

A RESOLUTION ACCEPTING THE DONATION TO THE VILLAGE OF A  
PARCEL OF LAND LOCATED AT 4920 BRECKSVILLE ROAD

WHEREAS, BP Products North America, Inc., the owner of an approximately 1.62-acre parcel at 4920 Brecksville Road in the Village of Richfield (Permanent Parcel No. 50-01858) wishes to donate that parcel to the Village by Quitclaim deed; and

WHEREAS, this Council determines that the acceptance of this parcel furthers the public health, safety, and general welfare of the community.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Village of Richfield, Summit County, State of Ohio:

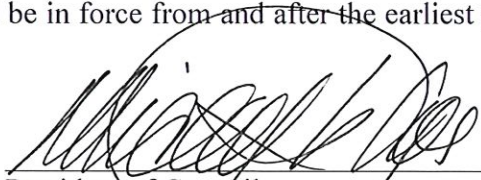
SECTION 1. That the Village of Richfield hereby accepts the donation of the property at 4920 Brecksville Road (Permanent Parcel No. 50-01858) (the "Property") from BP Products North America, Inc., through a Quitclaim deed.

SECTION 2. That the Mayor and Finance Director are authorized to enter into a donation agreement, substantially in the form of the agreement attached hereto as Exhibit "A" and incorporated herein fully as if by reference; to accept the deed and/or any other necessary documents to consummate the transfer of title to the Property to the Village under the terms and conditions set forth in the donation agreement; and to ensure the deed is properly recorded with the Summit County Fiscal Office.

SECTION 3. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with legal requirements, including Section 121.22 of the Ohio Revised Code.


SECTION 3. This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 6-2-2020

  
\_\_\_\_\_  
President of Council

  
\_\_\_\_\_  
Mayor

Dated: 6-2-2020

ATTEST:  
  
\_\_\_\_\_  
Clerk of Council



## DONATION AGREEMENT

This **DONATION AGREEMENT** ("Donation Agreement") is entered into as of \_\_\_\_\_, 2020, by and between BP PRODUCTS NORTH AMERICA INC., a Maryland corporation ("Donor"), and the VILLAGE OF RICHFIELD, an Ohio municipal corporation ("Donee").

### **RECITALS:**

WHEREAS, Donor owns certain real property located at 4920 Brecksville Road, Richfield, Ohio 44286, also known as Auditor's Parcel No. 50-01858, along with certain improvements located thereon ("Property");

WHEREAS, Donor wishes to donate and contribute the Property to Donee, and Donee wishes to accept such donation subject to various conditions set forth hereafter; and

WHEREAS, the parties hereto wish to describe the terms, timing and conditions of the donation.

NOW, THEREFORE, for and in consideration of the foregoing, and the mutual promises hereinafter set forth, Donor and Donee agree as follows:

1. Donation and Acceptance. Subject to the terms and conditions hereinafter set forth, Donor agrees to donate, convey and transfer to Donee, and Donee agrees to receive and accept from Donor, all of Donor's right, title and interest in and to the Property.
2. Conveyance. The conveyance of the Property by Donor to Donee shall be by quitclaim deed ("Deed").
3. Title. Donor shall cause Chicago Title Insurance Company (the "Title Company") to provide to Donee an ALTA Owner's Policy of Title Insurance (the "Title Policy") in the amount of One Hundred Eighty-Three Thousand Dollars (\$183,000) evidencing that fee simple title is vested at Closing in Donee or its nominee, free and clear of all liens and encumbrances whatsoever, except those easements, covenants, conditions, restrictions and limitations of record as set forth in the Schedule of Exceptions in the Chicago Title Insurance Company Commitment (the "Permitted Exceptions"). Donee shall pay for an ALTA survey for the Property. Donor shall reimburse Donee the total cost of the ALTA survey of the Property at closing as set forth in Section 9(d) of this Donation Agreement.
4. Representations, Warranties and Covenants of Donor. Donor to its knowledge represents, warrants and covenants to and with Donee as follows:
  - (a) Donor is a duly organized and validly existing corporation under the laws of the State of Maryland and has all necessary power and authority to enter into this donation agreement and to perform and carry out the terms and conditions required of it hereunder. The individual(s) executing this Donation Agreement and the instruments referenced herein on behalf of Donor has/have the legal power, right, and actual authority to bind Donor to the terms hereof and thereof.

- (b) Donor is not a "non-resident" alien, "foreign corporation," "foreign partnership," "foreign limited liability company," "foreign trust," or "foreign estate" within the meaning of 26 U.S. Code § 1445 and any related Treasury regulations.
- (c) Prior to the donation, Donor shall grant and does hereby grant Donee, its officials, employees, agents and designees full access to the Property, to conduct any and all environmental studies, assessments, or any other activities deemed necessary by Donee or its designees to satisfy itself as to the condition of the Property.
- (d) Donor has provided Donee with a true copy of the most recent environmental site assessment of the Property conducted by Donee.
- (e) All taxes and assessments which are currently due and payable are fully paid.
- (f) To Donor's actual knowledge, there is no litigation, proceeding or action pending or threatened against or relating to Donor or the Property.
- (g) There are no leases, tenancies, service contracts or agreements affecting the Property that will continue in effect after the Closing Date.

If prior to Closing, Donee becomes aware of any breach, inaccuracy or untruthfulness of any of the foregoing representations, covenants and warranties, Donee shall have the right, as its sole remedy, to terminate this Donation Agreement by giving Donor timely written notice of such election prior to or upon the Closing Date. If prior to Closing, Donor becomes aware of any breach, inaccuracy, or untruthfulness of any of the foregoing representations, covenants and warranties, Donor shall immediately provide written notice thereof to Donee describing such breach, inaccuracy or untruthfulness.

5. Representations, Warranties and Covenants of Donee. Donee represents, warrants and covenants to and with Donor that Donee is an Ohio municipal corporation and has all necessary power and authority to enter into this Donation Agreement and to perform and carry out the terms and conditions required of it hereunder.
6. Donor's Documentation and Delivery of Instruments. On or before the Closing Date, Donor shall deposit in escrow with the Escrow Agent, and deliver copies thereof to Donee, the following (collectively, "Donor's Closing Documents"):
  - (a) The Deed in a form and substance reasonably satisfactory to Donee and its counsel, conveying to Donee fee simple title to the Property, free and clear of all liens and encumbrances whatsoever except the Permitted Exceptions.
  - (b) Donor's affidavit, in form and substance satisfactory to the Title Company, in favor of Donee and the Title Company that all labor and materials in connection with any improvements or construction by Donor at the Property within the period provided by law for the filing of mechanic's liens have been paid in full.

- (c) Such other documents as are deemed reasonably necessary to effectuate the terms and conditions of this Donation Agreement.
- 7. Donee's Documentation and Delivery of Instruments. On or before the Closing Date, Donee shall deposit in escrow with the Escrow Agent, and deliver copies thereof to Donor, the following (collectively, "Donee Closing Document"):
  - (a) A certified resolution of Donee confirming and ratifying the authority of the Mayor of Donee to enter into the Donation Agreement and consummate the transaction contemplated herein.
  - (b) Such other documents as may be reasonably necessary to effectuate the terms and conditions of this Donation Agreement.
- 8. Contingencies to Donee's Obligations. The obligations of Donee hereunder are contingent and conditioned upon satisfaction of the following as determined in the sole discretion of Donee:
  - (a) The inspections, analyses, environmental assessments and testing of the Property are acceptable to Donee. Donee shall bear the initial cost of a Phase I environmental study of the Property. Donor shall reimburse Donee for the cost of the Phase I environmental study of the Property only if the transaction closes in accordance with this Donation Agreement.
  - (b) Donee is satisfied with the status of title to the Property; and
  - (c) Donee has adopted by resolution or ordinance the authorization and ratification necessary for entering into this Agreement and closing on the donation of the Property by Donor.
- 9. Demolition Contingency to Donee's Obligations. In addition to the contingencies set forth in Section 8 of this Agreement, the obligations of Donee hereunder are contingent and conditioned upon successful demolition of the improvements located on the Property as follows:
  - (a) Donee shall contract with a licensed and bonded third-party contractor for demolition services. Donee shall verify the contractor's licensed and bonded status and be responsible for the demolition costs, except as provided herein. Demolition services include, but are not limited to the removal of all building slabs and foundations, which includes the hydraulic lift building slab. The Parties acknowledge the presence of hydraulic staining on the building slab, which raises concerns about possible soil contamination.

- (b) In the event that the demolition contractor suspects that the soil is contaminated, excavation of the area shall cease until analytical testing has been performed. Donee shall be responsible for the cost of the contaminated soil exaction and related testing. An initial allowance of \$1,000 to extract and test contaminated soil is provided to the contractor without prior approval. Any costs above \$1,000 shall be authorized by the Donee, after written approval by Donor. Donee shall provide the results of soil testing to Donor within (5) calendar days of receiving the soil test results.
- (c) Donee and Donor shall independently review the soil data and shall jointly determine whether the results of the soil testing constitutes a material, adverse change in the condition of the Property prior to the Closing Date. If the event that Donee and Donor jointly determine that there is a material, adverse change in the condition of the Property, Donee may terminate this Agreement and cancel the closing of the transaction by providing written notice to Donor within ten (10) calendar days of providing the soil test results to Donor.
- (d) In the event Donee elects to terminate this Agreement based on the results of the soil testing, Donor shall reimburse to Donee the cost of the demolition, including the total cost of the contaminated soil excavation and related testing, as well as the cost of the Alta survey and initial BUSTR, total sum of which shall not exceed \$33,000.00.

10. Closing.

- (a) If all the terms and conditions of this Donation Agreement have been satisfied or waived as provided for in this Donation Agreement, then Closing shall take place on a date and time mutually agreed upon by Donor and Donee which is anticipated to be July 15, 2020, or such later date as may be agreed upon by the parties. The term "Closing" or "Closing Date" means the date upon which the Deed is recorded. If the Closing has not occurred by August 14, 2020, Donor shall have the right to terminate this Agreement by written notice to Donee.
- (b) This Donation Agreement shall serve as escrow instructions. The Title Company shall serve as the Escrow Agent. The Escrow Agent is hereby authorized to close this transaction and to make all prorations and pay all costs and expenses which are to be made between the Donor and Donee pursuant to this Donation Agreement.
- (c) On the Closing Date, if and when (i) the Title Company is prepared to issue the Title Policy in favor of Donee as provided for herein, (ii) the Escrow Agent has received all documents and funds required to be deposited hereunder pursuant to this Donation Agreement, and (iii) all of the terms and conditions of this Donation Agreement have been satisfied or waived as provided in this Donation Agreement, then the Escrow Agent shall cause the Deed to be filed for record and any funds disbursed in accordance with this Donation Agreement.

- (d) Escrow Agent shall charge Donee with the cost of the title exam, the cost of the title commitment, all transfer taxes and conveyance fees, if any, the premium for the Title Policy and the escrow fee, if any.
  - (e) At Closing, the Title Company shall prorate real estate taxes and assessments, both general and special, which are a lien but not yet due and payable based on the most recent tax duplicate. Donor shall pay all real estate taxes and assessments both general and special, through the date of Closing.
11. Possession; Condition of Property. Donee shall be entitled to possession of the Property at and upon the Closing completely vacant of all tenancies and occupants except as described in the Title Commitment. Donee acknowledges and agrees that it has examined the Property and is accepting the Property in an "As-Is" and "Where-Is" condition with all faults and all latent and patent defect and without representation or warranty by Donor (oral or written, express or implied by operation of law or otherwise, material or immaterial) of any kind as of the time of the Closing. This section shall not be construed as requiring Donee to insure, hold harmless, or indemnify Donor for any liability under the Comprehensive Environmental Response, Compensation, and Liability Act and Ohio R.C. Chapter 3745.
12. Release. As of the Closing, Donee hereby releases Donor from all property maintenance claims, violations, fees, penalties, damages or losses associated with the Property by Donee, the Village of Richfield, or any other municipality with jurisdiction.
13. Donor's Access. From and after the Closing, Donee shall permit Donor and their respective agents, employees, consultants and contractors, access to and entry upon the Property, without charge, as necessary to conduct and complete any remediation or other corrective action on the Property for which Donor shall be responsible or directed to perform by any government agency with jurisdiction. In the event Donor is required to exercise of Donor's access rights hereunder, Donor agrees to exercise such right of access in a manner which is reasonable and minimizes disruption to the use of Property by Donee to the extent practicable.
14. Commissions. Donor will be responsible for any real estate commissions in connection with this transaction payable to any broker acting for Donor. Donor shall indemnify, defend and save the other harmless from any claim asserted by any broker or agent claiming to act for, or as a result of any action by, the Donor.
15. Miscellaneous.
- (a) Captions. The captions, headings and arrangements used in this Donation Agreement are for convenience only and do not in any way affect, limit, simplify or modify the terms and provisions of this Donation Agreement.

- (b) Notices. All notices, demands and requests and other communications required or permitted under this Donation Agreement shall be in writing and shall be deemed to be delivered (i) when received, if sent by a national overnight courier, (ii) when received, if personally delivered or sent by certified mail to the following addresses:

If to Donor: BP Products North America Inc.  
30 South Wacker Drive, Suite 900  
Chicago, Illinois 60606  
Attn: Real Estate and Property Manager.

If to Donee: Village of Richfield  
c/o Mayor Michael Wheeler  
4410 West Streetsboro Road  
Richfield, Ohio 44286

With a copy to: Alejandro V. Cortes, Director of Law  
Walter | Haverfield LLP  
1301 East 9<sup>th</sup> Street, Suite 3500  
Cleveland, Ohio 44114

- (c) Governing Law. It is intended by the parties that the laws of the State of Ohio shall govern the validity, construction, enforcement and interpretation of this Donation Agreement.
- (d) Entirety and Amendments. This Donation Agreement embodies the entire agreement between the parties and supersedes all prior agreements, understandings, letters of intent, warranties and representations, if any, whether verbal or written, relating to the Property and may be amended or supplemented only by an instrument in writing executed by Donor and Donee.
- (e) Multiple Counterparts. This Donation Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes and all such counterparts shall, collectively, constitute one agreement.
- (f) Parties Bound. This Donation Agreement shall be binding upon and inure to the benefit of Donor and Donee, and their respective heirs, executors, administrators, successors and assigns.
- (g) Survival of Representations, Warranties and Covenants. The representations, warranties, covenants and agreements contained in this Donation Agreement shall survive the Closing and the filing of the Deed for record for a period of 90-days after Closing.
- (h) Further Assurances. Either party, upon request of the other party, shall execute and deliver such further documents or instruments as such other party may reasonably



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deem appropriate to carry out the terms and conditions of this Donation Agreement, provided that such further documents and instruments are consistent with the terms and conditions of this Donation Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Donor and Donee have executed this Donation Agreement as of the date set forth below their respective signatures.

**BP PRODUCTS NORTH AMERICA  
INC.**

By: *A. Schley*  
*Eric Schlesinger*

Its: *Real Estate Property Mgr.*

Date: *May 21, 2020*

**VILLAGE OF RICHFIELD**

By: \_\_\_\_\_  
Michael Wheeler, Mayor

Date: \_\_\_\_\_

And: \_\_\_\_\_  
Sandy Turk, Finance Director

Date: \_\_\_\_\_

The legal form of the within instrument  
is hereby approved.

By: \_\_\_\_\_  
Alejandro V. Cortes, Director of Law

Date: \_\_\_\_\_