

P/C 11/1/16 Planning  
CA 11/15/16  
1st R 11/16/16  
2nd R \_\_\_\_\_  
3rd R \_\_\_\_\_  
B/C \_\_\_\_\_

CITY OF BROOK PARK, OHIO

ORDINANCE NO: 10053-2016

INTRODUCED BY: MAYOR COYNE

AN ORDINANCE  
AUTHORIZING THE MAYOR TO ENTER INTO AN  
AGREEMENT TO ACCEPT THE DONATION AND TRANSFER OF LAND KNOWN AS  
PERMANENT PARCEL NO. 343-11-009,  
AND DECLARING AN EMERGENCY

WHEREAS, Bayview Loan Servicing, LLC, owner of the property located at 15275 Brookpark Road, Brook Park, Ohio ("Fanous") known as Permanent Parcel No. 343-11-009 has offered to donate and transfer this property to the City of Brook Park; and

WHEREAS, the Fanous property is blighted, dilapidated, obsolete and in substantial disrepair; and

WHEREAS, the donation and/or transfer of this property located at 15275 Brookpark Road, Brook Park, Ohio known as Permanent Parcel No. 343-11-009 to the City of Brook Park, Ohio would be beneficial to the City of Brook Park for future economic development; and

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Brook Park, State of Ohio, that:

SECTION 1: The Mayor is hereby authorized to accept the donation of PPN 343-11-009 and/or enter into an agreement for the donation / transfer of PPN 343-11-009, [a parcel of property ]which is further described and attached hereto and incorporated herein as if fully rewritten as Exhibit "A".

SECTION 2: The City of Brook Park shall pay \$1.00 for PPN 343-11-009.

SECTION 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance 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 all legal requirements, including Section 121.22 of the Ohio Revised Code.

**SECTION 4:** This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and for the further reason to authorize the Mayor to enter an agreement for the donation, transfer and/or sale of property located at 15275 Brookpark Road, Brook Park, Ohio, aka PPN 343-11-009; therefore provided this Ordinance receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: November 15, 2016

Jim Astory  
PRESIDENT OF COUNCIL

ATTEST: Michelle Blazak  
CLERK OF COUNCIL

APPROVED: [Signature]  
MAYOR

11/15/16  
DATE

I HEREBY APPROVE THE WITHIN INSTRUMENT AS TO LEGAL FORM AND CORRECTNESS

[Signature]  
DIRECTOR OF LAW

**CERTIFICATE**

Michelle Blazak, Clerk of Council, of the City of Brook Park, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ordinance/Resolution No. 10053-2016 passed on the 15th day of November 2016 by said council.  
Michelle Blazak  
Clerk of Council

	Yea	Nay
Troyer	✓	_____
Mencini	✓	_____
Powers	ABSTAINED	_____
Scott	✓	_____
Burgio	✓	_____
McCormick	✓	_____
Salvatore	✓	_____

I, Michelle Blazak, Clerk of Council for the City of Brook Park, State of Ohio, do hereby certify that there is no newspaper of general circulation in the municipality and that publication of the foregoing ordinances/resolutions was made by posting true copies at six of the most public places in said municipality as determined by Ordinance No. 4838-1975; location City Hall 6161 Engle Road, Police Station 17401 Holland Road, #1 Fire Station 5590 Smith Road, #2 Fire Station 22530 Ruple Parkway, #3 Fire Station 17401 Holland Road, Brook Park Library 6165 Engle Road, for a period of fifteen days.

commencing November 16, 2016  
Michelle Blazak  
MICHELLE BLAZAK  
Clerk of Council

**EXHIBITS**

**Exhibit "A"**

**Legal Description of the Land**

Situated in the City of Brook Park, County of Cuyahoga, and State of Ohio: and known as being part of Original Middleburg Township Lot No. 1, Section No. 10, bounded and described as follows: Beginning on the Southerly line of Brookpark Road, as shown by the dedication plat of Brookpark Road Widening, recorded in Volume 120 of Maps, Page 5 of Cuyahoga County Records at the Northwesterly corner of a parcel of land conveyed to Joseph F. Prusha and Alvina A. Prusha, by deed dated August 28, 1946 and recorded in Volume 6249, Page 631 of Cuyahoga County Records; Thence Westerly along the Southerly line of Brookpark Road as widened, 120 feet to a Northeasterly corner of a parcel of land conveyed to The Meyer Dairy Products Company by deed dated October 11, 1949, and recorded in Volume 6854, Page 383 of Cuyahoga County Records; Thence Southerly along an Easterly line of said parcel of land conveyed to The Meyer Dairy Products Company, 130 feet to an inner corner of said parcel so conveyed to the Meyer Dairy Products Company: Thence Easterly along a Northerly line of said parcel so conveyed to The Meyer Dairy Products Company, 120 feet to the Southwesterly corner of the parcel conveyed to Joseph F. Prusha and Alvina A. Prusha, as aforesaid; Thence Northerly along the Westerly line of said parcel so conveyed to Joseph F. Prusha and Alvina A. Prusha, 130 feet to the place of beginning, be the same more or less, but subject to all legal highways.

PPN: 343-11-009

15275 Brookpark Road

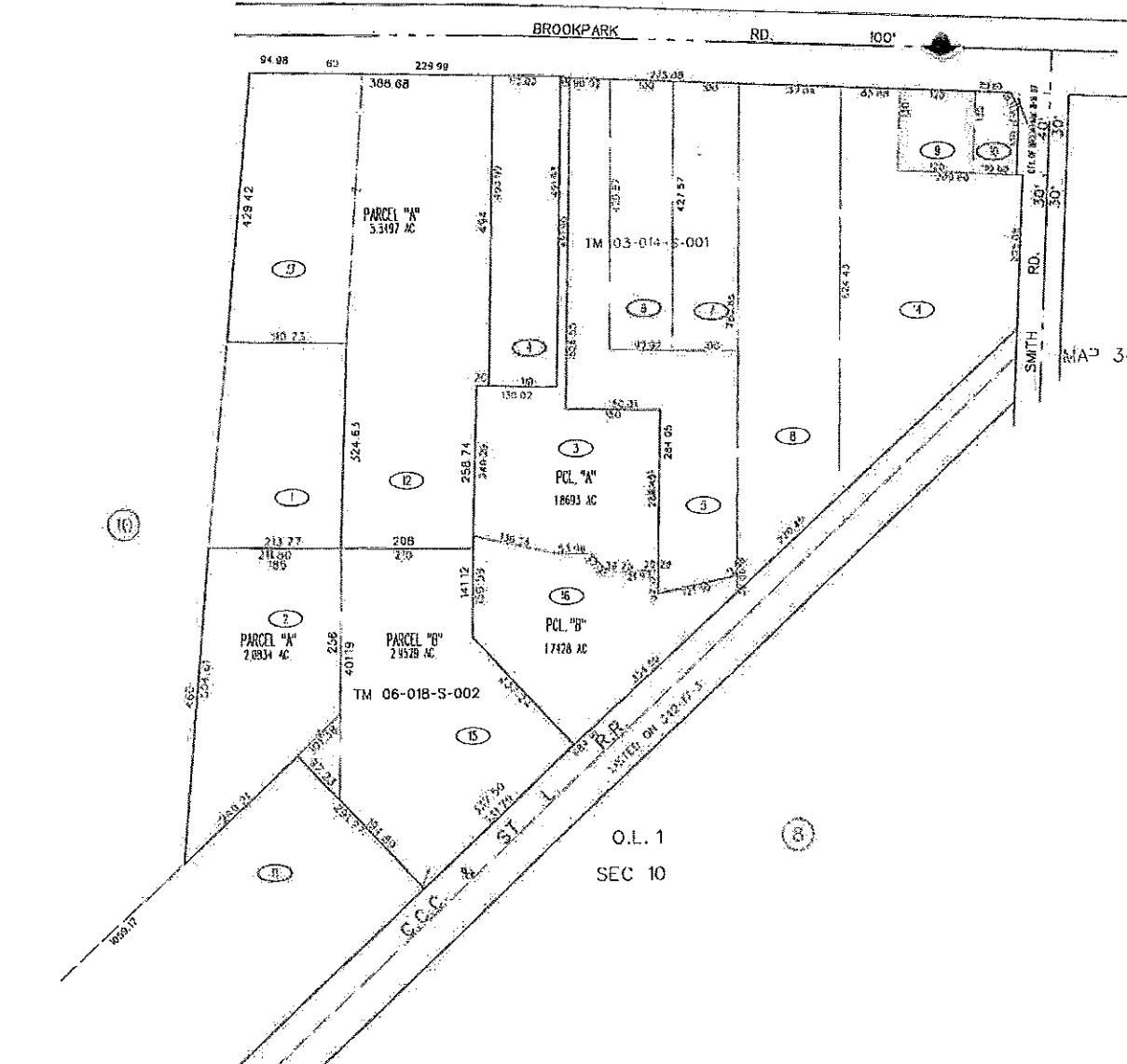
Brook Park, Ohio 44142



LOT SPLIT & CONSOLIDATION V.350 P.32 1-11-07  
LOT CONSOLIDATION V.355 P.47 3-10-08  
PLAT OF LOT SPLIT & CONSOLIDATION V.377 P.17 2-15-11

11

CLEVELAND MAP 28



MAP 344

O.L. 1  
SEC 10

REVISD: 07-11-11 AC  
DRAWN: APRIL 1990

SCALE 1" = 120'  
60 0 120 240

BROOKPARK MAP 343

## **PURCHASE AGREEMENT**

THIS AGREEMENT, executed as of the \_\_\_\_ day of October 2016 by and between the Bayview Loan Servicing, LLC, A Delaware Limited Liability Company having a principal place of business at 4425 Ponce De Leon Boulevard, 5<sup>th</sup> Floor, Coral Gables, Florida 33416 (herein, "Seller") and/or its permitted assignee, and the City of Brook Park, Ohio, 6161 Engle Road, Brook Park Ohio 44142 and/or its permitted assignee ("Buyer");

### **W I T N E S S E T H:**

**WHEREAS**, Seller owns fee simple interest in and to property herein described; and,

**WHEREAS**, Seller desires to sell and/or donate, and Purchaser desires to purchase and/or accept, the property herein described, on the terms and conditions set forth herein.

**NOW, THEREFORE**, for good and valuable consideration received to the full satisfaction of each of them, the parties agree as follows:

#### **1. AGREEMENT TO BUY AND SALE.**

Seller agrees to sell, donate and/or convey to Buyer, and Buyer agrees to accept, buy and/or take from Seller, under the terms and conditions set forth below, all of Seller's right, title, estate and interest in and to one parcel of land known as 15275 Brookpark Road, Brook Park Ohio, Cuyahoga County Permanent Parcel No. 343-11-009, as more fully described in Exhibit "A" attached hereto and made a part hereof, together with all appurtenant rights, easements, amenities and/or improvements therein and thereon (collectively, the "Property").

- i. EXCEPT AS PROVIDED TO THE CONTRARY HEREIN, BUYER AND SELLER AGREE THAT THE PROPERTY, IS BEING SOLD AND/OR DONATED "AS IS" WITHOUT ANY WARRANTIES AND/OR REPRESENTATIONS.**

#### **2. CONSIDERATION AND PAYMENT.**

The purchase price (the "Purchase Price") for the Property shall be the fair market value of the property as set forth by the Cuyahoga County Auditor on the date of closing. The Seller agrees that the Buyer shall remit ONE DOLLAR CASH (U.S.) (\$1.00) to the Seller on the Closing Date and the balance of the purchase price shall be donated to the Buyer by Seller.

#### **3. DUE DILIGENCE.**

Buyer, or its duly authorized representatives, shall have the right, during the period commencing as of the date of execution of this Agreement and terminating at 5 p.m. Eastern Standard Time on the date which is NINETY (90) days thereafter (the "Due Diligence Period") to enter onto the Property to perform such due diligence, at Buyer's sole cost and expense, which Buyer, in its sole discretion, deems necessary or appropriate; provided, however, Buyer shall not conduct environmental investigations at the Property, other than a Phase I assessment, without the prior written approval of Seller, which shall not be unreasonably withheld or delayed.

Upon TEN (10) days written notice to Seller, Buyer shall have the option to extend the Due Diligence Period an additional THIRTY (30) days.

Within seven (7) days after the date of this Agreement, Seller shall deliver to Buyer, if such exist and are in the possession or control of Seller, copies of existing surveys and title reports; certificate of occupancy; any contracts, agreements, guarantees, warranties and other documents or instruments affecting the Property that will

survive closing; and existing environmental reports including EPA assessments, if any (the "Due Diligence Items"). Seller shall cooperate with Buyer and shall permit Buyer and Buyer's agents, employees, contractors, clients and consultants, to enter the Property at all reasonable times upon reasonable prior notice for the purposes of performing Buyer's due diligence. In addition, at all times prior to the Closing Date, Buyer and Buyer's agents and employees may enter the Property at all reasonable times upon reasonable prior notice to Seller. Buyer may, at its sole cost and expense, update the existing survey or obtain an ALTA Survey of the Land (in either case, the "Survey"). If Buyer elects to obtain a Survey, it shall do so promptly, within thirty (30) days, following execution of this Agreement.

Buyer hereby agrees to indemnify, defend and hold Seller harmless from and against any cost and expense incurred by Seller by reason of entry upon the Property by Buyer's agents, employees, contractors, clients and consultants.

Buyer, in its sole discretion, may terminate this transaction in accordance with Section 3 (Due Diligence).

#### **4. CONTINGENCIES.**

This transaction and sale is contingent upon the following items being satisfied by Buyer or Seller as the case may be within the Due Diligence Period, to wit:

- a. Satisfactory completion, receipt and acceptance of any environmental liabilities identified in Phase I and Phase II (as necessary) environmental reviews by Buyer; and,
- b. Seller's filing and recordation of any/all releases for any/all mortgages, liens or encumbrances surviving Sheriff's sale.

#### **5. APPOINTMENT OF ESCROW AGENT; TITLE REVIEW PERIOD**

All funds and documents necessary to complete this transaction shall be deposited in escrow with Law Director of the City of Brook Park, who shall serve as escrow agent (the "Escrow Agent"). This Agreement shall be used as escrow instructions to the Escrow Agent.

Promptly upon execution of this Agreement, Buyer may, at its sole expense, obtain from the title company a preliminary title report (together with instruments listed as exceptions thereto) showing the status of the title to the Property. Buyer shall have seven (7) days from the date Buyer receives the title report (together with instruments listed as exceptions thereto) and the Survey (the "Title Review Period") to determine if the condition of title to the Property is acceptable to Buyer. If an exception in title appears that is unacceptable to Buyer (a "title defect") Buyer shall notify Seller of any such title defect prior to the expiration of the Title Review Period, in which event Seller shall promptly employ its good faith efforts to procure a cure for same. In the event, however, Seller is unable through the exercise of its good faith efforts (which shall include the payment of money with respect to any existing mortgages, deeds of trust, liens or other matters that can be removed by the payment of money) to cure any objectionable matter prior to Closing, then at Buyer's option, Buyer may either (i) take title to the Property despite the existence of such matter, or (ii) terminate this Agreement, in which event the parties shall be relieved of any further liability except as provided otherwise in this Agreement, and Buyer shall incur the costs of the title examination, title commitment and escrow fees, if any. If Buyer fails to notify Seller in writing of any title defect and/or Buyer's election to terminate this Agreement prior to the expiration of the Title Review Period, then Buyer shall be deemed to have accepted the condition of title to the Property, and the transactions contemplated hereunder shall proceed to close, provided no change in title and Survey occurs between such date and the Closing Date.

Notwithstanding anything herein to the contrary, any existing deeds of trust, mortgages, mechanics' or materialmen's liens, judgment liens or similar monetary liens and encumbrances shall be automatically deemed

matters to which objection is made by Buyer, regardless of whether Buyer gives written notice of objection thereto to Seller, and Buyer under no circumstances shall be deemed to have waived any such matters, nor shall same be considered "Permitted Exceptions" as defined in Section 6 below, unless such waiver shall be an express waiver in writing executed by Buyer.

## **6. OWNER'S POLICY OF TITLE INSURANCE**

Seller shall convey to Buyer good and marketable title to the Property by Quitclaim Deed in form reasonably acceptable to Buyer, free and clear of all liens and encumbrances whatsoever, except: (a) any restrictions, reservations, conditions, easements or any matter of record which Buyer has accepted or is deemed to have accepted in accordance with Section 5 above, (b) zoning and building ordinances and regulations, (c) real estate taxes which are a lien but not yet due and payable as of the date of Closing, and (d) any matter disclosed on the Survey which Buyer has accepted or is deemed to have accepted in accordance with Section 4 of this Agreement. Items (a) through (d) are herein referred to as the "Permitted Exceptions."

Buyer shall, at its option and expense, obtain an Owner's Policy of Title Insurance insuring title to the Property, subject only to the Permitted Exceptions. Buyer may elect to obtain, at its sole cost, such extended coverage or additional endorsements as it deems necessary or appropriate.

## **7. COSTS OF TRANSACTION**

Upon receipt of all funds and documents necessary to complete this transaction, the Escrow Agent shall proceed to close this transaction as follows:

- (a) all real estate taxes and assessments shall be prorated between the parties as of the date of transfer of title based upon the latest available tax duplicate, subject to adjustment outside of escrow in the event the latest tax duplicate is not available as of the Closing Date;
- (b) Seller shall be responsible for any special assessments certified prior to the Closing Date; and,
- (c) All fees, charges, and rents shall be prorated as of the date of transfer of title. Final readings on all gas, water and electric meters and sewer use charges shall be made and determined as of the Closing Date, if possible. If final readings are not possible, such gas, water, electric and sewer charges shall be prorated based on the most recent period for which costs are available subject to adjustments between the parties out of escrow when final readings are available.

The Escrow Agent shall charge to the Buyer out of the funds deposited into escrow by the Buyer, the following:

- (a) any prorated amounts due the Seller;
  - (b) the cost of the Owner's Policy of Title Insurance, if any;
  - (c) the cost of recording the deed and other charges incident thereto;
  - (d) the cost of obtaining any environmental assessments and/or the Land Survey;
- and,
- (e) the conveyance fee and transfer tax, if any.

The Escrow Agent shall charge to Seller and pay out of the funds standing to the credit of the Seller in escrow, the following:



- (a) any prorated amounts due the Buyer;
- (b) the cost of the title commitment, if any.

## 8. CLOSING DATE AND POSSESSION

The Escrow Agent shall close this transaction within thirty (30) days after the expiration of the Due Diligence Period, and no later than November 15, 2016, or such earlier or later date as the parties may agree in writing (the "Closing Date"), and the Escrow Agent shall cause the deed to be filed in the office of the County Recorder's Office transferring title into the name of the Buyer or its assignee, provided the conditions set forth in Section 9 have been satisfied.

## 9. REPRESENTATIONS AND WARRANTIES.

Buyer represents and warrants to Seller that:

(a) Authority. Buyer has all necessary power and authority to enter into this Agreement pursuant to Ordinance No. \_\_\_\_\_, that all actions required to be taken to approve or authorize the execution of this Agreement have been taken, and that the execution of this Agreement and the consummation of the transaction contemplated hereby constitutes the valid and binding obligation in accordance with its terms.

Seller represents and warrants to Buyer that:

(a) Authority. Seller has all necessary power and legislative authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. This Agreement constitutes, and the other documents and instruments to be delivered by Seller pursuant hereto when delivered will constitute, the legal, valid and binding obligations of Seller.

Buyer and Seller warrant to each other that:

- (a) No Litigation. There is no litigation, proceeding or action pending or threatened against or relating to the Property.
- (b) No Violation. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will constitute a violation of, be in conflict with or constitute a default under any term or provision of any agreement, instrument or lease to which Seller is party.
- (c) No Tenants. There are no leases or other occupancy agreements relating to the Property that will survive closing.
- (d) No Contract. There are no third party contracts or agreements relating to the ownership, operation and maintenance of the Property that will survive the Closing.
- (e) No Outstanding or Pending Assessments. To the best of Seller's knowledge, there are no outstanding or pending assessments affecting the Property.
- (f) Best Efforts. Seller shall employ its best efforts to cooperate and assist Buyer in obtaining all necessary permits and approvals to enable the Buyer to commence and complete the construction of the improvements to the property contemplated herein.
- (g) Cooperation. Seller and Buyer will cooperate and assist each other in obtaining any and all necessary approvals and permits to enable the Buyer to cause the buildings, structures and

improvement to the Property to be erected thereon and the Property to be used for the purposes indicated herein.

All of the statements set forth in this Section 9 shall be deemed renewed by Seller and Buyer on the Closing Date as if made at such time and shall survive the Closing.

**10. CONDITIONS TO CLOSING.**

Notwithstanding anything to the contrary contained in this Agreement, Buyer's obligations under this Agreement are expressly conditioned upon the occurrence of all of the following events:

- (a) Seller shall be ready, willing and able to deliver to Buyer on the Closing Date the fully executed Quit Claim Deed as described in Section 6.
- (b) There shall have been no change in the condition of the Property occurring from and after the expiration of the Due Diligence Period and the Closing Date.
- (c) There shall have been no change in the condition of title or the Survey from and after the expiration of the Title Review Period and the Closing Date.

Notwithstanding anything to the contrary contained in this Agreement, Seller's obligations under this Agreement are expressly conditioned upon the occurrence of all of the following events:

- (a) Buyer shall not have timely exercised its right to terminate this Agreement as provided herein.

Either prior to, at and after the Closing Date, the parties shall also execute and deliver to the other party such further instruments of conveyance, sale, assignment or transfer, and shall take or cause to be taken such other or further action as shall be necessary in order to convey, vest, confirm, or evidence in Buyer, title to the Property intended to be conveyed to Buyer under this Agreement, or such instruments as may be necessary in order to effectuate the terms and conditions of this Agreement.

**11. BROKERAGE FEES OR REAL ESTATE COMMISSIONS**

Buyer and Seller each represent and warrant to the other that no brokers are involved in any way connected with this transaction. Seller and Buyer hereby agree to indemnify, save harmless and defend each other from any claim for undisclosed broker's or finder's fee or commission in connection with the negotiation, execution or consummation of this Agreement.

**12. DAMAGE OR DESTRUCTION OF PROPERTY**

In the event the Property is damaged or destroyed by fire or other casualty prior to transfer of title to the Buyer, Buyer agrees to accept the property as is and Seller and Buyer shall be obligated to close this transaction.

**13. CONDEMNATION.**

Not applicable.

**14. OPERATIONS PRIOR TO CLOSING**

Not applicable.

**15. DEFAULT.**

In the event of a default by either party hereunder, the non-defaulting party shall have all rights and remedies available at law or in equity, including specific performance.

**16. BINDING AGREEMENT**

Upon full execution of this Agreement by Buyer and Seller, this Agreement shall become a binding contract between the parties and shall inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, personal representatives, successors and assigns.

**17. ASSIGNMENT.**

This Agreement may be assigned by Buyer upon written notice thereof to Seller, but Buyer shall continue to remain liable under this Agreement after such assignment.

**18. GOVERNING LAW.**

Ohio Law shall govern all matters relating to this Agreement.

**19. NOTICE.**

Unless otherwise expressly required or permitted by the terms of this Agreement, any notice required or permitted to be given hereunder by the parties shall be delivered in person or served by certified or registered mail, return receipt requested, or sent via overnight courier to the parties at the addresses set forth below, unless different addresses are given by one party to the other:

Seller: Bayview Loan Servicing LLC  
4425 Pone De Leon Boulevard, 5<sup>th</sup> Floor  
Coral Gables, Florida 33416  
PH:

Buyer: City of Brook Park Ohio  
Thomas J. Coyne, Mayor  
6161 Engle Road  
Brook Park, Ohio 44142  
PH: (216) 433-1300

With copy to:  
Carol Dillon Horvath  
Director of Law  
6161 Engle Rd.  
Brook Park, Ohio 44142

In Witness Whereof, the parties have executed this Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_ 2016.

**SELLER: BAYVIEW LOAN SERVICING, LLC**

Witnesses

\_\_\_\_\_  
Print name: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Print name: \_\_\_\_\_

**BUYER: CITY OF BROOK PARK, OHIO**

Witnesses

\_\_\_\_\_  
Print name: \_\_\_\_\_

By: \_\_\_\_\_  
Thomas J. Coyne, Mayor

\_\_\_\_\_  
Print name: \_\_\_\_\_

Approved as to legal form and correctness:

\_\_\_\_\_  
Carol Dillon Horvath  
Director of Law