive Environment Responsibility Compensation and Liability Act or Superfund) list or on any other similar State or Federal list as being classified as a hazardous site; (D) is located in any flood plain, floodway or other flood control district designated by any federal, state or local government agency, department or bureau; (E) is free of legally protected wetlands; (F) is free from significant historic sites or evidence of Native American habitation or settlement. Seller represents, without duty to further inquire, that it has no actual knowledge of any facts which would result in a finding of the existence of any of the items set forth in (A)-(F).

D) Financing- Satisfactory financing for the purchase to be arranged by Buyer.

E) Due Diligence Period; Right to Enter Property and Conduct Testing - Buyer, its agents, officials, employees, assignees, or designees, shall have the right to and shall be authorized by Seller to inspect the Property for a period of 150 days from the execution by all parties of this Agreement of Sale. Buyer and Seller agree that Buyer, its successors, assignees, and/or designees, shall be permitted to make entry on the Property upon providing reasonable notice of the same to Seller, in order to conduct any and all due diligence studies, inspections and testing procedures, studies, or assessments (including but not limited to all environmental testing, asbestos testing, surveying, engineering, soil borings and other tests) during the Due Diligence Period. Buyer, its agents, officials, employees, assignees, or designees, hereby agree to restore the premises to its original condition if otherwise disturbed by any due diligence efforts or activities of the Buyer resulting from this Agreement.

At any time during the due diligence period defined herein, Buyer may, at Buyer's sole discretion, elect to terminate this Agreement for any reason whatsoever, or alternatively, Buyer may, in its sole discretion, elect to waive any and all contingencies or material defects noted by Buyer during the course of its due diligence investigations and proceed to closing, provided such notice of termination or waiver of contingencies is furnished in writing to Sellers within the defined Due Diligence Period. Closing will take place no later than 30 days after the expiration of the Due Diligence Period if Buyer does not elect to terminate this Agreement during the Due Diligence Period.

F) Survey - Buyer shall provide and pay for necessary surveys for legal description, deed preparation and recording.

G) Seller agrees to include within the transfer of the Property all permanently installed improvements located on/within the Property and/or structure, subject to exceptions noted in Section 3.01 of this Agreement.

H) Sale shall be contingent upon Buyer receiving final approval and authorization from the Fairfield Township Board of Trustees, and further receiving final approval and funding to fund purchase of the same. Failure to receive said approval within 150 days from the effective date of this Agreement shall nullify this contract, and Buyer shall promptly so notify Seller.

I) The signing of Agreement For Public Infrastructure Improvements by Fairfield Township; the City of Hamilton, Butler County and Graceworks Lutheran Services. Buyer acknowledges that this Agreement has been signed by all parties.

Tax Prorations

2.02 There shall be prorated between Seller and Buyer as of Closing all (a) real estate taxes including CAUV recoupments and installments of assessments as shown on the latest available tax duplicate; (b) interest on encumbrances assumed by Buyer and (c) rents and operating expenses; with Buyer assuming liability for such items following Closing.

Expenses of Closing

2.03 The expenses of closing described in this Article shall be paid in the following manner:

- (1) The cost of preparing, executing, and acknowledging any deeds or other instruments required to convey title to Buyer or his nominees in the manner described in this Agreement shall be paid by Seller.
- (2) The cost of title insurance, if elected by the Buyer, shall be paid by the Buyer.
- (3) Any costs of surveys, transfer and recordation of title shall be paid by the Buyer.
- (4) Any tax imposed on the conveyance of title to said Property to Buyer or his nominee shall be paid by the Buyer.
- (5) Costs of preparing any mortgage releases shall be paid by Seller.

Included in the Sale

2.04 The REAL ESTATE shall include the land, the Group Home, all appurtenant rights, privileges, and easements, and shall also include all personal affects transferred in conjunction with the real estate, as itemized within Section 1.01 and 2.01(F) of this agreement.

2.05 Seller's obligation under this Agreement will be conditioned upon the prior closing of Seller's sale of the "Story Point" parcel to CSIG Development Company, LLC, and receiving the full purchase price for that Property.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF SELLER

Warranties of Seller

3.01 Seller represents and warrants to Buyer as follows:

(a) There are no parties in possession of any part of said Property as lessees, tenants at sufferance, or trespassers except for those residents in the Group Home;

(b) There is, to Seller's actual knowledge without duty to further inquire, no pending or threatened condemnation or similar proceeding or assessment affecting said Property, or any

part thereof, nor is any such proceeding or assessment contemplated by any governmental authority;

(c) Seller has to its actual knowledge complied with all applicable laws, ordinances, regulations, statutes, rules, and restrictions relating to said Property, or any part thereof;

(d) Said Property has full and free access to and from public highways, streets or roads and, to the actual knowledge of Seller, without duty to further inquire, and belief of Seller, there is no pending or threatened governmental proceeding which would impair or result in the termination of such access.

(e) The REAL ESTATE is zoned B-PUD and is () is not (X) located in an Environmental Quality District; and

(f) No Township, County or State orders have been served upon Seller requiring work to be done or improvements to be made which have not been performed.

ARTICLE 4. SELLER'S OPTION TO LEASE

4.01 The parties agree that Seller's obligation to close this purchase is subject to Seller being granted the option to lease the Group Home from Buyer for an initial term of up to two years from the closing date. The parties agree that if Seller exercises this option to lease that Seller and Buyer will agree on a written lease that includes the following provisions.

4.02 If Seller exercises its option to lease the Group Home, the rent for the initial term will be \$1,000 per month. All initial and exterior maintenance, real estate taxes and utilities will be paid by the Seller.

4.03 Seller may at any time terminate the Lease by delivering to Buyer thirty (30) days advance notice of termination. By mutual agreement the term of the Lease may be extended from time to time. In the event of any extension, the Lease Rate will be adjusted annually based on the Consumer Price Index. In the event that Buyer determines not to extend the initial term or any renewal term, Seller will be provided a ninety (90) day prior written notice before being required to vacate the Group Home.

4.04 During the term of the lease, Seller must maintain the Group Home in a commercially reasonable manner subject to inspection by Buyer.

4.05 Seller will indemnify Buyer from all claims resulting from Seller's occupancy and lease of the Group Home.

4.06 If Seller exercises its option to lease the Group Home from Buyer, Seller agrees to pay for Property and liability insurance in an amount reasonably acceptable to Buyer.

ARTICLE 5. MISCELLANEOUS BUYER'S EXAMINATION

5.01 Buyer is relying solely upon its own examination of the real estate, the Seller's certifications herein, and inspections herein required, if any, for its physical condition and

character. On the Closing Date, Seller will transfer possession of the Property to Buyer in as is where is condition with all faults and limitations, whether known or unknown, presently existing or that may hereafter arise. Buyer agrees that Seller has made no representations, warranties or promises except as set forth in this Agreement and Buyer expressly agrees to accept the Property, as is where is, with all faults.

Assignment of Agreement

5.02 This Agreement shall be binding on the parties, and to the extent assignable, on the assigns or nominees of the parties hereto, provided Buyer shall not transfer or assign this Agreement without first having obtained the express written consent of Seller which will not be unreasonably withheld. On delivery to Seller of an instrument in writing whereby the assignee of the Buyer assumes all of the provisions of this Agreement to be performed by Buyer, then, in that event, Buyer shall be released and discharged of all further liability hereunder.

Survival of Covenants

5.03 Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties pertaining to a period of time following the closing of the transactions contemplated hereby shall survive the closing and shall not be merged therein.

Ohio Law to Apply

5.04 This Agreement shall be construed under and in accordance with the laws of the State of Ohio. All obligations of the parties created hereunder are performable in Butler County, Ohio.

Legal Construction

5.05 In case anyone or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Prior Agreements Superseded

5.06 This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the aforesaid subject matter.

Gender

5.07 Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, and vice versa, unless the context requires otherwise.

Descriptive Heading

5.08 The descriptive headings used herein are for convenience only and are not intended to necessarily refer to the matter in sections, which precede or follow them, and have no effect whatsoever in determining the rights or obligations of the parties.

5.09 In the event that either party fails to close the sale and purchase of the Property pursuant to the terms of this Agreement, and is obligated to do so, both parties agree that the only action that may be maintained under this Agreement by either party is an election to enforce the terms hereof by action for specific performance, and that neither party will be entitled to damages or any other remedy available at law. However, in the event of a successful legal action by either party, the successful party will be entitled to recover its costs and attorneys fees.

5.10 Time is the of essence in this transaction.

5.11 This Agreement may be executed by both parties in counterparts each of which shall be deemed an original and all of such counterparts taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby,
have hereunder set their hands effective as of the ____ day of May, 2017.

BUYER:
FAIRFIELD TOWNSHIP, BUTLER COUNTY,

By: Julie Vanderhaar
Name Printed: JULIE VONDERHAAR
Title: ADMINISTRATOR
Date: 5/12/17

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby,
have hereunder set their hands this 15th day of May, 2017.

SELLER: Graceworks Lutheran Services

By: Willis O. Serr II

Mr. Willis O. Serr II, President
6430 Inner Mission Way
Dayton, Ohio 45459-7400

Date: 5/15/2017

APPROVED AS TO FORM AND EXECUTION:

Lawrence E. Barbieri
Fairfield Township Law Director

Exhibit A
(To be provided)

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