

ORIGINAL

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

A 1506891

CITY OF MADEIRA *ex rel.*
DOUGLAS OPPENHEIMER
aka PHILIP DOUGLAS OPPENHEIMER
7209 Juler Avenue
Madeira, OH 45243

Relator,

v.

CITY OF MADEIRA
c/o Jeffrey D. Forbes
Interim Law Director,
City of Madeira
% Wood & Lamping LLP
600 Vine Street, Suite 2500
Cincinnati, OH 45202-2491,

and

THOMAS E. MOELLER
City Manager, City of Madeira
7141 Miami Ave.
Madeira, OH 45243

and

THOMAS POWERS
DTZ
221 East Fourth Street, 26th Floor
Cincinnati, OH 45202

Respondents.

Case No. _____

Judge Dinkelacker

VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

FILED
DEC 18 A 9:32
CLERK OF COURTS
HAMILTON COUNTY, OH



Now comes the CITY OF MADEIRA, by and through Relator DOUGLAS OPPENHEIMER (also known as PHILIP DOUGLAS OPPENHEIMER) as a taxpayer and resident of the City of Madeira, and for its Complaint brought pursuant to, *inter alia*, R.C. 733, 56 *et seq.* alleges as follows:

INTRODUCTION

Relator, as a taxpayer and resident of the City of Madeira, and on relation to the CITY OF MADEIRA, hereby seeks (i) a declaratory judgment relating to the limitation contained within Article XVI of the Charter of the City of Madeira as it relates to the efforts of the CITY OF MADEIRA to sell a portion of the property known as the Muchmore House Property; and (ii) the issuance of an injunction in order to restrain the abuse of corporate and/or the execution or performance of a contract made on behalf of the municipal corporation in contravention of the laws or ordinances governing it.

PARTIES

1. Relator DOUGLAS OPPENHEIMER is a resident and taxpayer of and within the CITY OF MADEIRA.

2. Respondent CITY OF MADEIRA is a municipal corporation in the State of Ohio and, as such, is a body corporate and politic, capable of being sued and organized and existing under Chapter 715 of the Revised Code.

3. Respondent THOMAS E. MOELLER is the City Manager of the CITY OF MADEIRA.

4. Based upon information and belief, Respondent THOMAS POWERS is a resident of Hamilton County, Ohio, and may have or claim an interest in and to the property that is the subject of this action, either directly or through a separate legal entity.

STATEMENT OF FACTS

5. On about April 3, 1989, Cleo Hosbrook transferred to the CITY OF MADEIRA the real property located at 7010 Miami Avenue in the City of Madeira. This real property (referred herein as the Muchmore House Property) consists of approximately 0.215 acres of land together with a historic house located thereon known as the Muchmore House. A true and accurate copy of the deed transferring the real property to the CITY OF MADEIRA as obtained from the website of the Hamilton County Recorder is attached hereto as Exhibit A.

6. With the foregoing real property already owned by the City of Madeira, the citizens of the CITY OF MADEIRA adopted Article XVI of the City Charter in November 2014.

7. In toto, Article XVI of the City Charter of the City of Madeira provides as follows:

The City of Madeira was deeded and assumed ownership of the "Hosbrook House" located at 7014 Miami Ave. and the "Muchmore House" located at 7010 Miami Ave. In addition to these two properties the City also has ownership of the historic Railroad Depot located at 7701 Railroad Ave. These three important and historic properties are to be preserved, protected, and left standing on the same ground that the structures were built upon. These three historic structures will be included in the "Historic District".

8. Thus, Article XVI of the City Charter of the City of Madeira imposes limitations and restrictions on the disposition of the Muchmore House Property.

9. The adoption of Article XVI of the City Charter of the City of Madeira by the voters of the CITY OF MADEIRA was undertaken pursuant to an initiative-petition process of which the Relator was one of leaders of such effort.

10. The adoption of Article XVI of the City Charter of the City of Madeira by the voters of the CITY OF MADEIRA was undertaken notwithstanding the expressed opposition of the City Council of the City of Madeira to the proposed charter amendment.

11. In fact, in advance of the election held in November 2014 (when the voters approved Article XVI of the City Charter of the City of Madeira), the City Council of the City of Madeira adopted, in October 2014, Resolution No. 10-14 which was entitled "A Resolution in Opposition to Issue 13 Madeira Charter Amendment Historic District/Preservation". A true and accurate copy of Resolution No. 10-14 as obtained from the website of the CITY OF MADEIRA is attached hereto as Exhibit B.

12. As acknowledged by the City Council of the City of Madeira in Resolution No. 10-14, Article XVI of the City Charter of the City of Madeira "obligate[s]...[the] preserv[ation]and maint[enance] [of] the properties and buildings" located on the three properties designated therein.

13. Notwithstanding the limitation in Article XVI of the City Charter of the City of Madeira, as well as its own acknowledgment of such limitation, the City Council of the City of Madeira adopted Ordinance No. 15-30 on November 9, 2015. This Ordinance specifically concerns and relates to the Muchmore House Property. A true and accurate copy of Ordinance No. 15-30 as certified by the clerk of the City Council is attached hereto as Exhibit C.

14. Ordinance No. 15-30 provides for and authorizes the execution of a contract for the sale or transfer by the CITY OF MADEIRA of a portion the Muchmore House Property.

15. While the contract authorized by Ordinance No. 15-30 does not include the specific area of the Muchmore House property that would be sold (as that amount is left blank on the contract authorized by the Ordinance), the diminution of a parcel already consisting of approximately one-fifth-of-an-acre does not comply with the letter, spirit or intent of Article XVI of the City Charter.

16. The proposed sale or transfer of the Muchmore House Property would violate the prohibition with Article XVI of the City Charter of the City of Madeira.

17. Thus, on November 30, 2015, and pursuant to section 733.56 *et seq.* of the Revised Code, counsel for and on behalf of the Relator tendered a written demand (the "Taxpayer Demand Letter") upon Robert P. Malloy, who at the time was the Law Director for the CITY OF MADEIRA, "pursuant to Sections 733.56 *et seq.* of the Ohio Revised Code ... [t]o make application to a court of competent jurisdiction for an order of injunction to restrain the abuse of corporate powers of the City of Madeira as it relates to the effort to sell or transfer a portion of the Muchmore House property located at 7010 Miami Avenue." A true and accurate copy of the Taxpayer Demand Letter is attached hereto as Exhibit D.

18. In response to the Taxpayer Demand Letter, the Interim Law Director for the CITY OF MADEIRA, Jeffrey D. Forbes responded on December 8, 2015, via a written letter (the "Response to the Taxpayer Demand Letter"). A true and accurate copy of the Response to the Taxpayer Demand Letter is attached hereto as Exhibit E.

19. Within the Response to the Taxpayer Demand Letter, Mr. Forbes as the Interim Law Director for the CITY OF MADEIRA, rejected the contention that the action envisioned, authorized or anticipated by the contract authorized by Ordinance No. 15-30 violates Article XVI of the City Charter of the City of Madeira.

20. Thus, Mr. Mr. Forbes, as the Interim Law Director for the CITY OF MADEIRA, refused to bring a lawsuit to enjoin said contract pursuant to R.C. § 733.56.

21. While the Taxpayer Demand Letter indicated that Ordinance No. 15-30 and the action envisioned, authorized or anticipated by the contract authorized by Ordinance No. 15-30 constituted an abuse of corporate powers, the contract envisioned, authorized or anticipated by Ordinance No. 15-30 is also in contravention of the laws or ordinances governing it, *viz.*, Article XVI of the City Charter of the City of Madeira, the premise of which was clearly set forth in the Taxpayer Demand Letter.

22. In light of the Response to the Taxpayer Demand Letter wherein Mr. Forbes rejected the contention that the action envisioned, authorized or anticipated by the contract authorized by Ordinance No. 15-30 violates Article XVI of the City Charter of the City of Madeira, it would be vain, futile and unavailing to undertake any effort, if even necessary, to supplement the Taxpayer Demand Letter so as to request the bringing of an action for an injunction based also upon said contract being in contravention of the laws or ordinances governing it.

23. On December 15, 2015, in a conversation with Relator, THOMAS MOELLER indicated that final revisions to the contract authorized by Ordinance No. 15-30 are being made and, once finalized, the CITY OF MADEIRA will be proceeding forward with the signing of the contract and its ultimate execution.

**FIRST CAUSE OF ACTION
(Declaratory Judgment)**

24. Relator restates and incorporates by reference all of the foregoing paragraphs as if fully restated.

25. A real and justiciable dispute exists between the parties regarding the rights, status, and other legal relations arising from the foregoing facts.

26. Relator seeks a declaratory judgment regarding said rights, status and other legal relations, including, *inter alia*, a declaratory judgment that the prohibitions, restrictions and/or limitations within Article XVI of the Charter of the City of Madeira prohibit and/or preclude the CITY OF MADEIRA from proceeding forward with the contract authorized by Ordinance No. 15-30.

**SECOND CAUSE OF ACTION
(Injunction)**

27. Relators restate and incorporate by reference all of the foregoing paragraphs as if fully restated.

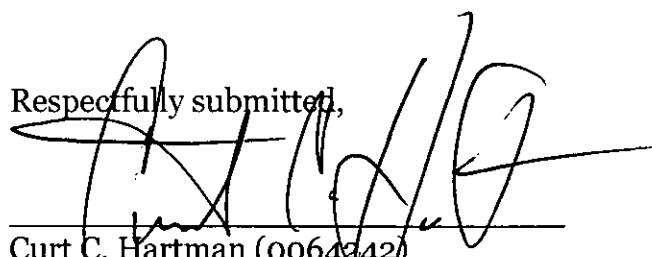
28. Relator is entitled to the issuance of an injunction against and restraining the CITY OF MADEIRA and THOMAS MOELLER, the City Manager for the City of Madeira, or those acting at their behest or direction, from executing or performing any other acts whatsoever in furtherance of any contract or prospective contract authorized by Ordinance No. 15-30.

29. Relator is entitled to the issuance of an injunction against and restraining the CITY OF MADEIRA and THOMAS MOELLER, the City Manager for the City of Madeira, or those acting at their behest or direction, from executing any deed transferring any portion of the Muchmore House Property

WHEREFORE, Relator, on relation to and on behalf of the CITY OF MADEIRA, pray for the entry of judgment in his favor and against Respondents granting the declaratory judgment and injunctive relief sought in the preceding paragraphs, together

with court costs, attorney fees, as well as such other relief to which Relator may be entitled in law or in equity.

Respectfully submitted,



Curt C. Hartman (0064242)
THE LAW FIRM OF CURT C. HARTMAN
7394 Ridgepoint Drive, Suite 8
Cincinnati, OH 45230
(513) 379-2923
hartmanlawfirm@fuse.net

Christopher P. Finney (0038998)
Finney Law Firm, LLC
4270 Ivy Pointe Blvd., Suite 225
Cincinnati, OH 45245
(513) 943-6655

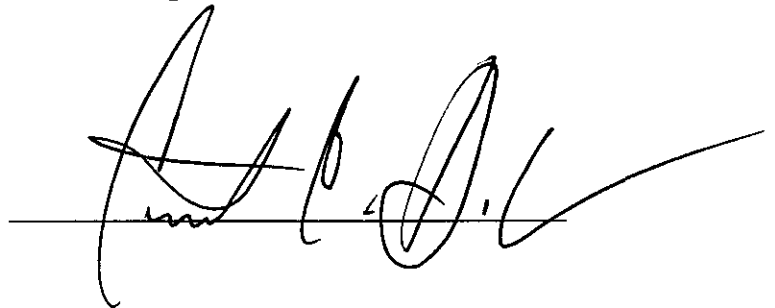
Attorneys for Relators

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was or will be served upon the following on the 18th day of December 2015, via e-mail:

Jeffrey Forbes
Interim Law Director, City of Madeira
Wood & Lamping LLP
600 Vine Street, Suite 2500
Cincinnati, OH 45202
jdforbes@woodlamping.com

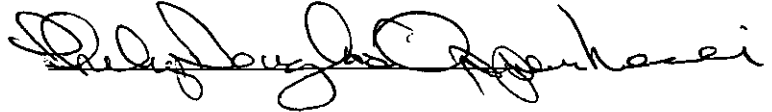
Thomas Powers
DTZ
221 East Fourth Street, 26th Floor
Cincinnati, OH 45202
tom.powers@cushwake.com



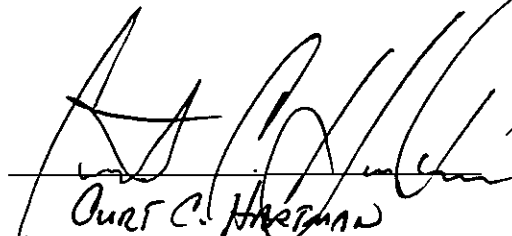
VERIFICATION

State of Ohio, County of Hamilton) ss:

Now comes DOUGLAS OPPENHEIMER, having been duly cautioned and sworn, and declares that he has reviewed the foregoing complaint and that the factual allegations therein are true and accurate.



Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, on this the 17th day of December 2015.



Curt C. Harpman
Attorney at Law
my commission has
no expiration

525-57
KNOW ALL MEN BY THESE PRESENTS:

6-2-27-6

That this Deed made this 3rd day of April, 1989, between CLEO J. HOSBROOK, unmarried, herein called "Donor-Grantor", and the CITY OF MADEIRA, a municipal corporation under the laws of Ohio, herein called "Donee-Grantee", in consideration of her affection for the community known as the "City of Madeira", does hereby give, grant and convey to the Donee-Grantee, its successors and assigns, all of the Donor-Grantor's interest in the following real estate:

Situated in the City of Madeira, Hamilton County, Ohio, being part of Lot number eighteen (18) of Madeira as laid out by Moore and Hosbrook, the plat of which is recorded in Plat Book 3, Page 231, Hamilton County, Ohio records and bounded as follows:

Beginning at the southwest corner of said Lot number eighteen (18); thence with the Section Line north 1°24'21" east, 36.13 feet; thence north 69°38' east parallel to Laurel Avenue, 158.17 feet; thence south 1°24'21" west 99.84 feet to the north line of Railroad Street; thence with the north line of said street north 88°35'39" west one hundred and forty-four and 75/100 (144.75) feet to the point of beginning, subject to all legal highways and being the same premises set forth in deed recorded in Deed Book 2534, Page 365, Hamilton County records.

Being part of the same premises passing to the Donor-Grantor as set forth in Certificate of Transfer recorded in Deed Book 2534, Page 365, Hamilton County Recorder's Office.

and all the estate, right, title and interest of the Donor-Grantor in and to said premises, to have and to hold the same with all of the privileges and appurtenances thereto belonging to the said Donee-Grantee, its successors and assigns forever.

HAMILTON COUNTY RECORDERS OFFICE
FRONT DESK
DOC # 89-126310 TYPE DEED
FILED 10-21-89 @ 02:15:15PM \$ 10.00
OFF REC: 5115 1165 F. R21

JOSE E. DE COURCY, JR. REC'D
HAMILTON COUNTY, OHIO

Exhibit A

5115 FC 1165

And the said CLEO J. HOSBROOK, for herself and her heirs, executors and administrators, does hereby covenant with the CITY OF MADEIRA, its successors and assigns, that she is the true and lawful owner of said premises and has full power to convey the same, and that the title so conveyed is clear, free and unencumbered; and further that she does warrant and will defend the same against all claim or claims, of all persons whomsoever.

IN WITNESS WHEREOF, the said CLEO J. HOSBROOK, unmarried, has hereunto set her hand this 3rd day of April 1989, in the year of Our Lord One Thousand Nine Hundred Eighty-Nine (1989).

Cleo J. Hosbrook

Signed and acknowledged in the presence of:

Rebecca A. Guster

John W. Hudson

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

Be it remembered that on this 3rd day of April 1989, before me, the subscriber, a Notary Public in and for said County, personally came CLEO J. HOSBROOK, the Grantor in the foregoing Deed, and acknowledged the signing thereof to be her voluntary act and deed.

In testimony whereof, I have hereunto subscribed my name and affixed my notarial seal on the day and year last aforesaid.

John W. Hudson
NOTARY PUBLIC

5115#1166

RESOLUTION NO. 10-14

**A RESOLUTION IN OPPOSITION TO
ISSUE 13 MADEIRA CHARTER AMENDMENT HISTORIC DISTRICT/PRESERVATION**

WHEREAS, a petition was circulated to amend the Madeira City Charter to add Article XVI – Madeira Historic District / Preservation, and

WHEREAS, the proposed amendment to the Madeira City Charter is identified as Issue 13 on the November 2014 ballot, and

WHEREAS, The wording in Issue 13 is vague and references items not present within the City of Madeira which will cause confusion about requirements for the properties referenced, and may lead to expensive court challenges for years to come, and

WHEREAS, Issue 13 states that the two city-owned houses, along with the Railroad Depot will be added to “the Historic District” and no such district” exists in the City of Madeira code of ordinances or city policies, and

WHEREAS, Issue 13 will obligate the residents of Madeira preserve and maintain the properties and buildings indefinitely such that if one or more of the buildings sustains some form of significant structural damage, the vague language of proposed charter amendment may require construction of buildings that are merely historic replicas with little or no benefit to the community and which could result in expenses that put extreme pressure on how Madeira pays for basic services such as police, fire, roads, and parks, and

WHEREAS, The Madeira City Charter is a document that defines the governing principles of the city, much like the Constitution for the United States of America and, as such, it is not an appropriate vehicle for issues such as property management. These types of initiatives that do not focus on the governing operation of our city will only weaken our charter and lead to uncertainty and higher cost to our community, and

WHEREAS, This initiative is only the first step by special interest groups to assume control over the two houses and train station as language for a second charter amendment that would establish a five (5) person “Historical District Commission” has been presented to City Council; and special interest groups would hold a controlling four (4) seats on the Commission that will, “dictate the construction, remodeling, and other interior and exterior changes to the structures or grounds”. This unelected commission could impose significant unfunded mandated expenditures on the City of Madeira taxpayers.

NOW, THEREFORE BE IT RESOLVED, by the Council of the City of Madeira, Ohio

Section 1. That this Council hereby declares its strong opposition to Issue 13 and urges all Madeira voters to vote “NO” on Issue 13 on the November 2014 ballot.

Section 2. That this resolution shall take effect and be in force from and after the earliest period allowed by law.

This Resolution is not subject to referendum per Article XII, Section 3 of the Madeira Home Rule Charter.

PASSED ON THE 27TH DAY OF OCTOBER, 2014 BY THE FOLLOWING 7-0 VOTE:

YEA:

Melisa Adrien
Tom Ashmore
Ken Born
Nancy Spencer
Rob Steier
Mike Steur
Traci Theis

NAY:

ABSTAIN:

ABSENT:

Mike Steur, Mayor

Diane D. Novakov, Clerk of Council

Resolution 10-14

Page 1 of 1

Exhibit B

CERTIFIED COPY

STATE OF OHIO

City of Madeira, Ohio SS
County Hamilton

I, Diane D. Novakov Clerk of the City of Madeira, Ohio do hereby certify that the attached is a true and correct copy of Ordinance No. 15-30 adopted by the legislative Authority of the said City on the 9th day of November, 2015.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 11th day of November, 2015.
(SEAL)


Diane D. Novakov, Clerk of Council
City of Madeira, Ohio

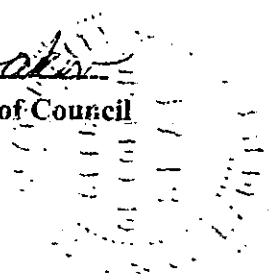


Exhibit C

ORDINANCE NO. 15-30

**AUTHORIZING THE CITY MANAGER TO ENTER INTO THE FIRST CONTRACT FOR
SALE AND PURCHASE FOR THE PROPERTY LOCATED AT
7010 MIAMI AVENUE, MADEIRA, OHIO**

WHEREAS, the City of Madeira, Ohio owns certain real property ("Property") located at 7010 Miami Avenue; and

WHEREAS, Council intends to sell a portion of the vacant land located on the Property to Thomas M. Powers and/or his related affiliates; and

WHEREAS, the Council of the City of Madeira recognizes the benefit that will continue to accrue to the community by the use that would be able to be made of that portion of the vacant Property located at 7010 Miami Avenue; and

WHEREAS, the basic terms and conditions of the proposed Contract for Sale and Purchase ("Contract") are acceptable to the City.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Madeira, State of Ohio:

Section 1. That the City Manager is hereby authorized and directed to enter into a Contract with Thomas M. Powers, and/or his related affiliates, for the sale and purchase of a portion of the vacant land located on the Property located at 7010 Miami Avenue in a form substantially the same as set forth in the Contract for Sale and Purchase attached hereto and incorporated herein as if fully set forth.

Section 2. That this Ordinance shall take effect from and after the earliest period allowed by law.

Section 3. That the City Manager is further authorized to execute any and all other documents necessary and related to the contract for sale and purchase.

Section 4. That the City Manager is further authorized to take any and all steps necessary to effectuate the terms of this Ordinance.

PASSED ON THE 9TH DAY OF NOVEMBER, 2015 BY THE FOLLOWING 6-1 VOTE:

YEA:

Melisa Adrien
Nancy Spencer
Rob Steier
Mike Steur
Traci Theis
Ken Born

NAY:

Tom Ashmore

ABSTAIN:

ABSENT:

Mike Steur, Mayor


Diane D. Novakov, Clerk of Council

ORDINANCE NO. 15-30
EXHIBIT "A"

FIRST CONTRACT FOR SALE AND PURCHASE

This First Contract for Sale and Purchase ("Contract") is entered into as of this ____ day of November, 2015 ("Effective Date") and made by and between the **City of Madeira, Ohio, an Ohio municipal corporation**, 7141 Miami Avenue, Madeira, Ohio 45243, (hereafter, "Seller") and **Thomas M. Powers**, having an address of _____ (hereafter, "Purchaser" and upon the Closing of the purchase under this Contract between Seller and Purchaser, the "Company"), under the following terms and conditions:

RECITALS:

A. Seller has determined it to be a public purpose for certain long-term strategic economic development and planning efforts to enter into the Contract with Purchaser and Company and to provide additional public parking spaces in the Central Business District, as generally depicted in Exhibit "A". Seller and Purchaser have further outlined future development plans in the area known as the Madeira Historical District which includes a portion of Seller's Property, as more fully identified in Exhibit B below, and Purchaser intends to make a good faith effort to preserve or create jobs and employment opportunities within the City Of Madeira, Ohio.

B. Seller owns certain real property consisting of approximately ____ square footage of land, (or that which is found to be the actual square footage by survey pursuant to Section 4), as set forth in Exhibit "B", being a portion of the unimproved land located at 7010 Miami Avenue, Madeira, Ohio 45243, but shall, in no event, exceed ____ square feet, as more fully described in Section 4 below. The land is located in Hamilton County, Ohio and is generally described in Exhibit "C" attached hereto. Said land and all appurtenant rights, privileges, and easements thereto are hereinafter referred to as the "Property."

C. Seller has determined that the agreements and transactions provided for in this Contract will facilitate positive long-term development planning and encourage development that will benefit the people of the City of Madeira, Ohio by increasing opportunities for employment and strengthening the economic welfare of the City of Madeira, Ohio.

D. Purchaser has been in negotiations with the B & B Mower Service, Inc. ("B&B") to purchase the B&B Property, located at 7710 Railroad Avenue, Madeira, Ohio 45243.

E. Purchaser and Seller intend to enter into this Contract along with a second, separate contract ("Second Contract") for the Seller's purchase of real property from the Purchaser.

F. The sale and purchase of the Property and the closing contemplated by this Contract shall be contemporaneous and in conjunction with the the sale of purchase of the real property identified in the Second Contract.

G. Purchaser has the financial capability to purchase the Property from Seller in order to induce the City of Madeira, Ohio to sell the Property to Purchaser.

H. Purchaser under this Contract, may choose to transfer and assign his rights and obligations under this Contract to his affiliated land holding company, and shall have the right to assign all of Purchaser's obligations under this Agreement, as approved by Seller, and as more fully set forth in Section 16 J below.

NOW, THEREFORE, in consideration of the premises and mutual covenants and promises contained herein, the sufficiency of which is hereby acknowledged by the parties, Seller and Purchaser hereby agree as follows:

1. **Real Estate.** Purchaser shall purchase from Seller the currently unimproved real estate being located at the north side of Railroad Avenue and just east of Miami Avenue containing approximately +/- ____square feet of land, as further described in Section 4 below, located on the site in the City of Madeira, Hamilton County, Ohio and as described in Exhibit "C," attached hereto, with all appurtenant rights, privileges and easements ("Property").

2. **Seller's Certifications.** Seller certifies the following facts regarding the Property.

A. Seller is the sole owner of the entire undivided fee simple interest in the Property.

B. The Property is free from any City, County, State or Federal orders affecting the Property.

C. Subject to the approval of the City of Madeira, Ohio City Council, as more fully set forth in Sections 12 and 15B of this Contract, Seller has full power and authority to execute, deliver and carry out the terms and provisions of this Contract and has taken all necessary action to authorize the execution, delivery and performance of this Contract. The individuals executing this Contract on behalf of Seller have the authority to bind Seller to the terms and conditions of this Contract. This Contract and all documents required hereby to be executed by Seller, when so executed, shall be legal, valid, and binding obligations of Seller enforceable against Seller in accordance with their respective terms. Seller is deemed to have made the certifications contained in this Section 2 again as of the time and date of the Closing, except that Seller shall not be in default hereof if any representation or warranty contained herein cannot be made at the Closing because of the acts or fault of Purchaser.

3. **Purchaser's Certification.** Purchaser hereby certifies to Seller that each of the following statements is true and correct as of the date of this Contract and shall be true and correct on each Closing Date:

A. Purchaser has the full power and authority to enter into this Agreement, to purchase the Property from Seller as provided in this Agreement, and to carry out Purchaser's obligations hereunder.

B. All requisite action necessary to authorize Purchaser to enter into and perform this Agreement in accordance with its terms and to carry out Purchaser's obligations has been obtained.

C. This Contract has been duly authorized, executed and delivered by Purchaser and is enforceable against Purchaser in accordance with its terms.

D. Purchaser or Purchaser's assignee has the financial capability to purchase the Property and to pay the Purchase Price in immediately available funds and construct the proposed project as outlined in Exhibit "D," ("Project") on the Property. Upon request, Purchaser, Purchaser's assignee, or their accounting firm, or Purchaser's lender will provide Seller with reasonable proof of financial capability, as determined by Seller in Seller's sole discretion. Purchaser must demonstrate financial capability and allow Seller, at Seller's option, to verify financial capability with ____ and/or at Seller's option and sole cost, to undertake, and/or to engage ____ to perform, a confidential financial verification and analysis of the purchasing entity, to ensure Purchaser has the financial capability (through equity and financing resources in the form of commercial financing), in Seller's reasonable discretion, to purchase the Property and construct the proposed Project, as outlined in Exhibit "D," on the Property.

E. Neither the execution and delivery of this Agreement nor the performance hereof will (i) be in violation of Purchaser's affiliated entity's organizational documents including its bylaws, Articles of Organization and its operating agreement, (ii) conflict with any law, decree, judgment, regulation or decree of any court or governmental agency, or (iii) conflict with any agreement or instrument to which Purchaser is a party or by which Purchaser is or may be bound.

F. Purchaser has conducted an environmental inspection and is satisfied with the results and shall hold Seller harmless as to the results thereof.

G. Purchaser shall construct a new restaurant generally consistent with design character, building materials and construction quality as outlined in drawings dated _____, 2015 and attached herein as Exhibit "D".

H. Purchaser is deemed to have made the certifications contained in this Section 3 again as of the time and date of the Closing, except that Purchaser shall not be in default hereof if any certification contained herein cannot be made at the Closing because of the acts or fault of Seller.

4. **Purchase Price and Terms.**

A. The Purchase Price for all of the Property will be based on a price of \$43.00 per square foot for the +/- _____ square feet for a total purchase price of approximately \$ _____. The Purchase Price shall be subject to final determination of the total square footage of the Property and shall be mutually agreed upon by Seller and Purchaser based on final survey and approved sub-division/cut-up plat materially consistent with the Site Plan set forth on Exhibit "D" attached hereto. Exhibit "D" provides an approximation of the _____ square feet area described, as well as the approximate location of the building and setbacks.

B. There shall be no earnest money deposit payable from Purchaser to Seller.

C. In addition to the Conditions to Close set forth in Section 10, Purchaser's obligation to pay the Purchase Price and the Closing are contingent upon the Contingencies set forth in Section 7.

D. The Purchase Price will be payable by Purchaser to Seller by wire transfer/cashier's check at Closing.

5. **Due Diligence.** Purchaser shall have a period of up to ____ (____) days after the _____ Date to:

A. Obtain, a current commitment for title insurance issued with respect to the Property in the amount of the Purchase Price (the "Title Commitment").

B. Review and approve the cut-up survey and Legal Description of the Property, as more fully described in Section 6. The cut-up survey and Legal Description shall also be reviewed and approved by Seller.

6. **Cut-up Survey; Legal Description.** Purchaser shall obtain, and shall pay the expense of a metes and bounds legal description for the cut up of the Property, so that the Property can be conveyed to Purchaser and be subject to a separate tax bill. Seller and Purchaser shall have the right to approve the survey and legal descriptions, which approval shall not be unreasonably withheld. Purchaser may select the engineer/surveyor that will prepare the cut up survey, metes and bounds description, and easement plat. Purchaser shall be solely responsible for, and shall bear all expenses related to, any approvals required to sub-divide the Property and for recording all sub-division plats necessary to carry out the intent of this Contract.

7. **Contingencies.** Purchaser's obligation to buy the Property from Seller, and Seller's obligation to sell the Property to Purchaser shall be subject to the following Contingencies:

A. Review and approval by the City of Madeira Planning Commission of the sub-division of the Property, site plan, design concept, character, building materials, and construction quality of the Project, zoning, proposed setbacks; parking areas, and

B. Review and approval by the City of Madeira Historical Preservation Commission ("MHPC") of the Project and use of that portion of the land within the Madeira Historic District; and

C. Issuance of building permits by the City of Madeira, Ohio to Purchaser for the Project; and

D. Approval of the legal descriptions of the Property by Seller and Purchaser; and

E. Location of easement(s) for any access deemed necessary by Seller and Purchaser; and

F. Review and approval of Seller and Purchaser of any easements required between the parties; and

G. Approval of liquor license to be issued to Purchaser as required by the State of Ohio and City of Madeira, Ohio; and

H. Review and approval for capacity by the Hamilton County Metropolitan Sewer District; and

I. Coordination of Project landscaping with requirements of the City of Madeira, Ohio; and

J. Any other approvals required and deemed necessary by the City of Madeira, Ohio Planning Commission for the Project.

During the term of the Contract, Purchaser and its representatives shall be entitled to enter on to the Property and to conduct such inspections thereon as Purchaser may deem appropriate in order to determine the suitability of the Property for the Project. Purchaser will keep the Property free and clear of any mechanic's or materialmen's liens, shall pay all expenses incurred, shall restore any damage to the Property caused by Purchaser or its agents.

8. **Closing ("Closing")** shall be on or before _____ (____) days/weeks/months following _____, as applicable or on such other reasonable date as the parties may agree.

A. Marketable title to the Property will be conveyed by Seller to Purchaser by special or limited warranty deed at Closing, subject to easements and restrictions of record and any easements that existed prior to Seller's ownership of the Property and merged due to Seller's acquisition of the Property, as reflected in the Title Commitment, and as confirmed by Seller, which shall be required as the result of the new division of ownership between Seller as the owner of the Property and Seller as the beneficiary of the easements. At Closing, Purchaser shall execute any and all unplatted easements necessary to Seller for the Property, provided such easements were provided to Purchaser for review prior to Closing. Seller and Purchaser will also execute any other appropriate documents at Closing. Title shall be conveyed subject to no monetary liens except for the lien for non-delinquent real property

taxes, assessments, or improvement district liens, but otherwise subject to all matters of record as specified above.

B. The costs incurred in connection with the transaction contemplated by the Contract shall be allocated between Seller and Purchaser as follows:

<u>Requirement</u>	<u>Responsibility</u>
Survey-ALTA	Purchaser
Survey-Cut Up/Boundary	Purchaser
Title Search	Purchaser
Title Insurance Commitment/Policy	Purchaser
Grantor's Tax	Seller
Grantee's Tax	Purchaser
Brokerage Commissions	N/A
Inspection Costs	Purchaser
Attorneys' Fees	Each Party Pays Own
Environmental	Purchaser
Recordation	Purchaser
Financial review	Seller
Remainder/residual survey, if necessary	Purchaser

C. Real property taxes and any other matters to be prorated will be prorated as of date of Closing. Seller will pay all expenses and taxes applicable to the period prior to Closing; Purchaser will pay all expenses and taxes applicable to the period on or following Closing.

NOTE: Property taxes and assessments are subject to change. Purchaser and Seller agree that the taxes and any assessments shall be based on the latest tax information available through the Hamilton County, Ohio Auditor and Treasurer's records. Purchaser and Seller acknowledge that property taxes and assessments may not be pro-ratable at Closing as they will be based upon a large tract or parcel from which the subject Property has been cut-out. Seller shall continue to pay the property taxes and assessments on the large tract until such time as they are assessed on the subject Property, at which time, Seller and Purchaser shall handle any proration of the property taxes and assessments, as appropriate. Purchaser acknowledges that the entirety of Seller's property is currently benefitted by a property tax exemption and that the property tax exemption will not be applicable to the cut-up portion of the Property.

9. **Default.** In the event of a default by Purchaser under the Contract, Seller shall be entitled, as Seller's sole and exclusive remedies, to either terminate the Contract or to request a court in Hamilton County, Ohio to specifically enforce the obligations of Purchaser under this Contract. In the event of a default by Seller under the Contract, Purchaser shall be entitled, as Purchaser's sole and exclusive remedies, to declare the Contract terminated, or to request a court in Hamilton County, Ohio to specifically enforce the obligations of Seller under this Contract.

10. **Conditions to Close.**

A. Conditions Precedent to Obligations of Seller. The obligations of the Seller hereunder are subject to satisfaction, at or prior to the Closing, as applicable, of each of the following conditions:

(i) Purchaser's sale to Seller and a closing on the Seller's purchase of the Purchaser's real property according to the provisions as set forth in the Second Contract.

(ii) The certifications of Purchaser made in Section 3 of this Contract shall be true and complete in all material respects as of the Closing Date as if made on and as of that date.

(iii) All of the terms, covenants and conditions to be complied with and performed by Purchaser on or prior to the Closing Date shall have been complied with or performed in all material respects.

(iv) Seller has received adequate and sufficient information, as required herein, to ensure itself that Purchaser or its assignee has the financial capability to fulfill the terms of the Contract and to construct the proposed Project as outlined in Exhibit "E", on the Property.

(v) Purchaser and its assignee shall have executed the easements to Seller as required and described in this Agreement.

(vi) Purchaser shall have paid the Purchase Price as required herein.

B. Conditions Precedent to Obligations of Purchaser. The obligations of Purchaser hereunder are subject to satisfaction, at or prior to the Closing, of each of the following conditions:

(i) Purchaser's successful closing and acquisition of the B&B Property.

(ii) Seller's purchase and closing on the Purchaser's real property according to the provisions as set forth in the Second Contract.

(iii) The certifications of Seller made in Section 2 of this Contract shall be true and complete in all material respects as of the date hereof and on and as of the Closing Date as if made on and as of that date.

(iv) All of the terms, covenants and conditions to be complied with and performed by Seller on or prior to the Closing Date shall have been complied with or performed in all material respects.

(v) Seller shall have delivered to Purchaser each of the documents and other items required to be delivered by Seller as required by the title company, and pursuant to this Contract.

(vi) Seller shall have delivered title to Purchaser as required by Section 8.A.

11. **Delivery of Notice.** Any notice to be given hereunder shall be hand delivered, given by registered or certified mail (return receipt requested), or via electronic mail addressed to the party in question at the addresses appearing in the introductory paragraph of this Contract except as is otherwise expressly provided herein. The effective date of any such notice shall be the date on which such notice is delivered (in the case of hand delivery) or mailed (in the case of use of registered or certified mail) to such addresses or the date of actual receipt in any other case. Any address set forth herein may be changed by notice to the other party hereto.

A copy of any notice to Seller shall also be given to:

Robert P. Malloy, Law Director
Wood and Lamping LLP
600 Vine Street, Suite 2500
Cincinnati, Ohio 45202
rpmalloy@woodlamping.com

A copy of any notice to Purchaser shall also be given to:

12. **Offer to Purchase.** If Purchaser executes this Contract prior to Seller, then this Contract shall constitute and be an Offer to Purchase by the Purchaser that shall remain open to acceptance by Seller, based upon approval by City Council of Seller, until 5 p.m. eastern daylight savings time, on _____, 2015. Upon Seller's acceptance, execution, and delivery of this Contract, this Contract shall constitute and be a valid Contract for Sale and Purchase that is binding upon all parties hereto.

13. **Broker Commissions.** Seller and Purchaser shall be responsible for the payment of any and all broker's commissions, if any, that may be due pursuant to any existing broker agreements, and each party shall protect and save harmless the other party against the claim of any broker hired with respect to this Contract. The parties acknowledge that there shall be no brokerage commissions or fees related to Seller's sale of the Property to Purchaser. Purchaser shall pay the brokerage fees of any broker used by Purchaser.

14. **Failure to Perform.** If Purchaser fails to meet any of its obligations under this Contract, at no fault of Seller, Seller, at its option, can exercise any of its rights under this Contract including but not limited to: (a) may elect to enforce the terms hereof by action for specific performance, and/or exercise any other right or remedy available to it at law or in equity, or (b) may terminate this Contract by notice to Purchaser. If Seller fails to meet any of its

obligations under this Contract, at no fault of Purchaser, Purchaser, at its option, can exercise any of its rights under this Contract including but not limited to: (a) may elect to enforce the terms hereof by action for specific performance, and/or exercise any other right or remedy available to it at law or in equity, or (b) may terminate this Contract by notice to Seller and to receive the refund of the Deposit, in which case Seller shall have no further obligations under the Contract to Purchase.

15. **Additional Contingency Clause.** Notwithstanding anything herein or elsewhere to the contrary, it is expressly understood by the parties hereto that the Seller and Purchaser's obligation to consummate the Closing and purchase the Property is contingent upon the occurrence of the following event:

Approval by all necessary action of the City Council of Seller (including approval by resolution and/or ordinance, as applicable) of the Contract and Second Contract and approval by the MHPC, as set forth in Section 7B.

16. **Miscellaneous.**

A. Press Release. Both parties agree not to issue or make any public announcement, whether oral or written, of the sale of the Property without first giving the other party the opportunity to review and comment upon the contents of the notice or other statement.

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

C. Captions. The captions in this Contract are inserted only for the purpose of convenient reference and in no way define, limit, or prescribe the scope or intent of this Agreement or any part hereof.

D. Construction. No provisions of this Contract shall be construed by any court or other judicial authority against any party hereto by reason of such party's being deemed to have drafted or structured such provisions.

E. Entire Agreement. This Contract, including Exhibits "A" through "D" constitutes the entire contract between the parties hereto and supersede all prior understandings, if any, there being no other oral or written promises, conditions, representations, understandings or terms of any kind as conditions or inducements to the execution hereof and none have been relied upon by either party. Any subsequent conditions, representations, warranties, or agreements shall not be valid and binding upon the parties unless in writing and signed by both parties.

F. Time is of the Essence. Time is of the essence in this transaction.

G. Recitals. The above-stated Recitals shall be an integral part of this Contract.

H. Original Document/Counterparts. This Contract shall be executed by both parties in counterparts, each of which shall be deemed an original, but all of such counterparts taken together shall constitute one and the same Agreement.

I. Governing Law. This Contract shall be construed, and the rights and obligations of Seller and Purchaser hereunder shall be determined, in accordance with the laws of the State of Ohio.

J. Non-Merger. In addition to any specific language of non-merger found in certain sections of this Contract, any provision hereof which by its terms would be performed after the Closing shall survive the Closing and shall not merge in the Closing or in the deed, except as specifically provided to the contrary herein.

K. Assignment. Purchaser, as the current Purchaser under his Agreement, shall have the right to assign all of Purchaser's rights and obligations under this Contract to an affiliated land holding company created by Purchaser, intended to act as title holder for the Property, provided Seller approves of the proposed assignee based on the requirements set forth in Section 3D, with Seller's approval not to be unreasonably withheld or delayed. Purchaser, Company and their affiliates shall be obligated under the terms of this Contract and the Second Contract.

L. Severability. In the event that any provision or clause in this Contract shall be ruled invalid and severed by a court of competent jurisdiction, such severability shall not affect other provisions of this Contract and they shall remain in full force and effect. This provision shall survive the Closing or any termination hereof.

The parties have executed this Contract as of the respective dates set forth below.

SELLER:

City of Madeira, Ohio, an Ohio municipal corporation

Date

By: _____
Thomas W. Moeller, City Manager

PURCHASER:

Date

Thomas M. Powers

APPROVED AS TO FORM:

Robert P. Malloy, Law Director

EXHIBITS TABLE OF CONTENTS (Contract for Sale and Purchase)

Exhibit A	Depiction of Parking Spaces
Exhibit B	Depiction for cut up of property/Muchmore House
Exhibit C	Legal Description for Property to be conveyed (to be determined by survey)
Exhibit D	Project Site Plan

Exhibit A
Depiction of Parking Spaces

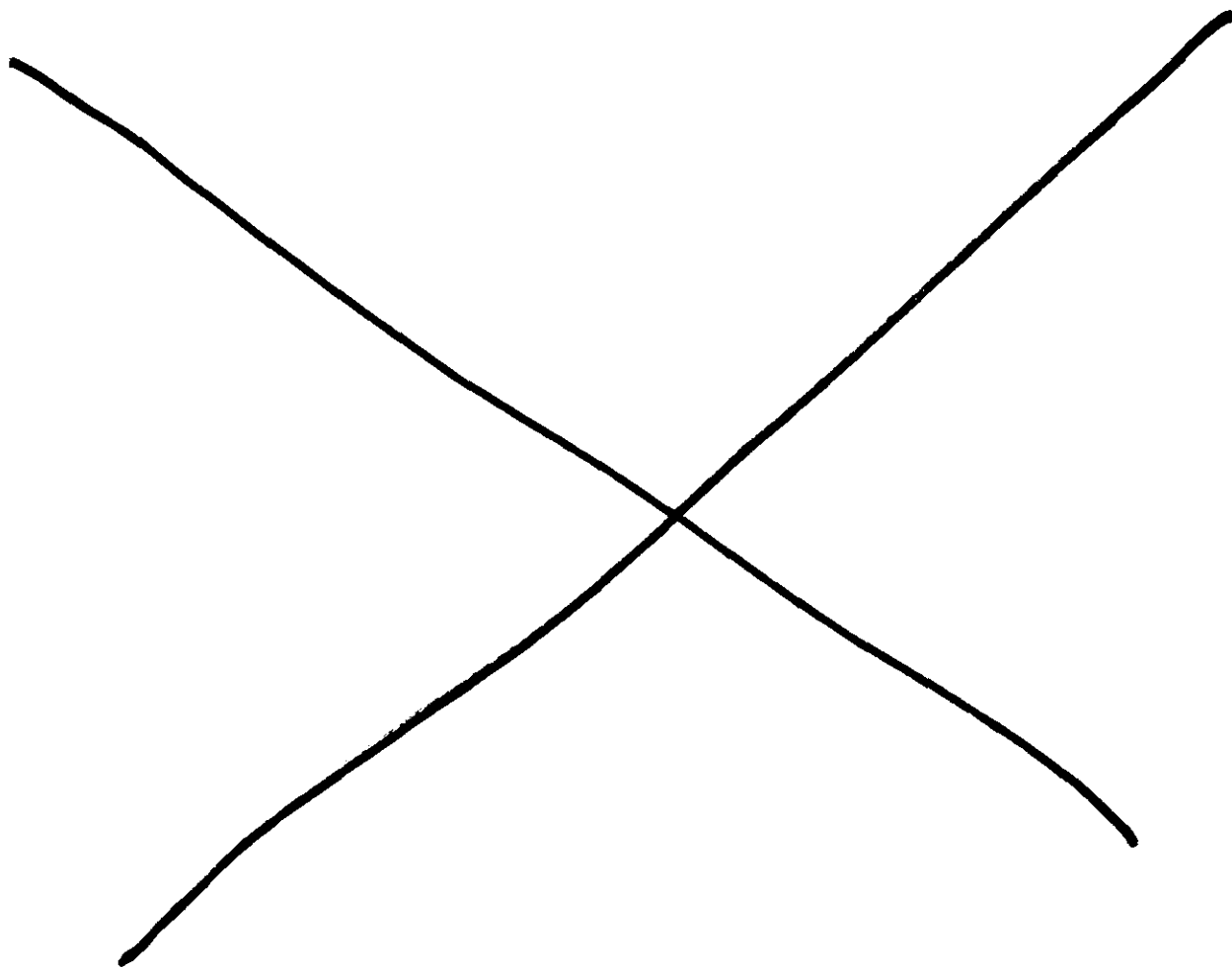


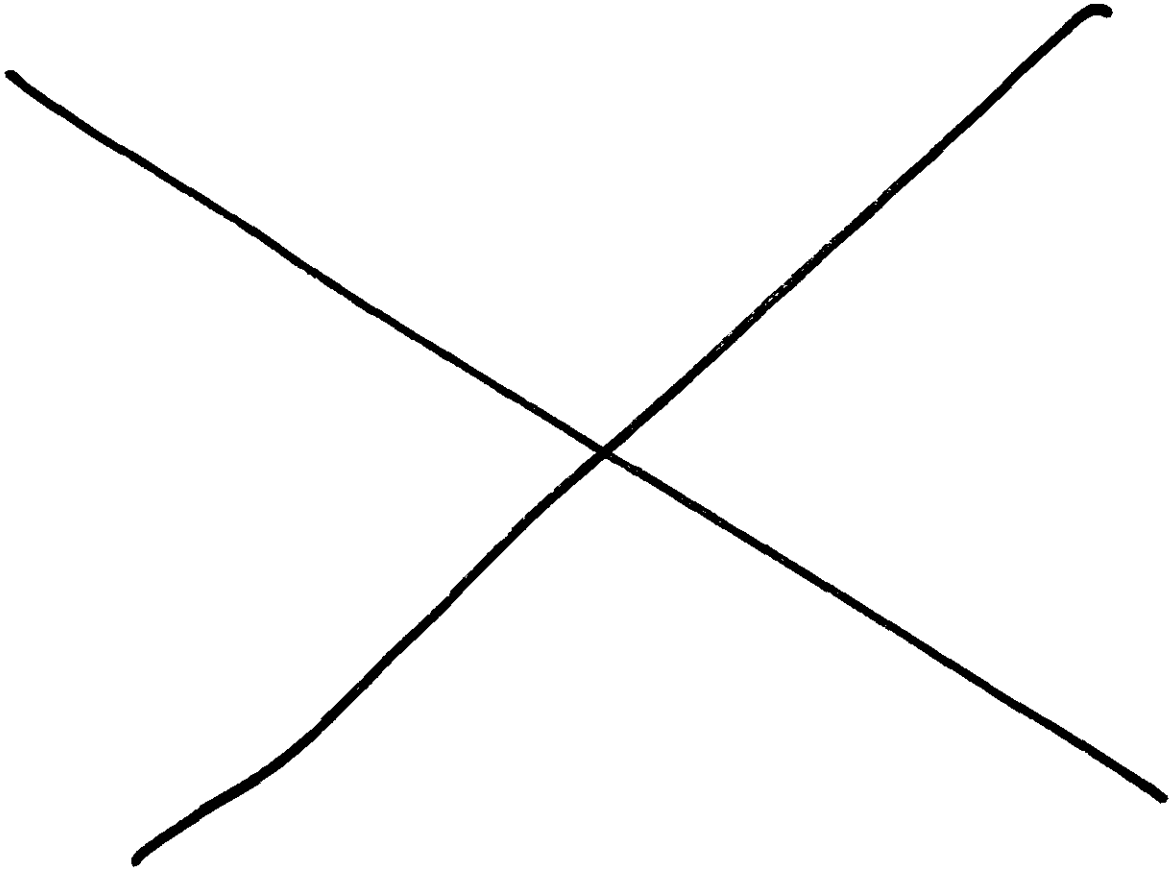
Exhibit B

Depiction for cut up of property/Muchmore House

Exhibit C

Legal Description for Property to be conveyed (to be determined by survey)

Exhibit D
Project Site Plan



The Law Firm of Curt C. Hartman

7394 Ridgepoint Drive, Suite 8
Cincinnati, Ohio 45230
hartmanlawfirm@fuse.net

November 30, 2015

BY EMAIL (*rpmalloy@woodlamping.com*)

Robert P. Malloy
Law Director, City of Madeira
Wood & Lamping LLP
600 Vine St. Suite 2500
Cincinnati, OH 45202

Re: Request for Initiation of Civil Action Pursuant to R.C. 733.56 et seq.

Mr. Malloy:

This firm represents Douglas Oppenheimer (aka Philip Douglas Oppenheimer), a resident and taxpayer of the City of Madeira, and on whose behalf this letter is tendered. Specifically, I am writing to you on behalf of Mr. Oppenheimer pursuant to the taxpayer lawsuit provisions of the Ohio Revised Code due to the recent actions by the City Council of the City of Madeira that constitute an abuse of corporate powers. In particular, the recent passage of Ordinance No. 15-30 by the City Council authorizing a contract for the sale of real property owned by the City of Madeira notwithstanding that the Charter of the City of Madeira mandates that the specific property must, *inter alia*, be preserved and protected.

In toto, Article XVI of the Charter of the City of Madeira provides that:

The City of Madeira was deeded and assumed ownership of the "Hosbrook House" located at 7014 Miami Ave. and the "Muchmore House" located at 7010 Miami Ave. In addition to these two properties the City also has ownership of the historic Railroad Depot located at 7701 Railroad Ave. These three important and historic properties are to be preserved, protected, and left standing on the same ground that the structures were built upon. These three historic structures will be included in the "Historic District".

The property specifically identified in Article XVI of the City Charter as the Muchmore House consists of approximately 0.215 transferred to the City of Madeira by Cleo Hosbrook by a deed dated April 3, 1989. With the foregoing Muchmore House property already owned by the City of Madeira, the citizens of the City of Madeira adopted Article XVI of the City Charter in November 2014. And pursuant to the provision of the City Charter, the Muchmore House property must, *inter alia*, be "preserved [and] protected."

However, on November 9, 2015, the City Council adopted Ordinance No. 15-30. This Ordinance specifically concerns and relates to the Muchmore House property.

Exhibit D

Specifically, Ordinance No. 15-30 provides for and authorizes the execution of a contract for the sale by the City of Madeira of a portion the Muchmore House property – property that already consist just over one-fifth-of-an-acre. While the contract authorized by Ordinance No. 15-30 does not include the specific area of the Muchmore House property that would be sold (as that amount is left blank on the contract authorized by the Ordinance), the diminution of a parcel already consisting of one-fifth-of-an-acre does not comply with the letter, spirit or intent of Article XVI of the City Charter. (Additionally, if the Muchmore House property is presently nonconforming under the City's Zoning Code, the sale of a portion of the property would also constitute an unauthorized alteration to an existing nonconforming parcel.)

As the foregoing demonstrates, at a minimum, the foregoing, including the adoption of Ordinance No. 15-30 and any action to implement and effectuate a sale of a portion of the Muchmore House property clearly violates Article XVI of the City Charter so as to constitute an abuse of corporate powers. Accordingly, pursuant to Sections 733.56 *et seq.* of the Ohio Revised Code, Mr. Oppenheimer, as a resident and taxpayer of the City of Madeira, hereby requests that you, as the City Law Director, make application to a court of competent jurisdiction for an order of injunction to restrain the abuse of corporate powers of the City of Madeira as it relates to the effort to sell or transfer a portion of the Muchmore House property located at 7010 Miami Avenue.

I am sure you appreciate that time is of the essence and, thus, would ask for a prompt and immediate response as to whether you will file such an action.

Sincerely,

/s/ Curt C. Hartman
Curt C. Hartman

cc: Thomas W. Moeller, City Manager (via e-mail, tmoeller@madeiracity.com)
Douglas Oppenheimer

WOOD & LAMPING LLP

SINCE 1927

ATTORNEYS AT LAW

600 VINE STREET, SUITE 2500
CINCINNATI, OHIO 45202-2491
TELEPHONE (513) 852-6000
FAX (513) 852-6087

www.woodlamping.com

ROBERT P. MALLOY
MARK S. RECKMAN
JAN M. FRANKEL
GARY J. DAVIS
JAMES B. HARRISON
HENRY E. MENNINGER, JR.
C.J. SCHMIDT III
THOMAS M. WOEBKENBERG
ARTHUR D. WEBER, JR.
THOMAS J. BREED
DALE A. STALF
LISA D. LEHNER
HOWARD RICHSHAFFER
ELIZABETH A. HORWITZ
LINDA A. ASH

EDWARD D. BENDER
JEFFREY D. FORBES
SUSAN K. CLIFFEL
JEFFREY R. TEETERS
EDWARD S. DORSEY
ROBERT M. M. SHAFFER
RAYMOND J. PIKNA, JR.
JENNIFER G. ANSTAEIT
ROCCINA S. NIEHAUS
KEVIN K. FRANK
RAYAN F. COUTINHO, Ph.D.
SHAWN M. EVANS
RICHARD E. LAMPING
BRIAN W. FOX
JING ZHANG

Counsel
KENNETH J. SCHNEIDER
PAUL R. BERNINGER
ROBERT F. RECKMAN
WILLIAM H. EDER, JR.
HAROLD G. KORBEE
JOHN W. EILERS

JOHN WOOD II (1917-1998)
FRED C. LAMPING (1903-1989)

Direct Dial: 513-852-6092
E-Mail: jdforbes@woodlamping.com
Direct Fax: (513) 419-6492

December 8, 2015

Curt C. Hartman
The Law Firm of Curt C. Hartman
7394 Ridgpoint Drive, Suite 8
Cincinnati, OH 45230

RE: City of Madeira - Request for Initiation of Civil Action

Dear Curt:

As of December 1, 2015, I have appointed Interim Law Director for the City of Madeira. Your letter of November 30, 2015, has been forwarded to me for response.

As you stated, Ordinance No. 15-30, adopted by City Council on November 9, 2015, authorizes the sale of a portion of the property referred to as the Muchmore House. This was done after a thorough review of the relevant provisions of the Madeira City Charter and other relevant laws, ordinances, and documents.

As you have indicated, Article XVI of the Charter states as follows:

The City of Madeira was deeded and assumed ownership of the "Hosbrook House" located at 7014 Miami Ave. and the "Muchmore House" located at 7010 Miami Ave. In addition to these two properties the City also has ownership of the historic Railroad Depot located at 7701 Railroad Ave. These three important and historic properties are to be preserved, protected, and left standing on the same ground that the structures were built upon. These three historic structures will be included in the "Historic District".

As you can see, there is no express prohibition against selling any portion of the identified properties. The only requirement is that the properties be "preserved [and] protected."

Exhibit E

Preservation and protection can be, and are being, achieved through other legislative measures. More specifically, the Charter provision also created the Historic District. City Council approved legislation after the passage of the Charter Amendment which created the Madeira Historical Preservation Commission (MHPC). One of the responsibilities of the MHPC is to recommend standards and regulations which will oversee the future of the properties. City Council is in the process of reviewing those standards in order to finalize them so they can be enforced by the MHPC. While it is possible that the Historic Preservation Commission may one day recommend further restrictions on the properties in the Historic District, no such regulations exist at this time. So again, there is no express restriction that would prohibit the City from selling any portion of the property. The strict and specific purpose of the proposed standards and regulations are to "preserve" and "protect" the properties located within the Madeira Historic District. As such, the only requirement of the Charter (to preserve and protect) is being fulfilled.

Next we examined the 2012 Muchmore Historic Area legislation. This legislation specifically retains the right to convey some of the property as long as it meets the two main goals of the legislation: respect the historical significance of the property and assist in business development. This ordinance is an example of the theme of restraint that exists around these properties. However, there is no express restriction that would prohibit the City from selling the property.

Finally, we examined the deeds and accompanying letters of donation that the City received when initially acquiring the properties. There are no restrictions that came in the deeds when the City acquired the property. The most that accompanied the deeds is the letter from Cleo Hosbrook expressing her hope about the preservation of the buildings. Again, while this may support the theme of restraint and the hope and expectation of preservation, it is not a specific legal requirement. Therefore, there is no express restriction in the conveyance documents that would prohibit the City from selling the property or subdividing it for additional public parking.

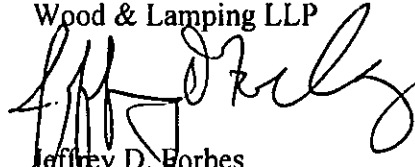
Your letter also questions whether the existing parcel is conforming to the Zoning Code. The parcel is located within the Main Street Core District. There are no lot/area limitations; therefore, the reduction in the area of the lot would not make the lot non-conforming. As well, building setbacks within the MSC District are 5 ft.; the proposed reduction in the size/area of the lot will not cause there to be a non-conforming building setback issue.

Based on the foregoing, I do not believe that Madeira City Council abused its corporate authority in enacting Ordinance No. 15-30. As such, I am declining to initiate a civil action pursuant to R.C. 733.56 *et seq.*

Curt C. Hartman
December 8, 2015
Page 3

Very truly yours,

Wood & Lamping LLP



Jeffrey D. Forbes
Interim Law Director

cc: Tom Moeller, City Manager

2229745.1