

ORDINANCE NO. 2014 - 9

AN ORDINANCE AUTHORIZING THE SALE OF REAL PROPERTY OWNED BY THE CITY OF WILLOWICK, OHIO, FOLLOWING BID; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Willowick, Ohio, owns real estate consisting of three (3) vacant parcels under permanent parcel numbers 28-A-043R-00-018-0 (approximately 1.61 acres); 28-A-043R-00-020-0 (approximately 0.77 acres); and 28-A-043R-00-024-0 (approximately 0.56 acres), (collectively, the "Real Estate"); and

WHEREAS, this Council by prior Ordinance determined that the Real Estate is not needed for any municipal purpose, and authorized the offer of the Real Estate for sale in the manner required by law and for the specific purpose of senior housing, a permitted use in the City's Mixed Use District; and

WHEREAS, this Council now desires to sell the Real Estate to The Woda Group, Inc., which entity is the highest and best bidder for the purchase of the Real Estate after advertisement once a week for five (5) consecutive weeks in a newspaper of general circulation within the City of Willowick, Ohio, with such sale and purchase to be in accordance with the terms and conditions of the annexed Purchase Agreement;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Willowick, County of Lake, State of Ohio, two-thirds or more of the members elected thereto concurring, that:

SECTION 1. The Mayor of the City of Willowick is hereby authorized to enter into the Purchase Agreement in a form substantially similar to the Purchase Agreement annexed as Exhibit A and incorporated herein and to execute any and all documentation necessary to formalize the validity and implementation of that Purchase Agreement with The Woda Group, Inc., as purchaser, which entity is the highest and best bidder for the purchase of the Real Estate after advertisement for once a week for five (5) consecutive weeks in a newspaper of general circulation within the City of Willowick, Ohio, and its bid is correspondingly accepted.

SECTION 2. That all formal actions of this Council concerning the passage of this Ordinance were adopted in an open meeting and all deliberations of this Council, or any of its committees that resulted in such formal actions, were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

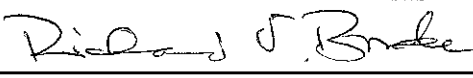
SECTION 3. That this Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City of Willowick and further, provides for the usual daily operation of a municipal department; wherefore, this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

ADOPTED BY COUNCIL: 2/4, 2014

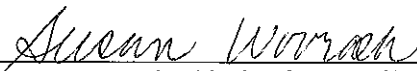

Robert Patton, President of Council

SUBMITTED to the Mayor for his approval
on FEB 05, 2014

APPROVED by the Mayor on
FEB 05, 2014


Richard J. Bonde, Mayor

ATTEST:


Susan Wovrosh, Clerk of Council

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") is made and entered into this _____ day of February, 2014, by and between City of Willowick, an Ohio municipal corporation (whose mailing address is 30435 Lakeshore Blvd. Willowick, Ohio 44095 (hereinafter referred to as the "Seller")), and The Woda Group, Inc., whose address is 229 Huber Village Blvd., Suite 100, Westerville Ohio 43081 (hereinafter referred to as the "Buyer").

WHEREAS, the Seller is the owner of certain real estate collectively consisting of Permanent Parcel Nos. 28A043R000180 (30707 Lakeshore Blvd.), 28A043R000200 (VL; no known address) and 28A043R000240 (VL; no known address) containing approximately 2.94+/- acres, more or less, situated on north side of Lakeshore Blvd., City of Willowick, Lake County, Ohio, and all as more particularly described and depicted on Exhibits A through C attached hereto and incorporated herein (the "Property"), and;

WHEREAS, the Seller, as adopted, approved and authorized under Codified Ordinance No. 2013-63 desires to sell the Property and the Buyer, as highest and best bid in response to the City of Willowick's advertisement to develop the Property solely and exclusively for the purposes of senior housing development and desires to purchase the Property upon and subject to the terms and conditions of this Agreement;

NOW THEREFORE, for and in consideration of the sum of One Thousand Dollars (\$1,000.00) (the "Initial Earnest Deposit"), the receipt and the sufficiency of which are hereby acknowledged, and for the further consideration of the covenants and agreements set forth below, the parties agree as follows:

1. Seller shall sell and Buyer shall purchase the Property upon and subject to the terms and conditions of this Agreement.
2. The purchase price for the Property shall be Two Hundred Seventy-Six Thousand Dollars and no/100 (\$276,000.00) (the "Purchase Price").
3. The Buyer shall pay to the Seller a refundable Initial Earnest Deposit to be held in escrow within (5) five business days of the full execution of this Agreement. The Initial Earnest Deposit shall be held by an escrow agent at Star Title Agency LLC, 229 Huber Village Road, Westerville, Ohio (the "Escrow Agent"). The Escrow Agent will provide Seller with an affidavit and proof of receipt of the Initial Earnest Deposit. If Buyer submits an application for IRC Section 42 tax credits to the Ohio Housing Finance Agency for the Property prior to or on February 20, 2014, then Buyer's Initial Earnest deposit shall be considered non-refundable. If the Buyer obtains a reservation of IRC Section 42 tax credits from the Ohio Housing Finance Agency for the Property on or before June 3, 2014, then Buyer shall make an additional nonrefundable earnest deposit to the Seller to be held in escrow by the Escrow Agent in the amount of Five Thousand Dollars and no/100 (\$5,000) (the "Final Earnest Deposit"). If the Buyer does not obtain a reservation on or before June 3, 2014, and Buyer determines it will resubmit/submit a revised application for IRC Section 42 tax credits to the Ohio

Housing Finance Agency for the Property prior to or on March 30, 2015, then Buyer may extend terms of this agreement but only upon the expressed written consent of the Seller for such extension and thereafter by making an additional nonrefundable earnest deposit in lieu of the Final Earnest Deposit, to the Seller to be held in escrow by the Escrow Agent in the amount of Five Thousand Dollars and no/100 (\$5,000) (the "Extension Deposit"). The Escrow Agent will provide Seller with an affidavit and proof of receipt of either the Final Earnest Deposit or the Extension Deposit.

4. At closing, the Purchase Price shall be paid by the Buyer as follows: (1) Buyer shall pay to Seller Two Hundred Seventy Thousand Dollars and no/100 (270,000.00) in cash and instruct release and delivery to the Seller (2) the Initial Earnest Deposit and either the Final Earnest Deposit or the Extension Deposit, both of which are held by the Escrow Agent and shall be credited toward the Purchase Price. At closing, the Seller shall deliver a transferable, recordable, Limited Warranty deed to the Buyer, or its assignee. The Limited Warranty deed shall be prepared by the Seller. If the Buyer obtains a reservation of IRC Section 42 tax credits from the Ohio Housing Finance Agency for the Property on or before June 3, 2014, then Closing shall occur on or before December 31, 2014. If the Buyer chooses to extend terms of this agreement with the expressed written consent of the Seller, and the Extension Deposit has been paid, and the Buyer obtains a reservation of IRC Section 42 tax credits from the Ohio Housing Finance Agency for the Property on or before July 3, 2015, then Closing shall occur on or before December 31, 2015.
5. Title to the Property shall be free and clear of all liens and encumbrances other than those that do not unreasonably interfere with Buyer's intended development of the Property for Senior Housing, as determined by Buyer in its sole and reasonable discretion. Buyer shall obtain a title insurance commitment for the Property and if any exception noted therein is unacceptable to Buyer, Buyer shall so notify Seller in writing and Seller shall then have 30 days to cure such unacceptable exception. If Seller fails to cure such exception within such 30 day period and provide evidence to Buyer of such cure, then Buyer shall have the right to terminate this Agreement by written notice to Seller and the Deposits shall be returned to Buyer.
6. Buyer's obligation to purchase the property shall be subject to and contingent upon satisfaction to Buyer, at Buyer's sole cost and expense and in Buyer's sole and reasonable discretion, of the following contingencies prior to the dates specified below:
 - a) Buyer determining on or before June 3, 2014, that the Property is properly zoned for and the site conditions will allow for a maximum of fifty (50) multi-family senior units and a community building.
 - b) Buyer determining on or before June 3, 2014, that it can obtain all governmental approvals necessary or desirable for the construction of the housing units and all related amenities on the Property.
 - c) Buyer determining on or before June 3, 2014, that (i) the Property has access to water, sanitary sewer, storm sewer, electric, telephone, cable, and natural gas services, adequate to service the units, and (ii) the costs to construct utility

infrastructure on the Property, including tap fees, are feasible for said housing units.

- d) Buyer determining on or before June 3, 2014 that the Property is in compliance with the lender and investor environmental requirements.
 - e) Buyer obtaining on or before June 3, 2014 a reservation of IRC Section 42 tax credits from the Ohio Housing Finance Agency.
 - f) Buyer, having not previously obtained on or before June 3, 2014 a reservation of IRC Section 42 tax credits from the Ohio Housing Finance Agency and upon extending the terms of this agreement per paragraph 3, obtaining on or before July 3, 2015 a reservation of IRC Section 42 tax credits from the Ohio Housing Finance Agency.
7. If the contingencies in paragraph 6 above are not satisfied or waived by Buyer on or prior to the date set forth in the applicable subsection of paragraph 6, then the Buyer shall have sole and absolute right to terminate this Purchase Agreement by written notice to Seller on or before such date. If this Agreement is terminated by Buyer on or before February 20, 2014 then the Seller shall return the One Thousand Dollars and no/100 (\$1,000.00) Initial Earnest Deposit held by the Escrow Agent to the Buyer, and neither party hereto shall have any further rights, obligation, or liabilities hereunder. If this Purchase Agreement is terminated by Buyer after February 20, 2014 then the Seller shall retain the Initial Earnest Deposit held by the Escrow Agent as liquidated damages, and neither party hereto shall have any further rights, obligations, or liabilities hereunder. If the Buyer does not receive a reservation of IRC Section 42 tax credits from the Ohio Housing Finance Agency on or before July 3, 2015, then the Seller shall retain the nonrefundable Extension Deposit held by the Escrow Agent as liquidated damages, and neither party hereto shall have any further rights, obligations, or liabilities hereunder. If the Buyer does not make the Final Earnest Deposit or the Extension Deposit as set forth in paragraph 3 above, then this Agreement shall terminate and Seller shall retain the Initial Earnest Deposit. The foregoing notwithstanding, the party terminating this Agreement shall pay all title company fees, the title examination and title commitment fees and any escrow fees.
8. It is understood and agreed that during the contract period for the Property the Buyer and its designees shall have the right to enter the Property to conduct environmental tests, surveying, soils tests, waivers, zoning changes, site plan approvals, parcel recombination or lot splits/plats or any other such investigation or due diligence as deemed necessary by the Buyer, all at Buyer's sole discretion and expense. The Buyer will indemnify and hold harmless the Seller from any claims, damages or causes of action which might occur as a result of the Buyer's activities on the Property and the Buyer shall restore the Property to the existing condition before said test or investigations were conducted.
9. Notices under this Agreement may be given by fax, mail, overnight mail, or personal delivery, and as follows: If to the Seller, to City of Willowick, 30435 Lakeshore Blvd., Willoughby, Ohio 44095, with a copy to Michael C. Lucas, Law Director for the City

of Willowick, 37265 Euclid Avenue, Willoughby, Ohio 44094; and if to Buyer, to The Woda Group, Inc., 229 Huber Village Blvd., Suite 100, Westerville, Ohio 43081. Any notice that is actually received shall be effective regardless of the manner in which it is sent or delivered.

10. Seller shall not, without the prior written approval of Purchaser, (a) make or permit to be made any material changes or alterations to any part of the Property; (b) enter into any agreement affecting any part of the Property; (c) permit any liens, mortgages, deeds of trust, or other encumbrances not currently of record to be placed against, or to affect any part of the Property or title to the Property.
11. At closing, Seller shall pay the cost of deed preparation. The Buyer shall pay to prepare any survey required for transfer. Seller agrees to provide Buyer a Limited Warranty Deed with no encumbrances upon the real property described herein. The Buyer shall pay the cost of an owner's title insurance policy in the full amount of the Purchase Price. Buyer shall pay the cost of any mortgage title insurance. The Seller and Buyer agree that the closing or the purchase of the property and the title insurance for the transaction will be furnished through a title agency of the Buyer's choice.
12. Buyer shall commence Senior Housing Construction within twenty-four (24) months of Closing unless commencement of construction is delayed for causes not within the control of the Buyer. Seller shall have the option to re-purchase the Property from Buyer at the purchase price if commencement of construction is delayed beyond said date by causes within the control of Buyer and not within the control of Seller; provided, however, that such option to purchase must be exercised within ninety (90) days of said date and such option shall be null and void after such failure to exercise within the ninety (90) day period shall commence Senior Housing Construction within twenty-four (24) months.
13. This Agreement shall be assignable by Buyer to an affiliate of Buyer with prior notice to and written consent of the Seller, which consent shall not unreasonably be withheld. This Agreement shall be assignable by Seller to an affiliate of Seller with prior notice to and written consent of the Buyer, which consent shall not unreasonably be withheld. No assignment by Seller or Buyer shall alter the terms and conditions of this Agreement
14. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The invalidity or unenforceability of any term or provision of this Agreement or the non-application of such term or provision to any person or circumstance shall not impair or affect the remainder of this Agreement, and its application to other persons and circumstances and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Time is of the essence in this Agreement and each and all of its provisions. Any extension of time granted for the performance of any duty under this

Agreement shall not be considered an extension of time for the performance of any other obligation under this Agreement. The date of this Agreement is the last date on which both parties hereto have executed this Agreement.

Witness the following signatures:

Seller:

City of Willowick, Ohio

By: _____

Witness

Its: _____

By: _____

Witness

Its: _____

Buyer:

The Woda Group, Inc.

By: _____

Witness

Its: _____

EXHIBIT A

Situated in the City of Willowick, County of Lake, and State of Ohio: and known as being a part of Original Willoughby Township Lot 1 in Tract 16 of said Township, and bounded and described as follows: Beginning at a point on the center line of Lake Shore Boulevard (60 feet wide) at the most easterly corner of the land conveyed to William E. and Elizabeth C. Hefner by deed dated December 29, 1952, and recorded in Volume 329, on Page 546 of Lake County Records. Thence North $39^{\circ} 30' 15''$ West along the northeasterly line of the land so conveyed to William E. and Elizabeth C. Hefner, a distance of about 810.50 feet to the mean low water mark of Lake Erie. Thence North $57^{\circ} 27' 14''$ East along the mean low water mark of Lake Erie a distance of 173.95 feet to a point. Thence South $38^{\circ} 31' 20''$ East a distance of about 334.00 feet to an iron pin stake crossing the high bank at 244.00 feet from said iron pin stake and also passing through iron pin stakes located 88.00 feet and 216.50 feet from said iron pin stake. Thence South $39^{\circ} 47' 00''$ West along a line parallel to the center line of Lake Shore Boulevard a distance of 121.85 feet to an iron pin stake, passing through iron pin stakes at 50.00 feet intervals. Thence South $10^{\circ} 03' 55''$ East a distance of 54.07 feet to an iron pin stake. Thence South $39^{\circ} 30' 15''$ East along a line parallel to the northeasterly line of the land conveyed as aforesaid to William E. and Elizabeth C. Hefner a distance of 381.84 feet to a point on the center line of Lake Shore Boulevard, passing through an iron pin stake on the northwesterly line of Lake Shore Boulevard and also passing through iron pin stakes at 50.00 feet intervals. Thence South $39^{\circ} 47' 00''$ West along the center line of Lake Shore Boulevard a distance of 21.00 feet to the place of beginning and containing 1.618 acres of land according to the survey of Frank N. Riley, Registered Surveyor and Professional Engineer, made in September, 1955, be the same more or less, but subject to all legal highways. Excepting from the above-described premises any part thereof resulting from change in the shoreline of Lake Erie occasioned by other than natural causes or by natural causes other than accretion. Subject to rights, obligations and duties imposed by law by virtue of being littoral.

PPN: 28-A-43-R-18

EXHIBIT B

Beginning at a point on the centerline of Lake Shore Boulevard, 60 feet wide, at the most southerly corner of a 1.754 acre parcel conveyed to Cecil M. Ricker and Jean Ricker, as recorded in Volume 652, page 232 of Lake County Records of Deeds. Thence North 39° 07' 30" West along the southwesterly line of land conveyed to Cecil M. Ricker and Jean Ricker, as aforesaid, a distance of 742.00 feet to the high water mark of Lake Erie, passing through an iron pipe stake at 30.57 feet on the northwesterly line of Lake Shore Boulevard and an iron pin stake at 662.00 feet on the top of the high bank. Thence South 57° 40' 34" West along the high water mark of Lake Erie, a distance of 5.27 feet to a point, said point being the northerly corner of land conveyed to Selm Schuller, as aforesaid, a distance of 334 feet to a point being the most easterly corner of lands conveyed to Selm Schuller, as aforesaid. Thence South 39° 47' 00" West along a line parallel to the centerline of Lake Shore Boulevard, a distance of 48.76 feet to a point, said point being the northerly corner of land conveyed to Marvin Silver and Jack M. Silver as recorded in Volume 812, Page 1066 of Lake County Records of Deeds. Thence South 39° 30' 15" West along the northeasterly line of Marvin Silver and Jack M. Silver, a distance of 323.97 feet from the centerline of Lake Shore Boulevard, Thence North 39° 47' 00" East along a line parallel to the centerline of Lake Shore Boulevard, a distance of 75.00 feet to a point. Thence South 39° 07' 30" East along a line parallel to the southwesterly line of Cecil M. Ricker and Jean Ricker, as aforesaid, and a distance of 25.00 feet therefrom, a distance of 323.97 feet to a point on the centerline of Lake Shore Boulevard. Thence North 39° 47' 00" East along the centerline of Lake Shore Boulevard a distance of 25.00 feet to the place of beginning, containing approximately 0.787 acres of land, be the same more or less, but subject to all legal highways.

Excepting from the above-described premises any part thereof resulting from change in the shoreline of Lake Erie occasioned by other than natural causes or by natural causes other than accretion. Subject to rights, obligations and duties imposed by law by virtue of being littoral.

PPN: 28A-043R-00-020

EXHIBIT C

Situated in the City of Willowick, County of Lake, and State of Ohio: beginning at a point on the centerline of Lake Shore Boulevard, 60 feet wide, at the easterly corner of land conveyed to Marvin Silver and Jack M. Silver as recorded in Volume 812, Page 1066 of Lake County Records of Deeds. Thence No. $39^{\circ} 30' 15''$ West along the Northeasterly line of land conveyed to Marvin Silver and Jack M. Silver as aforesaid, a distance of 323.97 feet to a point, said point being South $39^{\circ} 30' 15''$ East a distance of 100.00 feet from the Northerly corner of lands conveyed to Marvin Silver and Jack M. Silver, as aforesaid. Thence North $39^{\circ} 47' 00''$ along a line parallel to the centerline of Lake Shore Boulevard, a distance of 75.00 feet to a point. Thence South $39^{\circ} 07' 30''$ East a distance of 323.97 feet to a point on the centerline of Lake Shore Boulevard, said point being $39^{\circ} 47' 00''$ East a distance of 75.24 feet from the easterly corner of lands conveyed to Marvin Silver and Jack M. Silver, as aforesaid. Thence South $39^{\circ} 47' 00''$ West along the centerline of Lake Shore Boulevard, 60 feet wide, a distance of 75.24 feet to the place of beginning containing approximately 0.558 acres of land, be the same more or less, but subject to all legal highways.

PPN: 28A-043R-00-024