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PREPARED BY:

**CLERK, CITY OF TROY
116 E. MARKET
TROY, IL 62294**

2023R04791
STATE OF ILLINOIS
MADISON COUNTY
02/22/2023 12:33 PM
LINDA A. ANDREAS
CLERK & RECORDER
REC FEE: 50.00
CO STAMP FEE:
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FF FEE:
RHSPS FEE:
OF PAGES: 13

CITY OF TROY

RESOLUTION 2023 – 13

50.00 city

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE
A DONATION AGREEMENT WITH OSBORN DEVELOPMENT, LLC
(FORMOSA ROAD RIGHT OF WAY PARCEL NUMBER 2 OF 2)**

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF TROY, ILLINOIS
THIS 6TH DAY OF FEBRUARY 2023**

RESOLUTION 2023-13

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE
A DONATION AGREEMENT WITH OSBORN DEVELOPMENT, LLC
(FORMOSA ROAD RIGHT OF WAY PARCEL NUMBER 2 OF 2)**

WHEREAS, as part of its approval of Osborn Development, LLC's Preliminary Plat for Carrington Farms on January 17, 2023, the City Council for the City of Troy, Illinois, believes it is in the best interest of the City and its citizens to enter into a Donation Agreement with Osborn Development, LLC, to further the development of the bike path in and around the City; and

WHEREAS, the City and Osborn Development, LLC, have negotiated the terms and conditions of the Agreement attached hereto and incorporated herein as Exhibit A, and the City believes that such terms and conditions are in the best interest of the health, safety and general welfare of its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF TROY, ILLINOIS, AS FOLLOWS:


1. The recitals set forth above are hereby incorporated herein as if fully set forth.
2. The Mayor of the City of Troy, Illinois, is hereby authorized to execute and enter into the attached Donation Agreement, and is further authorized to take all actions and sign all documents necessary to fulfill the intent of this Resolution.
3. This Resolution shall be in effect following its passage, approval and publication as provided by law.

PASSED by the City Council of the City of Troy, Madison County, Illinois, approved by the Mayor, and deposited in the office of the City Clerk this 6th day of February 2023.


Aldermen Vote:

Dan Dawson	<u>AYE</u>	Sam Italiano	<u>AYE</u>	Ayes:	<u>7</u>
Tim Flint	<u>ABSENT</u>	Debbie Knoll	<u>AYE</u>	Nays:	<u>0</u>
Elizabeth Hellrung	<u>AYE</u>	Tony Manley	<u>AYE</u>	Absent:	<u>1</u>
Nathan Henderson	<u>AYE</u>	Troy Turner	<u>AYE</u>	Abstain:	<u>0</u>

APPROVED:

By: 
DAVID NONN, Mayor
City of Troy, Illinois

ATTEST:

By: 
KIMBERLY THOMAS, Clerk
City of Troy, Illinois

DONATION AGREEMENT

THIS DONATION AGREEMENT (this "Agreement") is made and entered into effective as of the 16TH day of FEBRUARY 2023, by and between Osborn Development, LLC ("Donor") and the City of Troy, Illinois, a municipal corporation organized and existing under and pursuant to the laws of the State of Illinois ("Donee").

WITNESSETH:

WHEREAS, Donee is a municipal corporation, duly organized, validly existing and in good standing under the laws of the State of Illinois, and is exempt from taxation pursuant to the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, Donor owns certain real property located in the City of Troy, County of Madison, State of Illinois, which real property is legally described on Exhibit A attached hereto, and consists of approximately 2.11 acres, more or less (the real property described on Exhibit A, together with any and all hereditaments and appurtenances thereunto belonging, is hereinafter collectively referred to as the "Property"); and

WHEREAS, Donor desires to donate the Property to Donee in order for Donee to construct a bike path and related appurtenances thereon, and Donee desires to accept the donation of the Property from Donor, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants, promises and agreements hereinafter contained, Donor and Donee hereby agree as follows:

ARTICLE 1

DONATION OF THE PROPERTY

1.1. Donation of the Property. Donor agrees to donate the Property to Donee, and Donee agrees to accept the Property from Donor upon the terms, covenants and conditions herein set forth.

ARTICLE 2

CLOSING DATE AND CLOSING

2.1. Closing. The consummation of the donation contemplated by this Agreement shall occur at a closing (herein referred to as the "Closing") to be held at the offices of Abstracts & Titles (the "Title Company") in Collinsville, Illinois, or at such other place as the parties may mutually agree upon in writing (the "Closing Date").

2.2. Donor's Obligations at Closing. At the Closing, the Donor shall execute, acknowledge (where necessary) and deliver to Donee or to the Title Company, as appropriate, the following:

A. A Deed, in the form attached hereto as Exhibit B and incorporated herein by this reference (the "Deed"), conveying all of the Property to Donee.

B. An affidavit (or such other undertakings as may be reasonably required by the Title Company) to remove from the title policy to be issued to Donee the standard exceptions for: (i) unfiled mechanics' liens, materialmen's liens or other liens for services, labor or materials furnished; and (ii) parties in possession.

C. Such other documents and instruments as may be required to give effect to this Agreement or as may be reasonably requested by the Title Company or Donee in connection with the performance of Donor's obligations hereunder.

D. Possession of the Property.

2.3. Donee's Obligations at Closing. At the Closing, the Donee shall execute, acknowledge (where necessary) and deliver to Donor or the Title Company, as appropriate, such documents and instruments as may be required to give effect to this Agreement or as may be reasonably requested by the Title Company or Donor in connection with the performance of Donee's obligations hereunder (including without limitation evidence satisfactory to Donor of Donee's tax exempt status pursuant to the Code.) Donee shall not, however, be required to make any representation or certification as to the fair market value of the Property.

ARTICLE 3

CLOSING COSTS AND ADJUSTMENTS

3.1. Proration of Real Estate Taxes. Donee shall bear responsibility for all such taxes and special assessments relating to the period after the Closing Date (provided, however, that nothing in the foregoing sentence shall obligate Donee to make such payments in the event that Donee is exempt from making such payments). In the event that on the Closing Date, the precise figures necessary for any of the foregoing adjustments are not capable of determination, the adjustments shall be made on the basis of good faith estimates of the parties, and such adjustments shall be final and binding on the parties.

3.2. Other Closing Costs.

A. At the Closing, Donee shall pay the cost of recording and filing fees regarding the release of any deeds of trust or other security documents relating to any existing loans being released.

B. At the Closing, Donee shall also pay the following charges and costs: the cost of obtaining an owner's policy of title insurance regarding the Property, if Donee elects to obtain such insurance; the recording and filing fees regarding the Deed and any documents relating to financing obtained by Donee.

C. The cost of any escrow or closing fees charged by the Title Company shall also be borne by Donee. Each party hereto shall be responsible for the payment of the respective attorneys' fees incurred by such party in connection with this Agreement.

ARTICLE 4

DONOR'S REPRESENTATIONS, COVENANTS AND WARRANTIES

4.1 Donor's Representations, Covenants and Warranties. Donor represents, warrants and covenants to Donee as follows, which representations and warranties shall survive Closing hereunder and shall inure to the benefit of Donee, its successors and assigns and shall be considered made as of the date hereof and as of Closing Date:

A. Donor's Authority. Donor is a limited liability existing under and pursuant to the laws of the State of Illinois, and has all requisite power and authority to execute this Agreement and such other documents as may be necessary or desirable to perform its obligations hereunder; the execution and delivery thereof by Donor is fully authorized by all requisite authority.

B. Authority of Signatories; No Breach of Other Agreements. The execution, delivery of and performance under this Agreement is pursuant to authority validly and duly conferred upon Donor and the signatories of Donor hereto. To the actual knowledge of Donor, the performance by Donor of its obligations under the terms of this Agreement do not conflict in any material or adverse way with or result in breach of any of the terms or provisions of, or constitute a default under any agreement, arrangement, understanding, accord, document or instrument by which Donor is bound, and, to the actual knowledge of Donor, will not and does not constitute a violation of any applicable law, rule, regulation, judgment, order or decree of any governmental instrumentality or court, domestic or foreign, to which Donor is subject.

C. All Required Action Taken. All action required pursuant to this Agreement and necessary to effectuate the donation contemplated herein has been or will be taken with reasonable promptness and in good faith by Donor and its representatives and agents.

ARTICLE 5

DONEE'S REPRESENTATIONS, COVENANTS AND WARRANTIES

5.1 Donee's Representations, Covenants and Warranties. Donee represents, warrants and covenants to Donor as follows, which representations and warranties shall survive Closing hereunder and shall inure to the benefit of Donor, its successors and assigns and shall be considered made as of the date hereof:

A. Donee's Authority. Donee is a municipal corporation organized and existing under and pursuant to the laws of the State of Illinois, and has all requisite power and authority to execute this Agreement and such other documents as may be necessary or desirable to perform its obligations hereunder; the execution and delivery thereof by Donee is

fully authorized by all requisite authority; and no other consents by any other party are required for Donee to execute and deliver this Agreement and such other documents.

B. Authority of Signatories; No Breach of Other Agreements. The execution, delivery of and performance under this Agreement is pursuant to authority validly and duly conferred upon Donee and the signatories of Donee hereto. To the actual knowledge of Donee, the performance by Donee of its obligations under the terms of this Agreement do not conflict in any material or adverse way with or result in breach of any of the terms or provisions of, or constitute a default under any agreement, arrangement, understanding, accord, document or instrument by which Donee is bound, and, to the actual knowledge of Donee, will not and does not constitute a violation of any applicable law, rule, regulation, judgment, order or decree of any governmental instrumentality or court, domestic or foreign, to which Donee is subject.

C. All Required Action Taken. All action required pursuant to this Agreement and necessary to effectuate the donation contemplated herein has been or will be taken with reasonable promptness and in good faith by Donee and its representatives and agents.

D. Tax-exempt Status. Donee is exempt from taxation pursuant to the Code. Donee is similarly exempt and classified under the income tax laws of the State of Illinois. Donee shall cooperate with the Donor and at Donor's request will deliver to Donor and to the Internal Revenue Service all certifications and forms which are reasonably necessary or required to support the tax treatment of this donation.

ARTICLE 6

NOTICE

6.1. Notice. Any notice or election required or permitted to be given or served by any party hereto upon any other will be deemed sufficiently given when delivered in person, or when deposited in the United States Mail, registered or certified, return receipt requested, postage prepaid, to such party at the respective addresses given below, or sent by telecopy to the fax numbers set forth below, provided that a confirming copy of the telecopy is promptly sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses given below (and a copy of any notice or election given to either party shall be promptly delivered to the attorneys for such party at the addresses given below):

If to Donee:	City of Troy, Illinois 116 E. Market Street Troy, Illinois 62294 Attn: City Administrator Fax No.: 618.667.4009
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If to Donor:	Osborn Development, LLC 7700 Stonebridge Golf Dr. Maryville, IL 62062
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Each such notice or communication shall be deemed to have been delivered to the party to which addressed on the date the same is hand-delivered, or, if sent by telecopy, on the date the transmittal thereof is confirmed as transmitted and received, or, if mailed when deposited in the United States Postal system, sent by registered or certified mail, return receipt requested, postage prepaid, as the case may be, properly addressed in the manner above provided, and shall be deemed to have been received by the party to which addressed, in the case of hand delivery, on the day it is delivered, in the case of telecopy, on the day the transmittal is confirmed as transmitted and received, or in the case of United States Mail, two (2) days after deposit in the United States Postal system. Any party hereto may change its address for the service of notice hereunder by delivering written notice of said change to the other party hereto, in the manner above provided.

ARTICLE 7

GENERAL PROVISIONS

7.1 Remedies. In the event of any breach or default by Donee or Donor hereunder, the non-defaulting party shall be entitled to pursue any and all rights and remedies allowed at law or in equity, specifically including the equitable right of specific performance in order to enforce its rights under this Agreement.

7.2 Entire Agreement. This Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between the parties with respect to the Property. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by the parties hereto.

7.3 Survival. Except as otherwise expressly provided herein, the representations, warranties, covenants and agreements set forth in this Agreement shall survive (and shall be enforceable after) the Closing, and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

7.4 Captions. The headings or captions of the articles, sections or paragraphs appearing in this Agreement are for convenience of reference only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

7.5 Binding Effect. This Agreement shall become effective and shall be binding on the parties hereto only after it has been signed by both Donee and Donor. This Agreement and all the covenants, terms and provisions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

7.6 Controlling Law. This Agreement has been made and entered into under the laws of the State of Illinois, and said laws shall control the interpretation hereof.

7.7 Time of the Essence. Time shall be of the essence in the performance of this Agreement.

7.8 Counterparts. This Agreement may be executed in one or more counterparts which together shall constitute one and the same Agreement and shall be binding on the parties hereto notwithstanding the fact that all parties may not be signatories to the same original or the same counterpart hereof.

7.9 Assignment. Except as otherwise expressly provided herein, neither Donee nor Donor shall assign its rights, duties or obligations hereunder without the prior written consent of the other. Any assignment made in violation of this Paragraph shall be null and void and of no force or effect.

7.10 Participation. Each of the parties hereto has had the opportunity to participate in the negotiation and preparation of this Agreement, and expressly acknowledges such participation, and agrees that no rule construing contractual language against the party which drafted such language shall be applicable in connection with this Agreement.

7.11 Expenses of Parties. Except as otherwise specifically provided in this Agreement, each party hereto will pay and bear its own expenses and fees in connection with this Agreement and the donation contemplated hereby.

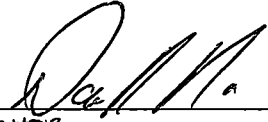
7.12 Effective Date. As used herein, the term "Effective Date" shall mean and refer to the date upon which this Agreement is executed by the last party to sign, as indicated by the dates set forth below opposite the signatures of Donee and Donor.

7.13 Exhibits. Any reference herein to any exhibit, addendum or attachment refers to the applicable exhibit, addendum or attachment attached to this Agreement, and all such exhibits, addenda or attachments shall constitute a part of this Agreement and are expressly incorporated herein by reference and made a part hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

DONEE:

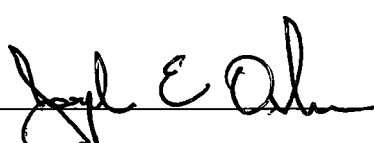
THE CITY OF TROY, ILLINOIS

By: 
MAYOR

Date: 2-9-23

DONOR:

Osborn Development, LLC

By: 

Date: 1-23-23

Exhibit A

LEGAL DESCRIPTION

**CARRINGTON FARMS
BIKE PATH TRACT
PERIMETER DESCRIPTION**

TRACT B (BIKE PATH PARCEL)

Part of the Southeast Quarter of Section 18, Township 3 North, Range 7 West of the Third Principal Meridian, Madison County, Illinois, more particularly described as follows:

Commencing at an iron pin marking the Southeast Corner of said Northeast Quarter of Section 18 as recorded in Monument record 2005R05023 of the Madison County Illinois records; thence, S.89°45'49"W. (bearing assumed), along the North line of said Southeast Quarter, 30.00 feet to the Point of Beginning; thence, S.89°45'49"W., continuing along said North line, 1841.42 feet to a Westerly corner of a tract of land described in Document Number 2009R43770; thence, S.00°08'51"E. along the West line of said tract, 50.00 feet; thence, N.89°45'49"E., parallel with and 50.00' South of said North line, 1841.32 feet; thence, N.00°02'27"W. parallel with and 30.00' West of the East line of said Southeast Quarter, 50.00 feet to the Point of Beginning, containing 2.11 acres, more or less.

Exhibit B

FORM OF SPECIAL WARRANTY DEED

**THIS DOCUMENT PREPARED BY/
AFTER RECORDING RETURN TO:**

**Frederick Keck
Attorney at Law
3201 West Main Street
Belleville IL 62226**

FUTURE TAX BILLS TO:

**City of Troy, Illinois
116 E. Market Street
Troy, Illinois 62294
Attn: City Administrator**

SPECIAL WARRANTY DEED

THIS DEED is made and entered into as of the 16TH day of FEBRUARY, 2023, by and between Osborn Development, LLC ("Grantor") and THE CITY OF TROY, ILLINOIS, a municipal corporation organized and existing under and pursuant to the laws of the State of Illinois (the "Grantee").

WITNESSETH, that the said Grantor, for and in consideration of the sum of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION paid by the said Grantee, the receipt of which is hereby acknowledged, does by these presents GRANT, BARGAIN and SELL, CONVEY and CONFIRM unto the said Grantee, FOREVER, the Real Estate situated in the County of Madison and State of Illinois, more particularly described as follows:

See Attached Exhibit A

Subject to all covenants, declaration, conditions, restrictions, easements, rights of way and encumbrances of record.

THIS TRANSACTION IS EXEMPT as Grantee is a municipal corporation.

TO HAVE AND TO HOLD said Real Estate, together with all rights and appurtenances to the same belonging, unto the said Grantee. The said Grantor hereby covenanting that it will convey the title to said Real Estate unto the said Grantee.

IN WITNESS WHEREOF, the said Grantor has executed these presents the day and year first above written.

Osborn Development, LLC
By: *Joseph Osborn*

STATE OF ILLINOIS)
) ss.
COUNTY OF MADISON)

On this 23 day of January, 2023, before me a Notary Public in and for said State, personally appeared Joseph Osborn on behalf of Osborn Development, LLC, duly sworn, did say that he/she is the member of Osborn Development, LLC, and that said instrument was signed on behalf of same; and he/she acknowledged said instrument to be the free act and deed of Osborn Development, LLC.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

CADE
Notary Public

My term expires:
5-21-25

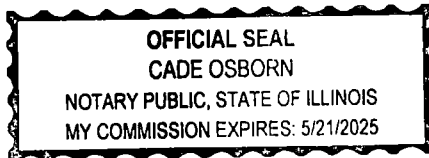


EXHIBIT A

**CARRINGTON FARMS
BIKE PATH TRACT
PERIMETER DESCRIPTION**

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pt 09-1-22-1806-000008.003

MAPS & PLATS

Survey Required
For Recording

Initials SE

Date 09/01/23

END OF DOCUMENT

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