

EMERGENCY
City of Cincinnati

CHM

AWB

An Ordinance No. _____

- 2020

AUTHORIZING the City Manager to execute a *Property Transfer Agreement* with BJ Homes Limited Partnership under which the City will acquire fee interest in and to certain real property located adjacent to Boldface Park at 3110 Illinois Avenue in the Sedamsville neighborhood of Cincinnati.

WHEREAS, BJ Homes Limited Partnership is the owner of certain real property located adjacent to Boldface Park at 3110 Illinois Avenue in the Sedamsville neighborhood of Cincinnati, as more particularly described in the *Property Transfer Agreement* attached to this ordinance as Attachment A (the "Property"); and

WHEREAS, pursuant to a *Settlement Agreement*, the City Solicitor and BJ Homes Limited Partnership have agreed to settle or compromise all claims in an action to which the City is a party, namely Hamilton County Court of Common Pleas Case No. A1902806, *City of Cincinnati v. Robert Dressman, et al.*, pursuant to which BJ Homes Limited Partnership will convey to the City all its right, title, and interest in the Property by general warranty deed; and

WHEREAS, James A. R. Flax, a reputable attorney-at-law practicing in Hamilton County, Ohio, has determined that BJ Homes Limited Partnership holds title to the Property in fee simple, free and clear of all encumbrances of every kind except for taxes for the second half of the year 2019 and taxes not yet assessed for 2020 to date; and

WHEREAS, the City Manager, upon consultation with the Director of Recreation, recommends the Council to accept the conveyance, finding that it is a proper municipal purpose to acquire the Property to provide land for recreation purposes as an addition to Boldface Park; and

WHEREAS, at its meeting on August 18, 2020, the Cincinnati Recreation Commission approved the acceptance of the conveyance as an addition to Boldface Park; and

WHEREAS, upon transfer of the property to the City, the City's Department of Buildings & Inspections will take prompt action to demolish the existing structure and remove hazardous nuisance conditions at the site so that the property will be appropriate for recreational uses as an expansion to Boldface Park; and

WHEREAS, at its meeting on September 18, 2020, the City Planning Commission approved the expansion of Boldface Park; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute a *Property Transfer Agreement* with BJ Homes Limited Partnership, in substantially the form attached to this ordinance as Attachment A, pursuant to which BJ Homes Limited Partnership will convey to the City by general warranty deed all its right, title, and interest to certain real property more particularly described as follows (“Property”):

Situated in the City of Cincinnati, County of Hamilton and State of Ohio in Section 35, Township 4, Fractional Range 1, Storrs Township, and more particularly described as follows:

Beginning at a point in the North line of the right of way known as Illinois Avenue where the same is intersected by the West line of the property of the City of Cincinnati and used for a playground and called Boldface Playground and which point is also the Easterly terminus of said Illinois Avenue; thence North, along the West line of said playground, North 59°35’ West, 200 feet to a point in the West line of said playground, which point is also the Northeasterly corner of the premises conveyed to Lawrence E. Pool, et al. by deed recorded in Deed Book No. 1116, Page 514, Hamilton County Records, thence Southwardly along the East line of said Pool property, 215 feet to a point in the North line of said Illinois Avenue, which point is also the Southeasterly corner of said Pool property and which point is also 143 feet West of the place of beginning; thence Eastwardly along the North line of said Illinois Avenue, 143 feet to the place of beginning.

Commonly known as 3110 Illinois Avenue, Cincinnati, Ohio 45204. Hamilton County Auditor Parcel ID: 153-0005-058-00.

Section 2. That the Council hereby authorizes the proper City officials to take all necessary and proper actions to carry out the terms of this ordinance, including the execution of all necessary real estate documents, to accept and confirm the conveyance instrument to the City, and to note such acceptance on the conveyance instrument.

Section 3. That the City Solicitor shall cause an authenticated copy of this ordinance to be filed with the Hamilton County, Ohio Auditor's office, and recorded in the Hamilton County, Ohio Recorder's office.

Section 4. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need for the City to execute the *Property Transfer Agreement* and accept the instrument conveying the Property to the City so that the City may promptly abate hazardous nuisance conditions at the Property and move forward with the planned expansion of Boldface Park.

Passed: _____, 2020

John Cranley, Mayor

Attest: _____
Clerk

ATTACHMENT A

CONTRACT FOR TRANSFER AND ACCEPTANCE
OF PROPERTY

PROJECT: 3110 Illinois Avenue –City v. Dressman Settlement

OWNER: BJ Homes Limited Partnership, 1727 E. Galbraith Road, Cincinnati, OH 45215

PROPERTY: 3110 Illinois Avenue, Cincinnati, OH 45204
(Auditor's Parcel No. 153-0005-0058)

THIS PROPERTY TRANSFER AGREEMENT (this "**Agreement**") is made and effective as of the Effective Date (as defined by the signature page herein) by and between **BJ HOMES LIMITED PARTNERSHIP**, an Ohio limited partnership, with a mailing address of 1894 East Galbraith Road, Cincinnati, Ohio 45215 ("**Owner**"), and the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202, as conveyee (the "**City**").

A. On June 6, 2019, the City filed a complaint against Owner in the Court of Common Pleas, Hamilton County, Ohio, in an action captioned *City of Cincinnati v. Robert Dressman, et al.*, Case No. A 1902806 (the "**Action**").

B. Pursuant to that certain *Settlement Agreement* dated September 25, 2020 the City and Owner have agreed to settle, compromise, and resolve certain rights, claims, and demands asserted in the Action (the "**Settlement Agreement**"). A true and accurate copy of the Settlement Agreement is attached hereto as Exhibit A (*Settlement Agreement*).

C. As a material inducement to the City to enter the Settlement Agreement, Owner agreed to convey to the City, free and clear of any and all liens or encumbrances, all its right, title, and interest in and to certain real property commonly known as 3110 Illinois Avenue, Cincinnati, Ohio 45204; Auditor's Parcel No.: 153-0005-0058-00, as more particularly described on Exhibit B (*Legal Description*) hereto and more particularly depicted on Exhibit C (*Site Map*) hereto (the "**Property**").

NOW, THEREFORE, in consideration of the mutual covenants contained herein and in the Settlement Agreement, as well as the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

1. **Agreement to Convey Owner's Property.** Owner hereby agrees to convey to the City, and the City hereby agrees to accept, all of Owner's right, title and interest in and to the Property, as described on Exhibit B hereto. Between the date of Owner's execution of this Agreement and the Closing (as defined below), Owner shall not make or permit any physical changes to the Property without the City's prior written consent. Owner shall deliver exclusive possession of the Property to the City at Closing. Owner represents and warrants that there are no tenants or other third parties that have possessory interests in the Property.

2. **Purchase Price.** Pursuant to the terms of the Settlement Agreement, Owner shall convey the Property at Closing at no cost to the City.

3. **City's Right to Enter.** Between the date of Owner's execution of this Agreement and the Closing, the City's agents, employees and contractors shall have the right to enter upon the Property, upon 24 hours prior verbal notice to Owner, for purposes of inspection and any and all other reasonable purposes.

4. **Title.** Owner represents and warrants to the City that: (a) it is the sole owner of the fee simple interest in the Property; (b) there are no tenants or other third parties who are entitled to the use or possession of any part of the Property; and (c) the Property is free and clear of all liens and encumbrances whatsoever, except for easements, restrictions, conditions and covenants of record, if any, and the lien for real estate taxes and assessments not yet due and payable. Owner shall procure and deliver to City any releases, assignments or cancellations of any and all other rights, titles and interests in the Property, whether attaching to the Property prior to or during Owner's ownership of the Property. Such interests may include, but are not limited to, those belonging to tenants, mortgagees or others now in possession or otherwise occupying the Property, and all tax and assessment claims against the Property. Any mortgage or other monetary liens on the Property shall be discharged and paid by Owner at or before Closing. If the City or Owner becomes aware of any title problems affecting the Property, then Owner, at Owner's expense, shall promptly take such action as is necessary to clear the title. Between the date of Owner's execution of this Agreement and the Closing, Owner shall not take any action that affects the title to the Property, including, but not limited to conveying any interest in the Property to any third party or granting any easements or the like, without the City's prior written consent. Notwithstanding anything in this Agreement to the contrary, the City's obligation to close on the acquisition of the Property is conditioned upon the City's satisfaction with Owner's title to the Property. If such condition is not satisfied, the City may terminate this Agreement by giving written notice thereof to Owner at any time prior to the scheduled Closing date, whereupon neither party shall thereafter have any rights or obligations hereunder.

5. **Closing.** At Closing, Owner shall convey title to the Property to the City by General Warranty Deed in substantially the form of Exhibit D (General Warranty Deed) hereto (the "**Deed**"). Owner's title shall be free, clear and unencumbered, subject only to such matters of record as are acceptable to the City. Owner's conveyance of title to the Property (the "**Closing**") shall take place within **30 days** after the adoption of an ordinance by the Council of the City of Cincinnati accepting the conveyance of the Property to the City or on such other date as the parties may mutually agree upon. At Closing, Owner shall execute a customary seller's title affidavit in a form prepared by the City, and the parties shall execute a settlement statement and any and all other customary closing documents.

6. **Closing Costs.** At Closing, Owner shall pay all transfer taxes, conveyance fees, and recording costs payable to the Hamilton County Auditor and Hamilton County Recorder and any and all other closing costs associated with the Closing (except that Owner shall not be required to pay any attorneys fees for the City). *As a material inducement to the City to enter into the Settlement Agreement, the City shall not be required to pay any closing costs associated with the Closing.* Real estate taxes and assessments shall be prorated as of the date of Closing in accordance with local custom. If, upon receipt of the actual tax bills for the Property, it is determined that Owner's estimated prorated share of the taxes and assessments through the date of the Closing, as reflected on the settlement statement, was less than Owner's actual prorated share, Owner shall pay the additional amount to the City within 30 days after receipt of the tax bill. Owner represents that Owner has not dealt with any real estate agent in connection with the sale of the Property who might claim entitlement to a real estate commission as a result of the sale of the Property to the City.

7. **Owner's Title Insurance.** At Closing, Owner, at no cost to the City, shall provide the City with an Owner's Title Insurance Policy for the Property, (i) issued by a reputable title insurance company acceptable to the City, (ii) identifying the City as the insured, (iii) evidencing insurance in the amount of the fair market value of the Property, (iv) showing title to be free and clear of all mortgages, easements, and other encumbrances (except for encumbrances as may be approved in writing by the City); (v) insuring the so-called "gap" period, and (vi) evidencing deletion of the Schedule B-II standard exceptions (including standard exceptions pertaining to parties in possession, survey matters, and mechanics liens). Owner shall provide the City with a Commitment for Title Insurance no less than 14 days prior to the Closing, for review.

8. **Environmental Representations.** Owner represents and warrants to the City that Owner is not aware of the existence of any environmental contamination, environmental hazards, underground storage tanks, or other adverse environmental conditions previously or currently affecting the Property.

9. **Damage to Property.** In the event of damage to the Property resulting from any cause prior to Closing, the City shall have the right to terminate this Agreement. If the City does not exercise such right, at Closing the City shall accept the Property in its then current condition.

10. **Survival.** Any and all obligations of the parties under this Agreement that have not been fully performed as of the date of Closing shall survive the Closing (and shall not be deemed to have merged into Owner's deed) until fully performed.

11. **Appropriation for Public Use.** Following Owner's execution of this Agreement, Owner agrees that it will not contest any action which the City has or may institute to appropriate the Property to public use, and in such proceedings Owner agrees to appear and consent that the jury in its verdict and the Court in its judgment entry may make the amount of the Purchase Price the amount of the compensation awarded for the appropriation of the Property to public use. Owner also consents to the filing and use of this Agreement in such proceedings as evidence of the agreed value of the Property.

12. **Notice.** Any notice or other communication required or desired to be given to either party under this Agreement shall be in writing and (i) delivered personally, (ii) deposited in the United States mail, first class, postage prepaid, or (iii) delivered by UPS, Federal Express or other recognized courier service, to the parties at their respective addresses set forth above or such other addresses as either party may specify from time to time. Notices shall be deemed given upon receipt. If Owner sends a notice to the City alleging that the City is in breach of this Agreement, Owner shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

13. **Representations, Warranties, and Covenants of Owner.** Owner makes the following representations, warranties and covenants to induce the City to enter into this Agreement:

(i) Owner is a limited partnership duly organized and validly existing under the laws of the State of Ohio, has been properly qualified to do business in the State of Ohio, and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement.

(ii) Owner has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for therein. This Agreement has by proper action been duly authorized, executed and delivered by Owner and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid and binding obligations of Owner.

(iii) The execution, delivery and performance by Owner of this Agreement and the consummation of the transactions contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or the organizational documents of Owner, or any mortgage, indenture, contract, agreement or other undertaking to which Owner is a party or which purports to be binding upon Owner or upon any of its assets, nor is Owner in violation or default of any of the foregoing.

(iv) There are no actions, suits, proceedings or governmental investigations pending, or to the knowledge of Owner, threatened against or affecting Owner or any of its members, at law or in equity or before or by any governmental authority. **[Except Hamilton County Court of Common Pleas Case No. A1902806]**

(v) Owner shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute or governmental proceeding or investigation affecting Owner or any of its members that could reasonably be expected to interfere substantially with its normal operations or materially and adversely affect its financial condition.

(vi) Owner does not owe any outstanding fines, penalties, judgments, water or other utility charges or other amounts to the City.

14. General Provisions.

(A) Amendments. This Agreement may be amended only by a written amendment signed by both parties.

(B) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Owner agrees that venue in such court is proper. Owner hereby waives trial by jury with respect to any and all disputes arising under this Agreement.

(C) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors.

(D) Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(E) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(F) No Recording. This Agreement shall not be recorded in the Hamilton County Recorder's office.

(G) Time. Time is of the essence with respect to the performance by the parties of their respective obligations under this Agreement.

(H) No Third-Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(I) No Brokers. The City and Owner represent to each other that they have not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(J) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

15. Exhibits. The following exhibits are attached hereto and made a part hereof:

- Exhibit A – *Settlement Agreement*
- Exhibit B – *Legal Description*
- Exhibit C – *Site Map*
- Exhibit D – *General Warranty Deed*

[Signature Page Follows]

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

BJ HOMES LIMITED PARTNERSHIP,
an Ohio limited partnership

By: _____

Title: _____

Date: _____, 2020

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, Interim City Manager

Date: _____, 2020

Recommended by:

Daniel E. Betts, Director,
Cincinnati Recreation Commission

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

EXHIBIT A
to Property Transfer Agreement
Settlement Agreement

[TO BE ATTACHED]

EXHIBIT B
to Property Transfer Agreement
Legal Description

Real property in the Township of Storrs, County of Hamilton, State of Ohio, and is described as follows:

Situate in the City of Cincinnati, Hamilton County, Ohio in Section 35, Township 4, Fractional Range 1, Storrs Township and more particularly described as follows:

159-5-58
Beginning at a point in the North line of the right of way known as Illinois Avenue where the same is intersected by the West line of the property of the City of Cincinnati and used for a playground and called Boldface Playground and which point is also the Easterly terminus of said Illinois Avenue, thence North along the West line of said Playground North 59 degrees 35' West Two hundred feet to a point in the West line of said Playground, which point is also the Northeasterly corner of the premises conveyed to Lawrence E. Pool, et al. by deed recorded in Deed Book Number 1116 page 514 Hamilton County Records; thence Southwardly along the East line of said Pool property Two hundred and fifteen feet to a point in the North line of said Illinois Avenue, which point is also the Southeasterly corner of said Pool property and which point is also One hundred and forty-three feet West of the place of beginning; thence Eastwardly along the North line of said Illinois Avenue, 143 feet to the place of beginning.

EXHIBIT C
to Property Transfer Agreement
Site Map

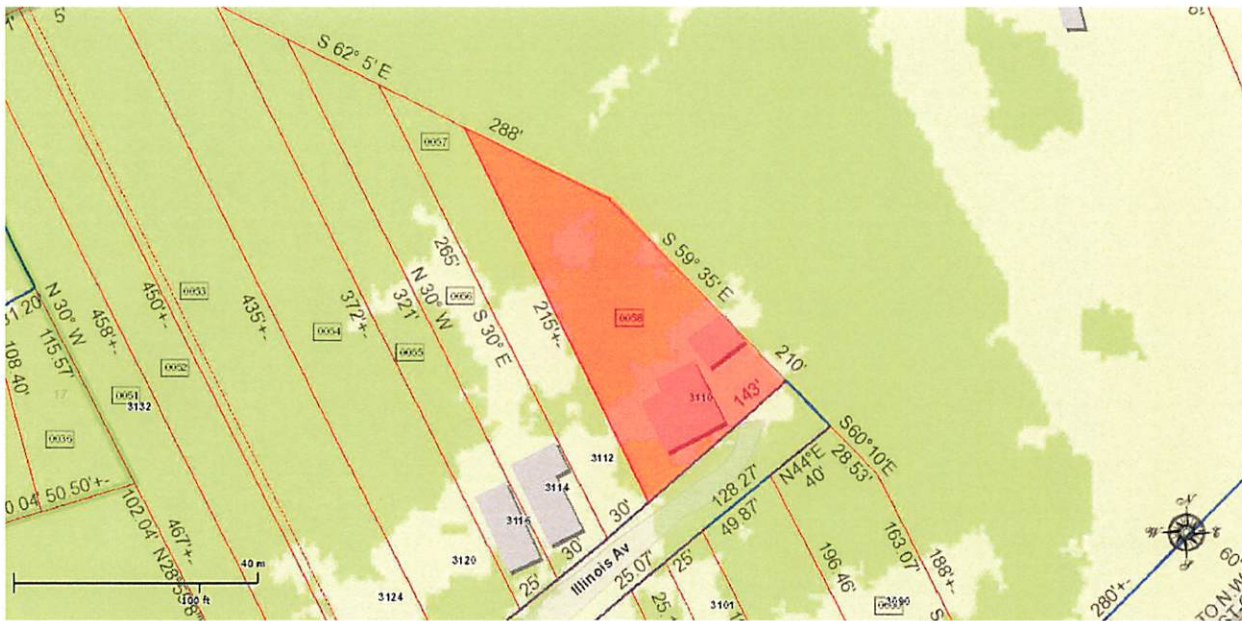


EXHIBIT D
to Property Transfer Agreement

General Warranty Deed

SEE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE]

GENERAL WARRANTY DEED

BJ HOMES LIMITED PARTNERSHIP, an Ohio limited partnership (“Grantor”), for valuable consideration paid, hereby grants and conveys, with general warranty covenants, to the **CITY OF CINCINNATI**, an Ohio municipal corporation, the tax-mailing address of which is 801 Plum Street, Cincinnati, OH 45202 (the “City”), the real property described on Exhibit A (Legal Description) hereto (the “Property”):

Street Address: 3101 Illinois Avenue, Cincinnati, OH 45204

Auditor's Parcel No: 153-5-58

Prior instrument reference: Official Record 14151, Page 1786, Hamilton County, Ohio Records.

Executed on _____, 2020.

BJ HOMES LIMITED PARTNERSHIP,
an Ohio limited partnership

By: _____

Printed name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by _____, the _____ of BJ Homes Limited Partnership, an Ohio limited partnership, on behalf of the limited partnership. This is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Accepted by:

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, Interim City Manager

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2020, by Paula Boggs Muething, Interim City Manager of the **CITY OF CINCINNATI**, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Cincinnati City Council authorized the acceptance of this conveyance by Ordinance ____-2020, passed on _____, 2020.

Acceptance Noted by:

Clerk of Council

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:
City of Cincinnati Law Department
801 Plum Street
Cincinnati, Ohio 45202

EXHIBIT A
to General Warranty Deed

LEGAL DESCRIPTION

Real property in the Township of Storrs, County of Hamilton, State of Ohio, and is described as follows:

Situate in the City of Cincinnati, Hamilton County, Ohio in Section 35, Township 4, Fractional Range 1, Storrs Township and more particularly described as follows:

Beginning at a point in the North line of the right of way known as Illinois Avenue where the same is intersected by the West line of the property of the City of Cincinnati and used for a playground and called Boldface Playground and which point is also the Easterly terminus of said Illinois Avenue, thence North along the West line of said Playground North 59 degrees 35' West Two hundred feet to a point in the West line of said Playground, which point is also the Northeasterly corner of the premises conveyed to Lawrence E. Pool, et al. by deed recorded in Deed Book Number 1116 page 514 Hamilton County Records; thence Southwardly along the East line of said Pool property Two hundred and fifteen feet to a point in the North line of said Illinois Avenue, which point is also the Southeasterly corner of said Pool property and which point is also One hundred and forty-three feet West of the place of beginning; thence Eastwardly along the North line of said Illinois Avenue, 143 feet to the place of beginning.

1/53-5-58