

CITY OF CLAYTON, OHIO

ORDINANCE NO. O – 09 - 18 -19

AN ORDINANCE AUTHORIZING THE ACCEPTANCE AT CLOSING OF 3.7884 ACRES OF REAL PROPERTY AS FURTHER DESCRIBED IN THE LEGAL DESCRIPTION APPENDED HERETO FROM RCS HOLDINGS, LLC PURSUANT TO THE TERMS AND CONDITIONS OF SETTLEMENT AGREEMENT APPROVED VIA RESOLUTION NO. R-06-18-32 AND FURTHER AUTHORIZING THE ACCEPTANCE OF REAL PROPERTY BEARING PARCEL ID NO. M60 16325 0005

WHEREAS, via enactment of Resolution No. R-06-18-32 on June 7, 2018, Council approved and authorized the City Manager to enter into a *Settlement Agreement* among the City of Clayton, Ohio, RCS Holdings, LLC, North Clayton Development, LLC, and the Estate of Kevin J. Merritt; and

WHEREAS, pursuant to and upon satisfaction of the terms and conditions specified in the *Settlement Agreement* referenced herein, the City Manager is authorized to accept via transfer by Fiduciary Deed from RCS Holdings, LLC to the City of Clayton, Ohio that certain 3.7884 acres of real estate further described in the legal description appended hereto as **Exhibit A** and located in Montgomery County, Ohio at a closing to be scheduled among the parties to the said *Settlement Agreement*; and

WHEREAS, in conjunction herewith, the City Manager is further authorized to accept transfer of that parcel of real estate bearing Parcel ID No. M60 16325 0005 and further described as Lot Number Sixty (60) of Village of North Clayton P.U.D. Section Two as recorded in Plat Book 206, Pages 24-24A of the plat records of Montgomery County, Ohio.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:

1. That the City Manager is authorized to accept at closing on behalf of the City of Clayton pursuant to and upon satisfaction of the terms and conditions specified in the *Settlement Agreement*, the transfer and conveyance by Fiduciary Deed from RCS Holdings, LLC to the City of Clayton, Ohio of that certain 3.7884 acres of real estate further described in the legal description appended hereto as **Exhibit A** and located in Montgomery County, Ohio and made a part hereof and to execute all documents and take all necessary action to close on said property.
2. That in conjunction herewith, the City Manager is authorized to accept transfer of that parcel of real estate bearing Parcel ID No. M60 16325 0005 described as Lot Number Sixty (60) of Village of North Clayton P.U.D. Section Two as recorded in Plat Book 206, Pages 24-24A of the plat records of Montgomery County, Ohio at closing on behalf of the City of Clayton and to execute all documents and take all necessary action to close on said property.

3. That this Ordinance shall be effective as an exception to any ordinance, resolution or other legislation of the City of Clayton, Ohio, inconsistent with this Ordinance or which imposes additional requirements for effectiveness or validity.

4. That in accordance with Clayton Charter Section 4.031 the requirement that this enactment be read on two (2) separate days is complied with by readings on September 20, 2018 and October 4, 2018.


5. That in accordance with Clayton Charter Section 4.031(H) this enactment shall become effective thirty days after its second reading and enactment.

ADOPTED BY COUNCIL ON OCTOBER 4, 2018.


AUTHENTICATION:



Mayor (Presiding Officer of Council)



Clerk of Council

APPROVED AS TO FORM:


Law Director

CERTIFICATION OF PUBLICATION

This shall certify that that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper

Date of publication

Englewood Independent October 7, 2018



CLERK



McDongall - Marsh

Land Surveyors

8529 Byers Road, Marietta, Ohio 45742

Tel: 937-847-2880 - Fax 937-847-2870

3.7884 acres

Tract I

Situate in Section 20, Town 5, Range 5 East, City of Clayton, Montgomery County, Ohio. Being part of a 7.7884 acre (by deed) parcel conveyed to RCS Holdings, LLC by LR. Deed-08-048482 of the Deed Records of Montgomery County, Ohio, and being a tract of land more particularly described as follows:

All of the Plats and Deeds referenced hereon, are recorded in the Plat and Deed Records of Montgomery County, Ohio.

Beginning at a Mag nail found at the northeast corner of Village of North Clayton P.U.D., Section Two, recorded in Plat book 206, Page 24 and the extension of the east right-of-way line of ProAction Drive (having a width that varies) and in the centerline of National Road (U.S. 40) and being the *True Point of Beginning*:

Thence, from said *True Point of Beginning*, N 83°55'23"E, with the centerline of said National Road (U.S. 40), for a distance of 336.70 feet to a Mag nail found at the northwest corner of a 1.000 acre (by deed) parcel conveyed to the City of Clayton by LR. Deed-14-051513:

Thence, S 06°04'37"E, leaving the centerline of said National Road (U.S.40), with the west line of said 1.000 acre parcel, passing a 5/8" iron pin set at a distance of 45.00 feet, for a total distance of 214.24 feet to a 5/8" iron pin found at the southwest corner of said 1.000 acre parcel:

Thence, S 69°13'11"E, with the south line of said 1.000 acre parcel, for a distance of 172.66 feet to a 5/8" iron pin found at the southeast corner of said 1.000 acre parcel and on the west line of a 5.945 acre (by deed) parcel conveyed to Mary Jo Theresa George by Deed M.F.#96-190E05:

Thence, S 00°00'57"W, with the west line of said 5.945 acre parcel, for a distance of 154.41 feet to a 5/8" iron pin set for a new corner:

Thence, N 89°59'03"W, with a new division line through said 7.7884 acre parcel, for a distance of 486.16 feet to a 5/8" iron pin set for a new corner on the east right-of-way line of said ProAction Drive:

Thence, N 05°30'33"W, with the east right-of-way line of said ProAction Drive, for a distance of 86.39 feet to a 5/8" iron pin found at the south corner of Lot 60 of Village of North Clayton, Section 2 recorded in Plat Book 206, Page 24:

Thence, northeasterly with the easterly line of said Lot 60, with a curve to the left, having a radius of 66.50 feet, an arc length of 131.77 feet, with a central angle of 113°31'58" and chord length of 111.25 feet which bears N 00°54'30" E, to a 5/8" iron pin found at a point of reverse curvature:

Thence, northwesterly continuing with the easterly line of said Lot 60, with a curve to the right, having a radius of 15.00 feet, an arc length of 13.03 feet, with a central angle of 49°46'53" and chord length of 12.63 feet which bears N 30°58'03" W, to a 5/8" iron pin found at a point of tangency:

Thence, N 06°04'37"W, with the east right-of-way line of said ProAction Drive, for a distance of 185.91 feet to the *True Point of Beginning*, Containing 3.7884 acres. Subject to all legal conditions, easements and right-of-ways pertaining to the premises herein described. This description prepared by McDougall - Marsh Land Surveyors. Based on a field survey made by same in April 2018, under the direct supervision of Thomas K. Marsh P.S. #7735. All iron pins set are 30" x 5/8" capped "7735." Bearings are based on the centerline of National Road (U.S.40), (N83°55'23"E), as recorded in Survey Volume 2006, Page 0295 of the Survey Records of Montgomery County, Ohio. Plat of Survey recorded in the Montgomery County Engineer's Record of Land Surveys, Volume 2018, Page 0130.

Thomas K. Marsh
Thomas K. Marsh P.S. #7735

Date: 5/29/18



No plat req.
DATE APPROVED 6/15/18
Janet Bomber
ZONING DEPARTMENT
MUNICIPALITY OF CLAYTON

PAUL W. GRUNER, P.E., P.S.
MONTGOMERY COUNTY ENGINEER
APPROVED FOR POINT OF BEGINNING,
ACREAGE AND CLOSURE ONLY
DATE 06/08/18 FILE NO. 2018-0130

BY Wayne B. Tol

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is made as of Sept 11, 2018 (the "date of this Agreement"), between RCS Holdings, LLC ("RCS"), an Indiana Limited Liability Company, North Clayton Development, LLC (NCD"), an Ohio Limited Liability Company and the City of Clayton, Ohio ("Clayton"), an Ohio political subdivision, and the Estate of Kevin J. Merritt (the "Estate") (each individually, a "Party" and collectively, the "Parties").

WHEREAS, RCS acquired by deed of record in Instrument No. 08-048482, Recorder's Office, Montgomery County, Ohio, that certain 7.7884 acres of real estate (the "Property") identified on the attached Exhibit A and located within the City of Clayton, Montgomery County, Ohio; and

WHEREAS, RCS and NCD were parties to a Settlement Agreement dated July 2, 2008, and a Memorandum of Settlement Agreement is recorded as Instrument No. AGRE 08-048483, Recorder's Office, Montgomery County, Ohio with respect to the Property;

WHEREAS, RCS executed a Promissory Note in the original amount of \$1,500,000.00 secured by an Open End Mortgage to Kevin J. Merritt, recorded as Instrument No. 10-028802, Recorder's Office, Montgomery County, Ohio, which encumbers the Property (the "Merritt Mortgage");

WHEREAS, NCD executed four (4) Affidavits of Fact, recorded as follows:

- a. Instrument No. 11-035899, Recorder's Office, Montgomery County, Ohio, which NCD alleges is a valid lien upon the Property;
- b. Instrument No. 2012-00050402, Recorder's Office, Montgomery County, Ohio, which NCD alleges is a valid lien upon the Property;
- c. Instrument No. 2014-00045037, Recorder's Office, Montgomery County, Ohio, which NCD alleges is a valid lien upon the Property; and
- d. Instrument No. 2016-00037533, Recorder's Office, Montgomery County, Ohio, which NCD alleges is a valid lien upon the Property (all collectively, the "NCD Affidavits");

WHEREAS, Kevin Merritt, the sole member of RCS, died on May 16, 2015, and the membership units of RCS owned by Kevin Merritt are an asset of the probate estate of Kevin Merritt, currently pending in the Hamilton Superior Court No. 1 *In Re The Matter Of The Estate Of Kevin Merritt, Deceased*, Case No. 29D01-1505-ES-00205 (the "Probate Case");

WHEREAS, NCD filed a claim against the Estate of Kevin Merritt in the Probate Case relating to the Property on August 29, 2016 seeking recovery in the amount of \$778,840.00 from the Estate (the "NCD Claim");

WHEREAS, the Property is tax lien eligible, and Clayton is interested in acquiring a portion of the Property in exchange for satisfying delinquent and future real estate taxes as delineated herein, attributable to the Property and unpaid by RCS (the "Tax Delinquency"); and

WHEREAS, Clayton acquired by deed of record in Instrument No. 14-051513, Recorder's Office, Montgomery County, Ohio, that certain one (1) acre parcel of real estate adjacent to the Property and further identified by Montgomery County Recorder Parcel ID No. M60 03102 0111 and further identified on the attached Exhibit B (the "Adjacent Property"); and

WHEREAS, Clayton acquired ownership of the Adjacent Property through a Board of Revision ("BOR") foreclosure action, during which the BOR failed to perfect service on RCS which failure of service may impair the ability of Clayton to deliver clear title to the Adjacent Property as provided herein; and

WHEREAS, in order to resolve the Merritt Mortgage, the NCD Affidavits, the NCD Claim, and the Tax Delinquency, and all other claims among them or affecting the property, the Parties agree to release all claims, divide the Property, and convey the Adjacent Property pursuant to the terms and conditions specified herein.

NOW THEREFORE, in consideration of the foregoing recitals and of the conditions, covenants, and agreements set forth below, and other good and valuable consideration, the amount and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Property.** In exchange for the consideration specified herein and the mutual obligations undertaken herein, RCS shall convey to Clayton any and all of RCS's right, title and interest in the northern section of the Property consisting of 3.7884 acres described in Exhibit C and fronting on U.S. Route 40 on the north side and fronting Proaction Drive on the west side (the "Clayton Parcel"), and Clayton shall accept, on the terms and conditions contained in this Agreement, the Clayton Parcel. In exchange for the consideration specified herein and the mutual obligations undertaken herein, Clayton shall convey any and all of Clayton's right, title and interest in the Adjacent Property to NCD and NCD shall accept, on the terms and conditions contained in this Agreement, said Adjacent Property. RCS shall convey by quitclaim deed to NCD any interest it may have in the Adjacent Property to cure any title defect which may or may not exist as a result of the failure of the BOR to perfect service upon RCS during the BOR foreclosure action by which Clayton acquired title to the Adjacent Property.

Ownership of the remaining 4.00 acres of the 7.7884 acres, as identified in Exhibit C, shall be retained by RCS (the "RCS Parcel"), or as directed by the Probate court, free and clear of unpaid real estate taxes and assessments and claims of NCD. The schematic attached hereto as Exhibit C shows the agreed upon lot splits of the Property described in this paragraph 1. The Property and Adjacent Property includes the land and all appurtenant rights, privileges and easements. The Parties acknowledge that the schematic attached hereto as Exhibit C may not reflect the final parcel divisions as determined by a surveyor and the local governing authority, and the Parties agree that the acreage of the Clayton Parcel and the RCS Parcel may each be increased or decreased as much as 0.10 acres, respectively.

2. **Terms and Conditions.** The lot splits and conveyances of the Clayton Parcel to Clayton and the Adjacent Parcel to NCD described in Paragraph 1, are subject to the satisfaction of the following terms and conditions:

- A. The specific boundaries of the lot splits specified in Paragraph 1 herein shall be mutually agreed upon by the Parties, and established by a boundary survey and Clayton will pay the cost of said boundary survey; and
- B. Compliance with all applicable Montgomery County, Ohio Engineer rules, regulations and requirements for the lot splits described in Paragraph 1 herein; and
- C. Compliance with all City of Clayton Zoning Department rules, regulations and requirements applicable to lot splits and development standards; and
- D. Prior to Closing, RCS will take all necessary steps to satisfy and clear from title Certificate of Judgment 2016 CJ 199984, Clerk's Office, Montgomery County, Ohio against RCS Holdings, LLC, et al. in favor of Altick & Corwin Co., LPA in the amount of \$3,827.71 plus interest at the rate of 3% per annum from March 11, 2016 plus court costs and filed of record on April 15, 2016.
- E. This Agreement is conditioned upon and subject to approval of the City of Clayton Council (Clayton will provide RCS an opportunity to review any draft resolution or other such instrument by providing such draft to RCS at least ten days before it is submitted to the City of Clayton for approval); and
- F. This Agreement is conditioned upon and subject to approval of the Hamilton Superior Court No. 1 *In Re The Matter Of The Estate Of Kevin Merritt, Deceased*, Case No. 29D01-1505-ES-00205;
- G. The delivery of such certificates, affidavits, instructions, notices, estoppel certificates, accounting, resolutions, authorizations, prorations, engineering studies and/or investigations as may be reasonably requested by any party or its counsel as is customary for the transactions herein.

3. Title. RCS and/or Clayton may obtain a commitment for an owner's policy of title insurance insuring RCS and/or Clayton's title to the RCS Parcel or the Clayton Parcel, respectively, at their own expense. If so, RCS and/or Clayton shall furnish a copy of the commitment to all Parties. If the commitment shows that title to all or part of the RCS Parcel or the Clayton Parcel, is unmarketable, as determined by Ohio law with reference to the Ohio State Bar Association Standards of Title Examination, or is subject to any defect, lien or encumbrance that is not a Permitted Encumbrance, RCS and/or Clayton shall notify all Parties of its objections within ten (10) days after receiving such title commitment. To the extent Clayton's objection(s) involve monetary liens, RCS shall, upon receipt of Clayton's objections, promptly undertake and complete prior to the Closing all actions necessary to satisfy and eliminate the liens, defects or encumbrances relative to the Property. To the extent RCS and/or Clayton's objections involve any other liens, defects or encumbrances and other defects and/or objections to title, RCS shall remedy or remove the liens, defects or encumbrances prior to the Closing. If RCS does not remedy or remove the liens, defects or encumbrances or is unable to do so, Clayton may (i) waive the liens, defects or encumbrances and accept such title to the Clayton Parcel as RCS is able to convey or

terminate this Agreement, and this Agreement shall be null and void. Clayton shall so elect by delivering written notice to all Parties on or before the date of the Closing, and if Clayton fails to give such notice, it shall be deemed to have exercised election (i) under the preceding sentence. All costs of the title examination and title insurance commitment and policy, if any, closing costs, escrow fees, applicable conveyance fee and parcel transfer fee with respect to the sale of the Property, appraisals, association fees from the date hereof shall be paid as specified on the attached Exhibit D.

4. **Closing.** Unless extended by agreement of the parties, the closing for the delivery of RCS's fiduciary deed for the Clayton Parcel and the closing for the delivery of the Clayton Limited Warranty Deed to NCD for the Adjacent Parcel consistent with Paragraph 1 herein, and delivery of the other instruments provided for in this Agreement, shall be held at a time and place in Dayton, Ohio, mutually agreeable to the Parties (the "Closing") the later of thirty (30) days after satisfaction of all of the following: (i) signature of this Agreement by all parties hereto; and (ii) approval of the City of Clayton Council of this Agreement; (iii) approval of this Agreement by the Hamilton Superior Court No. 1 *In Re The Matter Of The Estate Of Kevin Merritt, Deceased*, Case No. 29D01-1505-BS-00205; and satisfaction of the contingencies and conditions of this Agreement are satisfied.

- A. At the Closing, Clayton shall pay any and all outstanding real estate taxes, penalties, and assessments, including special assessments, if any, on the entire Property as evidenced by the records of the Montgomery County, Ohio Auditor. Clayton further covenants and agrees to pay, on or before all applicable due dates, any and all real estate taxes, penalties, and assessments, including special assessments, if any, which will become a lien on the RCS Parcel in tax year 2018 (payable in 2019).
- B. At the Closing, NCD, RCS, and the Estate of Kevin Merritt shall each release any and all of such party's respective liens upon or claims to the entire Property (except for clear and marketable title to the RCS Parcel as contemplated herein) including the Merritt Mortgage and the NCD Affidavits; and
- C. At the Closing, RCS shall deliver the Clayton Parcel by delivery of transferable and recordable fiduciary deed consistent with Paragraph 1 herein in substantially the form attached as Exhibit E, conveying marketable fee simple title to the Clayton Parcel, free and clear of all liens, rights to take liens, claims, assessments and encumbrances, except the following (the "Permitted Encumbrances"): (a) real estate taxes and assessments not then due and payable, (b) such easements and restrictions of record as will not materially interfere with the use of the Property for the following purposes: Planned Development 3 (PD3) per Section 1169.02(e) of the Clayton Codified Ordinances and the North Clayton Development Standards, (c) zoning, building and other laws, codes and ordinances, and (d) rights of parties in possession, if any. The Permitted Encumbrances also shall include any matters waived or deemed waived by Purchaser pursuant to Paragraph 3; and
- D. At the Closing, Clayton shall convey the Adjacent Parcel to NCD, by delivery of transferable and recordable Limited Warranty Deed consistent with Paragraph 1 herein

in substantially the form attached as **Exhibit F**, conveying marketable fee simple title to the Adjacent Parcel, free and clear of all liens, rights to take liens, claims, assessments and encumbrances, except the following (the "Adjacent Permitted Encumbrances"): (a) real estate taxes and assessments not then due and payable, (b) such easements and restrictions of record as will not materially interfere with the use of the Property for the following purposes: Planned Development 3 (PD3) per Section 1169.02(c) of the Clayton Codified Ordinances and the North Clayton Development Standards, (c) zoning, building and other laws, codes and ordinances, and (d) rights of parties in possession, if any. The Adjacent Permitted Encumbrances also shall include any matters waived or deemed waived by Purchaser pursuant to Paragraph 3.

5. **Possession and Alterations.** Exclusive possession of the properties conveyed per Paragraph 1 herein, shall be given to NCD and Clayton on the date of Closing, subject, however, to the Permitted Encumbrances and Adjacent Permitted Encumbrances, respectively.

6. **Brokers.** The Parties represent to each other that there is no broker or other person entitled to a commission or similar fee in connection with these transactions. Each party agrees, to the extent permitted by law, to defend, indemnify and save harmless the other parties against any and all other claims for brokerage commissions or similar fees for any services rendered at that party's request in connection with the transactions contemplated by this Agreement.

7. **Release of RCS and the Estate.** Except for the mutual obligations of the Parties to each other as enumerated in this Agreement, and upon completion of and subject to the Closing, in addition to any other releases in this Agreement, Clayton and NCD, for and on behalf of themselves and their respective assigns, attorneys, agents, parents, members, officers, and all other representatives, conditioned upon and for and in consideration of the performance of all of the terms of this Agreement, the sufficiency of which is hereby acknowledged, hereby **FOREVER RELEASES AND DISCHARGES** RCS and the Estate, their heirs, beneficiaries, personal representatives, employees, officers, attorneys, agents and assigns, members, and all other persons or entities who might be liable, from any and all manner of actions, causes of action, suits, accounts, losses, costs, obligations, liabilities, contracts, debts, claims, and demands whatsoever, at law or in equity, and however arising, asserted, or which could have been asserted, by Clayton or NCD through the date of Closing.

8. **Release of Clayton.** Except for the mutual obligations of the Parties to each other as enumerated in this Agreement, and upon completion of and subject to the Closing, in addition to any other releases in this Agreement, RCS, Estate, and NCD, for and on behalf of themselves and their respective assigns, attorneys, agents, parents, members, officers, and all other representatives, conditioned upon and for and in consideration of the performance of all of the terms of this Agreement, the sufficiency of which is hereby acknowledged, hereby **FOREVER RELEASES AND DISCHARGES** Clayton, its heirs, beneficiaries, personal representatives, employees, officers, attorneys, agents and assigns, members, and all other persons or entities who might be liable, from any and all manner of actions, causes of action, suits, accounts, losses, costs, obligations, liabilities, contracts, debts, claims, and demands whatsoever, at law or in equity, and however arising, asserted, or which could have been asserted, by RCS, Estate, or NCD through the date of Closing.

9. Release of NCD. Except for the mutual obligations of the Parties to each other as enumerated in this Agreement, and upon completion of and subject to the Closing, in addition to any other releases in this Agreement, RCS, Estate, and Clayton, for and on behalf of themselves and their respective assigns, attorneys, agents, parents, members, officers, and all other representatives, conditioned upon and for and in consideration of the performance of all of the terms of this Agreement, the sufficiency of which is hereby acknowledged, hereby **FOREVER RELEASES AND DISCHARGES** NCD, its heirs, beneficiaries, personal representatives, employees, officers, attorneys, agents and assigns, members, and all other persons or entities who might be liable, from any and all manner of actions, causes of action, suits, accounts, losses, costs, obligations, liabilities, contracts, debts, claims, and demands whatsoever, at law or in equity, and however arising, asserted, or which could have been asserted, by RCS, Estate, or Clayton through the date of Closing.

10. Notices. Any notice required or permitted to be given to a party under this Agreement, shall be deemed given if mailed by U.S. certified or registered mail, postage prepaid, or if sent by a nationally recognized overnight courier service, addressed as follows:

To RCS Holdings, LLC or Christopher J. Mueller, Esq.
the Estate of Kevin J. Hewitt Law & Mediation, LLC
Merritt: 47 S. Pennsylvania Street, Suite 700
Indianapolis, Indiana 46204
Email: cmueller@hewittlm.com
Phone: 317-922-2822

To City of Clayton, Ohio: Martina Dillon, Esq.
Gottschlich & Portune, LLP
201 East Sixth Street
Dayton, Ohio 45402
Email: mdillon@gplawdayton.com
Phone: 937-913-0200

To North Clayton Development, LLC: Gregory O'Connor, Esq.
McNamee and McNamee, PLL
2625 Commons Blvd.
Beavercreek, Ohio 45431
Email: goconnor@mcnameelaw.com
Phone: 937-427-1367

Any party may change its mailing address by written notice to the other party at its then current mailing address in accordance with the provisions of this Paragraph 10.

11. Non-Admission of Liability. This Agreement does not constitute an admission of liability by any Party hereto or that any action or inaction by the Party or its agents, employees, members, directors, officers, or representatives was wrongful, unlawful or in violation of any law, statute, ordinance or regulation or any agreement between the Parties.

12. Good Faith Compromise. The Parties agree that this is a good faith compromise of a disputed claims and the effect of this Agreement upon the interests of the Parties represented is just and reasonable.

13. Sole Party in Interest. The Parties represent that they have not assigned or transferred, or purported to assign or transfer, to any person, entity or party any respective claim, cost or cause of action they are releasing by this Agreement, and they are the sole party in interest with respect to the subject matter(s) of this Agreement.

14. Expenses. Each Party shall bear its own expenses, including attorneys' fees, incurred by them incident to this Agreement and the transactions contemplated hereby.

15. Additional Documentation. The Parties each hereby covenant and agree to cause its respective authorized agents to execute and deliver those documents and instruments required under this Agreement, as well as all such further documents, instruments and certificates, and to do all such other acts and requirements, as may be necessary to effectuate the terms of this Agreement.

16. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns.

17. Entire Agreement. This Agreement comprises the entire agreement between the Parties. No statements, other agreements or promises, verbal, written or otherwise, except as set forth herein, shall be used to construe this Agreement. No modification or amendment hereof shall be effective unless in writing and signed by each of the Parties hereto. The recitals set forth hereinabove are hereby incorporated and made a part of this Agreement.

18. Voluntary and Informed Assent. The Parties represent and agree that they each have read and fully understand this Agreement, that they are fully competent to enter into and sign this Agreement, and that they are executing this Agreement voluntarily, free of any duress or coercion.

19. Representation of Counsel. The Parties acknowledge that each has been represented by counsel and, for purposes of the rule of contract interpretation that construes a document against its drafter, the Parties agree that no Party or its counsel shall be considered the drafter of this Agreement.

20. Counterparts. This Agreement may be executed in counterparts by each Party signing a separate signature page which then shall be furnished to the other Parties. Counterparts executed and distributed by facsimile copy or by email are acceptable and shall be considered as binding and effective as an original signature.

21. Headings. The headings in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation hereof.

22. Governing Law and Jurisdiction. The laws of the State of Ohio shall apply to and control any interpretation, construction, performance or enforcement of this Agreement. The Parties agree that the exclusive jurisdiction for any legal proceeding arising out of or relating to this Agreement shall be in a court of competent jurisdiction in Ohio.

23. Modification. This Agreement may be modified in writing only signed by all the Parties.

24. Severability. The Parties agree that, if for any reason, a provision of this Agreement is held unenforceable by any court of competent jurisdiction, this Agreement shall be automatically conformed to the law, and otherwise this Agreement shall continue in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGES FOLLOW.]

SIGNED as of the date first written above.

RCS Holdings, LLC

By: Beth McIntire
Beth McIntire, Vice President of the National Bank of Indianapolis, solely in its capacity as Successor Personal Representative of the Estate of Kevin Merritt
Its: Sole Member and Manager
Date: 8/31/2018

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Beth McIntire, Vice President of the National Bank of Indianapolis, solely in its capacity as Successor Personal Representative of the Estate of Kevin Merritt pending in the Hamilton Superior Court No. 1, State of Indiana, under Cause No. 29D01-1505-ES-000205, as the sole and managing member of RCS Holdings, LLC, who, after having been duly sworn, acknowledged the execution of the foregoing for and on behalf of such Personal Representative.

WITNESS, my hand and notarial seal this 31st day of August, 2018.

Kelly E. Stuff
(KELLY E. STUFF) Notary Public

Commission Expires: 12/28/2023



The Estate of Kevin Merritt

By: Beth McIntire
Beth McIntire, Vice President of the National
Bank of Indianapolis, solely in its capacity as
Successor Personal Representative of the Estate of
Kevin Merritt
Its: Personal Representative
Date: 8/31/2018

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Beth McIntire, Vice President of the National Bank of Indianapolis, solely in its capacity as Successor Personal Representative of the Estate of Kevin Merritt pending in the Hamilton Superior Court No. 1, State of Indiana, under Cause No. 29D01-1505-ES-000205, who, after having been duly sworn, acknowledged the execution of the foregoing for and on behalf of such Personal Representative.

WITNESS, my hand and notarial seal this 31st day of August, 2018.



Kelly E. Stuff
(KELLY E. STUFF) Notary Public
Commission Expires: 12/28/2023

NORTH CLAYTON DEVELOPMENT, LLC

By: _____
Printed Name: _____
Title: _____

STATE OF OHIO)
) SS.
COUNTY OF GREENE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018 by _____ (Title) on behalf of North Clayton Development, LLC an Ohio Limited Liability Company.



NOTARY PUBLIC
In and for the State of Ohio
My Commission Expires: _____

~~NORTH CLAYTON DEVELOPMENT, LLC~~

~~By: _____
Printed Name: _____
Title: _____~~

~~STATE OF OHIO)
) SS.
COUNTY OF GREENE)~~

~~The foregoing instrument was acknowledged before me this ____ day of _____, 2018 by _____ (Title) on behalf of North Clayton Development, LLC an Ohio Limited Liability Company.~~

~~_____
NOTARY PUBLIC
Commission Expires: _____~~

NORTH CLAYTON DEVELOPMENT, LLC

By: [Signature]
Printed Name: Phillip W. Parker
Title: President

STATE OF OHIO)
) S.S.
COUNTY OF GREEN)

The foregoing instrument was acknowledged before me this 7 day of September, 2018 by Phillip W. Parker, President (Title) on behalf of North Clayton Development, LLC, an Ohio Limited Liability Company.

[Signature]
NOTARY PUBLIC

Commission Expires: May 1, 2023

**Marcia A. Buziak, Notary Public
in and for the State of Ohio
My Commission Expires May 1, 2023**

NORTH CLAYTON DEVELOPMENT, LLC

By: _____
Printed Name: David M Williams
Title: MEMBER

STATE OF OHIO)
 Montgomery) SS.
COUNTY OF ~~GREENE~~)

The foregoing instrument was acknowledged before me this 11th day of September, 2018 by David M Williams, Member (Title) on behalf of North Clayton Development, LLC, an Ohio Limited Liability Company.



Shelby Schleiter
NOTARY PUBLIC

Commission Expires: 12/20/2022

~~NORTH CLAYTON DEVELOPMENT, LLC~~

~~By: _____
Printed Name: _____
Title: _____~~

~~STATE OF OHIO)
) SS.
COUNTY OF GREENE)~~

~~The foregoing instrument was acknowledged before me this ___ day of _____, 2018 by _____ (Title) on behalf of North Clayton Development, LLC, an Ohio Limited Liability Company.~~

~~_____
NOTARY PUBLIC~~

~~Commission Expires: _____~~

CITY OF CLAYTON, OHIO

By: [Signature]
Printed Name: Richard A. Rose
Title: City Manager

STATE OF OHIO)
) SS.
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this 6 day of September, 2018 by Richard Rose, CM (Title) on behalf of the City of Clayton, Ohio, a political subdivision.



[Signature]
MARTINA M. DILLON, Attorney At Law NOTARY PUBLIC
Notary Public, State of Ohio
No expiration date, Section 147.03, O.R.C.

Commission Expires: No Expiration - 09/14/2019

This Instrument Prepared By: Martina M. Dillon, Esq.
Gottschlich & Portune, LLP
201 E. Sixth Street
Dayton, Ohio
937-913-0200

EXHIBIT A – LEGAL DESCRIPTION OF THE PROPERTY

- End of Exhibit A -

EXHIBIT "A"

Situata in Section 20, Town 5, Range 5 East, City of Clayton, Montgomery County, Ohio, being part of a 56.296 acre parcel conveyed to North Clayton Development as recorded in I.R.05-128122D of the Deed Records of Montgomery County, Ohio, and being a tract of land more particularly described as follows:

Starting for reference at a 3/4" pipe found at the intersection of Hoke Road (having a width that varies) and Old National Road-U.S. 40 (having a width that varies);

Thence, South 83 degrees 55 minutes 23 seconds West, with the centerline of said Old National Road-U.S.40, for a distance of 953.73 feet to a mag nail set for a new corner and being the True Point of Beginning;

Thence, South 06 degrees 04 minutes 37 seconds East, leaving the centerline of said Old National Road-U.S. 40, with a new division line for a distance of 214.24 feet to a 5/8" iron pin set for a new corner;

Thence, South 89 degrees 13 minutes 11 seconds East, continuing with new division line through the said 56.296 acre parcel for a distance of 172.86 feet to a 5/8" iron pin set, for a new corner on the east line of said 56.296 acre parcel and on the west line of a 5.945 acre parcel conveyed to Mary Jo Theresa George by M.F.98-180-E05;

Thence, South 06 degrees 00 minutes 57 seconds West, with the west line of said 5.945 acre parcel, for a distance of

541.17 feet to a 5/8" iron pin set for a new corner;

Thence, leaving the west line of said 5.945 acre parcel and through the said 56.296 acre parcel, with a new division line for the next 6 courses;

- 1.) South 90 degrees 00 minutes 00 seconds West, for a distance of 196.49 feet to a 5/8" iron pin set for a new corner;
- 2.) North 06 degrees 30 minutes 33 seconds West, for a distance of 25.12 feet to a 5/8" iron pin set for a new corner;
- 3.) South 90 degrees 00 minutes 00 seconds West, for a distance of 120.08 feet to a 5/8" iron pin set for a new corner;
- 4.) North 88 degrees 11 minutes 38 seconds West, for a distance of 132.84 feet to a 5/8" iron pin set for a new corner;
- 5.) North 05 degrees 30 minutes 33 seconds West, for a distance of 445.77 feet to a 5/8" iron pin set for a new corner;
- 6.) Thence, along a curve to the left having a radius of 88.50 feet and an arc length of 131.77 feet, being subtended by a chord of North 00 degrees 54 minutes 30 seconds East for a distance of 111.25 feet to a 5/8" iron pin set for a new corner;
- 7.) Thence, along a curve to the right having a radius of 15.00 feet and an arc length of 13.03 feet, being subtended by a chord of North 30 degrees 58 minutes 03 seconds West for a distance of 12.63 feet to a 5/8" iron pin set for a

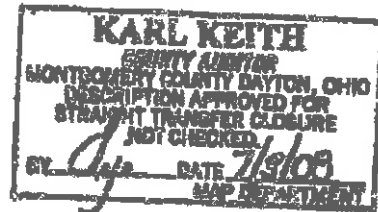
(2008-1338.PFD/2008-1338/33)

Instrument Number: 2008-09048482 Seq: 3

new corner;
8.) North 08 degrees 04 minutes 37 seconds West for a distance of 185.91 feet to a mag nail set for a new corner in the centerline of said Old National Road-U.S. 40;

Thence, North 83 degrees 55 minutes 23 seconds East, with the centerline of said Old National Road-U.S. 40, for a distance of 336.70 feet to the True Point of Beginning, Containing 7.7684 Acres. This description prepared by McDougall, Marsh and Chico, LLC. Based on a field survey made by same in June 2006 under the direct supervision of Thomas K. Marsh P.S. #7735. All iron pins set are 30" x 5/8" capped "McMC-7735." Plat of Survey recorded in the Montgomery County Engineer's Record of Land Surveys, Volume 2006-0296.

Thomas K. Marsh P.S. #7735



(2006-1336.PFD/2006-1336/36)

Instrument Number: 2008-00048482 Seq: 4

EXHIBIT B – LEGAL DESCRIPTION OF THE ADJACENT PROPERTY

- End of Exhibit B -

EXHIBIT **B**

Situate in Section 20, Town 5, Range 5 East, City of Clayton, Montgomery County, Ohio, part of a 55.938 acre (by deed) parcel conveyed to North Clayton Development LLC. by LR. Deed-08-081288 recorded in the Deed Records of Montgomery County, Ohio, and being a tract of land more particularly described as follows:

All of the Plats and Deeds referenced herein, are recorded in the Plat and Deed Records of Montgomery County, Ohio.

Starting for reference at a 3/4" pipe found at the intersection of Noto Road (having a width that varies) and Old National Road-U.S. 40 (having a width that varies) and on the east line of Section 20;

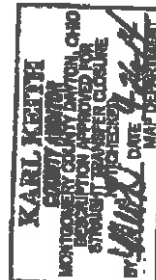
Thence S 83 Deg. 65' 25" W, with the centerline of said Old National Road-U.S. 40, for a distance of 788.80 feet to a railroad spike found at the northwest corner of a 5.845 acre (by deed) parcel conveyed to Mary Jo Theresa George by Deed M.F. 88-180805 and being the True Point of Beginning;

Thence S 80 Deg. 00' 57" W, leaving the centerline of said Old National Road-U.S. 40 with the west line of said 5.945 acre parcel, passing a 1/2" iron pipe found at 40.15 feet, for a total distance of 283.90 feet to a 5/8" iron pin found at a northwest corner of a 7.7884 acre (by deed) parcel conveyed to RCS Holdings, Inc. by IR. Deed-08-049482;

Thence N 89 Deg. 13' 11" W, with an easterly line of said 7.7884 acre parcel, for a distance of 172.89 feet to a 5/8" iron pin found at a northerly corner of said 7.7884 acre parcel;

Thence N 65 Deg. 04' 37" W, continuing with the northerly line of said 7.7884 acre parcel, passing a 5/8" iron pin set at 174.24 feet, for a total distance of 214.24 feet to a Nag nail set in the centerline of said Old National Road U.S. 40;

Thence N 83 Deg. 59' 23" E, with the centerline of said Old National Road-U.S. 40, for a distance of 188.23 feet to the True Point of Beginning, Containing 1.000 Acres. Subject to all legal conditions, assessments and right-of-ways pertaining to the premises herein described. This description prepared by EdDougal-Markle Land Surveyor. Based on a field survey made by date in December 2010, under the direct supervision of Thomas K. Markle P.S. 57735. All iron pins set are 30" x 5/8" capped "7735." Bearings are based on the east line of Section 20 (S 80 Deg 00' 00" W) as recorded in Sur-87-4 of the Survey Records of Montgomery County, Ohio. Plat of Survey recorded in the Montgomery County Engineer's Record of Land Surveys, Volume 2010-0337.



Parcel To: ~~WB-11-111~~
Permanent Parcel Number: M90 03102 0111
Parcel Address: National Road, Dayton, Ohio 45415

EXHIBIT C – PROPERTY DIVISION SCHEMATIC

- End of Exhibit C -

EXHIBIT C



EXHIBIT D - TITLE COSTS

- End of Exhibit D -

	CLAYTON	NCD	RCS
Title Exam			*
Title Commitments			*
Closing Cost			
Escrow Fees	*	*	*
Title Ins. Premiums			
- NCD Parcel (one acre tract)		X	
- Clayton Parcel	X		
- RCS Parcel			X
Recording Deed			
- NCD Parcel (one acre tract)		X	
- Clayton Parcel	X		
Transfer Fee			
- NCD Parcel (one acre tract)		X	
- Clayton Parcel	X		
Costs Associated with Obtaining & Recording Document Relating to Clear Title to Transfer of RCS Parcel to (Clayton) (Probate Court Approval)			X
Costs Associated with Clearing Title to One Acre Tract	X		
Costs Associated with Clearing Title Matters (Schedule B-2 Items 14, 15, 16, 17, 18, 19, 20) for RCS to Transfer Clayton Parcel to Clayton (Other Than One Acre Tract) File No. 3817 080215 Dated 8-11-17		*	*
Cost For Boundary Survey & Lot Split Approvals	X		
Additional Engineering/Surveying Requested by Party	#	#	#
Obtaining Approvals Necessary under "CCR"	*	*	*
Payment of Unpaid and Payable Real Estate Taxes and Assessments	X		

LEGEND

* Shared

Party Requesting

EXHIBIT E - PERSONAL REPRESENTATIVE'S DEED

PERSONAL REPRESENTATIVE'S DEED

To be effective as of the ____ day of _____, 2018, RCS HOLDINGS, LLC, an Indiana limited liability company, ("Grantor") with a mailing address of 107 N. Pennsylvania Street, Suite 500, Indianapolis, Indiana 46204, by its sole and managing member The National Bank of Indianapolis, solely in its capacity as Successor Personal Representative of the Estate of Kevin Merritt, duly appointed by that certain Agreed Order as to Removal and Appointment of Successor Personal Representative issued on October 16, 2015 by the Hamilton Superior Court No. 1, State of Indiana, ("Court") under Cause No. 29D01-1505-BS-000205, and in accordance with that certain [Order Authorizing the Sale] issued by the Court on _____, 2018, a copy of which is attached hereto as Exhibit A, CONVEYS to _____, a(n) _____ ("Grantee"), with a mailing address of _____, for the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, the certain real estate situated in the County of Montgomery and State of Ohio, which real estate is more particularly described on Exhibit B attached hereto and made a part hereof (the "Property"):

Prior Deed: Inst. No. 08-048482

Parcel No.: 5-5-20

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee and Grantee's successors or assigns, forever; provided, however that this conveyance is made by Grantor and accepted by Grantee subject to: (a) all easements, rights-of-way, covenants, restrictions, reservations, conditions and other matters of record; (b) all applicable local, state and federal laws, ordinances and regulations, including but not limited to building and zoning laws; (c) the rights of tenants in possession pursuant to written leases; (d) matters caused by Grantee; (e) all real estate taxes and assessments not yet due and payable; and (f) encroachments, overlaps, boundary-line disputes and any other matters which would be disclosed by an accurate survey of the Property.

GRANTEE ACKNOWLEDGES THAT GRANTOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY, EXCEPT AS SPECIFICALLY SET OUT IN THAT CERTAIN SETTLEMENT AGREEMENT AND MUTUAL RELEASE DATED _____, 2018. SUBJECT TO THE FOREGOING EXCEPTION, GRANTEE EXPRESSLY AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED "AS IS" AND "WITH ALL FAULTS", AND GRANTOR EXPRESSLY DISCLAIMS, AND GRANTEE ACKNOWLEDGES AND ACCEPTS THAT GRANTOR HAS DISCLAIMED, ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS OR IMPLIED (EXCEPT AS TO TITLE AS HEREIN PROVIDED AND LIMITED) CONCERNING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, (i) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY,

(ii) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE CONSTRUCTION, OF ANY IMPROVEMENTS TO THE PROPERTY; AND (iii) THE MANNER OF REPAIR, QUALITY OF REPAIR, STATE OF REPAIR OR LACK OF REPAIR OF ANY SUCH IMPROVEMENTS. BY GRANTEE'S ACCEPTANCE OF THIS DEED, GRANTEE REPRESENTS THAT GRANTEE HAS MADE ALL INSPECTIONS OF THE PROPERTY TO DETERMINE ITS VALUE AND CONDITION DEEMED NECESSARY OR APPROPRIATE BY GRANTEE.

EXECUTED AND DELIVERED this ____ day of _____, 2018.

GRANTOR:

RCS Holdings, LLC

By: Example Only
Beth McIntire, Vice President of the National Bank of Indianapolis, solely in its capacity as Successor Personal Representative of the Estate of Kevin Merritt Its: Sole Member and Manager

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared Beth McIntire, Vice President of the National Bank of Indianapolis, solely in its capacity as Successor Personal Representative of the Estate of Kevin Merritt pending in the Hamilton Superior Court No. 1, State of Indiana, under Cause No. 29D01-1505-ES-000205, as the sole and managing member of RCS Holdings, LLC, who, after having been duly sworn, acknowledged the execution of the foregoing Personal Representative's Deed for and on behalf of such Personal Representative.

WITNESS, my hand and notarial seal this ____ day of _____, 20__.

(_____) Notary Public

This instrument prepared by David Van Slyke, Plunkett Cooney, 300 E. Broad Street, Suite 590, Columbus, OH 43215.

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- End of Exhibit E -

EXHIBIT F – LIMITED WARRANTY DEED

- End of Exhibit F -

LIMITED WARRANTY DEED

The City of Clayton, of Montgomery County, Ohio, for valuable consideration paid, grant(s), with limited warranty covenants, to North Clayton Development, LLC, an Ohio Limited Liability Company, whose tax-mailing address is _____, the following real property:

See Exhibit A attached hereto and incorporated herein by this reference.

Prior instrument reference: _____.

The real property described above is conveyed subject to, and there are excepted from the limited warranty covenants, the following:

1. All easements, covenants, conditions and restrictions of record;
2. All legal highways;
3. Zoning, building and other laws, ordinances and regulations;
4. Real estate taxes and assessments not yet due and payable;
5. Rights of parties in possession; and
6. Matters that would be disclosed by an inspection or on a real estate survey of the property.

GRANTEE ACKNOWLEDGES THAT GRANTOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY, EXCEPT AS SPECIFICALLY SET OUT IN THAT CERTAIN SETTLEMENT AGREEMENT AND MUTUAL RELEASE DATED _____, 2018. SUBJECT TO THE FOREGOING EXCEPTION, GRANTEE EXPRESSLY AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED "AS IS" AND "WITH ALL FAULTS", AND GRANTOR EXPRESSLY DISCLAIMS, AND GRANTEE ACKNOWLEDGES AND ACCEPTS THAT GRANTOR HAS DISCLAIMED, ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS

OR IMPLIED (EXCEPT AS TO TITLE AS HEREIN PROVIDED AND LIMITED) CONCERNING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, (i) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY, (ii) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE CONSTRUCTION, OF ANY IMPROVEMENTS TO THE PROPERTY; AND (III) THE MANNER OF REPAIR, QUALITY OF REPAIR, STATE OF REPAIR OR LACK OF REPAIR OF ANY SUCH IMPROVEMENTS. BY GRANTEE'S ACCEPTANCE OF THIS DEED, GRANTEE REPRESENTS THAT GRANTEE HAS MADE ALL INSPECTIONS OF THE PROPERTY TO DETERMINE ITS VALUE AND CONDITION DEEMED NECESSARY OR APPROPRIATE BY GRANTEE.

Saving and excepting all taxes and assessments for 2018 which are due and payable in 2019, and thereafter, all of which the grantee herein assumes and agrees to pay.

Executed this ____ day of _____, 2018.

CITY OF CLAYTON, OHIO

By: _____
Printed Name: Richard Rose
Title: City Manager

STATE OF OHIO)
) SS.
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018 by Richard Rose, City Manager, on behalf of the City of Clayton, Ohio, a political subdivision.

NOTARY PUBLIC
Commission Expires: _____

This Instrument Prepared By:

John R. Mohr, Esq.
Gottschlich & Portune, LLP
201 E. Sixth Street
Dayton, Ohio 45402
937-913-0200