

***SPECIAL MEETING
DORMONT BOROUGH COUNCIL
DECEMBER 19, 2012***

1. Executive Session 5:30 PM
 - A. Legal Matter – Pitcher Park
 - B. Union Negotiations – Desk Officers Union
 - C. Personnel Matter – Police Chief Selection
 - D. Personnel Matter – Borough Manager Evaluation
2. Call to Order 7:00 PM
3. Pledge of Allegiance
4. Roll Call
5. Public Comment on Agenda Items
6. Action Items
 - A. **Approval of Agreement between Borough and Cochran Real Estate, L.P.** – Motion to authorize the Council President and Borough Manager to execute an Agreement with Cochran Real Estate, L. P. to exchange properties as part of the West Liberty Avenue Redevelopment plan – Finance and Legal Committee - Onnie Costanzo, Chairperson
 - B. **Approval of Resolution #22-2012, Authorizing an Exchange of Property with Cochran Real Estate, L.P.** – Motion to approve Resolution #22-2012 to authorize an exchange of properties as part of the West Liberty Avenue Redevelopment plan – Finance and Legal Committee - Onnie Costanzo, Chairperson
 - C. **Approval of Agreement between Borough and Cochran South Hills, Inc.** – Motion to authorize the Council President and Borough Manager to execute an Agreement with Cochran South Hills, Inc. increasing the scope and payment for their lease of property owned by the Borough – Finance and Legal Committee - Onnie Costanzo, Chairperson
 - D. **Approval of Agreement between Borough and Cochran Real Estate, L.P.** – Motion to authorize the Council President and Borough Manager to execute an Agreement with Cochran Real Estate, L. P. to provide for a guaranteed amount of contributions to a Tax Increment Financing plan should such plan be approved by the Borough, Allegheny County, and the Keystone Oaks School District – Finance and Legal Committee - Onnie Costanzo, Chairperson



- E. **Approval of Resolution #23-2012, Authorizing Pursuit of a Tax Increment Financing Plan** – Motion to approve Resolution #23-2012 authorizing the Borough to begin the process of creating a Tax Increment Financing District for West Liberty Avenue redevelopment – Finance and Legal Committee - Onnie Costanzo, Chairperson

7. Other Items

8. Adjournment



MEMORANDUM

Date: December 12, 2012

To: President, Vice-President, Council and Mayor

From: Jeff Naftal, Borough Manager *JN*

Subject: Agreements with Cochran for West Liberty Avenue Redevelopment

Background:

In September, Council voted to move forward with plans to develop West Liberty Avenue including a Transportation Oriented Development (TOD) adjacent to the Dormont Junction "T" Stop. As part of that process, Council needs to acquire some property owned by Cochran Real Estate, L.P. that they currently use to hold vehicles. To facilitate obtaining that property, Cochran proposed a swap of land with the Borough getting the lot at the corner of West Liberty Avenue and Biltmore Avenue as well as Cochran's lots across the street currently being utilized as a used car lot. In exchange, the Borough will give the corner parking lot to Cochran. To make this happen though a number of agreements needed to be developed relative to the various commitments by Cochran to future West Liberty Avenue redevelopment.

Discussion:

There are four separate agreements which have been developed to facilitate the redevelopment of West Liberty Avenue and which must be approved by Council prior to any further progress with this project. In addition, Cochran has provided the Borough with a letter outlining other things they will provide to the Borough to enhanced the redevelopment of West Liberty Avenue. Each of these documents is discussed below:

Document #1 – Agreement to Swap Property: This document sets out the details of the property exchange that the Borough needs to complete the TOD parcel and which Cochran needs to facilitate the building of an Infiniti dealership next to their Nissan dealership. This document contains standard real estate language relating to the condition of the properties, closing information, representations and warranties, and other language necessary to successfully complete a transfer of property.

Of particular note in this document is that Section 4 has some “conditions precedent” which are required prior to any closing. Those are that Cochran needs to secure approval for their Infiniti dealership, they need to have created a public parking lot for their Borough on the site of their current used car lot, and they will need to make sure that the current Junction Parking Lot is suitable for the development of the Infiniti dealership.

Document #2 – Resolution No. 22-2012: This document is the formal Resolution authorizing the transfer of the properties noted in Document #1 above. It simply provides the formal authorization required by the Borough Code for the property transfer.

Document #3 – Amendment to the Existing Ground Lease Agreement: Cochran currently leases three lots that the Borough owns on West Liberty Avenue between Park Boulevard and Biltmore Avenue. They use those lots for car storage along with the lot on Biltmore Avenue that is to be transferred to the Borough. When the transfer occurs, they will need to lease the extra lot until they have completed their development project at which point usage of all four lots returns to the Borough. Therefore, we need an amendment to the existing lease which covers no more than two years to allow for completion of the development project. The lease fee increases from \$800 per month to \$1,200 per month to compensate the Borough for the use of the fourth lot during the term of the lease. The original lease was executed in 2007 and was for five years. It has been maintained on a month to month basis since July of this year.

Document #4 – TIF Participation Agreement: In order to facilitate the development of the TOD, the County and Council have determined that the creation of a Tax Increment Financing (TIF) district would be not only beneficial, but quite possibly necessary in order to secure a developer for the TOD. With that in mind, we will be beginning this process with a Resolution authorizing pursuit of a TIF plan on this same agenda. Cochran has agreed to help us not only with the creation of the TIF district but with guaranteed financial support should the TIF district be created through agreement of Allegheny County, the Borough and Keystone Oaks School District.

The attached Agreement lays out what Cochran is willing to do for the TIF district should it be created. They will guarantee a payment of at least \$100,000 more than their current taxes into the TIF district to be used by the district for the 20 year term of the district. Some of those funds will be reimbursed to Cochran for the construction of the parking lot, up to \$160,000 over 5 years. All other Cochran contributions to the TIF district will go for infrastructure and investment in development opportunities for West Liberty Avenue.

Document #5 – Letter with additional Cochran Commitments: The final document attached to this report is a letter from Cochran indicating some additional commitments they are willing to make as partners in the redevelopment of West Liberty Avenue and to offset some of the impacts their new development will have on the Borough. The first commitment is that they will construct an entrance feature on the corner of McFarland and West Liberty at a cost not to exceed \$10,000. The Borough will have design approval of the entrance feature. This feature will allow people entering the Borough on West Liberty to know that they have entered the Borough.

The second commitment is that Cochran will work with the Borough to locate additional parking while their development is ongoing. After their development is completed, the Borough will have the use of the four lots between Park and Biltmore on West Liberty to use as parking. Their commitment is to seek alternative sources of parking and if they cannot locate those alternative sources, they will then reimburse the Borough up to \$2,500 per month for any alternative source we might utilize such as a shuttle bus to an alternative parking lot or valet parking.

Because Documents #1 through #4 require a vote of Council, the Agenda has four separate items with four separate motions. Document #5 is a unilateral commitment letter from Cochran that requires no Council action and is simply contingent on the actions noted above occurring.

Recommendation:

I recommend that Council approve all four agreements discussed above so that we can continue to move forward with redeveloping West Liberty Avenue.

JN

Attachments

Cc: Borough Solicitor

AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2012 by and between the BOROUGH OF DORMONT, a Municipal Corporation, with offices located at 1444 Hillsdale Avenue, Suite 10, Pittsburgh, Allegheny County, Pennsylvania 15216, (hereinafter referred to as "Borough"),

A
N
D

COCHRAN R.E., L.P., a Pennsylvania limited partnership, with offices located at 4520 William Penn Highway, Monroeville, Pennsylvania 15146, (hereinafter referred to as "Cochran").

R E C I T A L S:

WHEREAS, Cochran currently is the title owner of real estate in the Borough of Dormont known as Lot and Block: 98-G-117; Lot and Block: 98-G-115; Lot and Block: 98-G-95; and Lot and Block: 98-G-129, 132, 133, 135 and 136; and

WHEREAS, the Borough is the title holder of property in the Borough of Dormont known as Lot and Block: 98-F-215; 98-G-90; 98-G-88 and 98-G-96; and

WHEREAS, Cochran is desirous of developing an automobile car dealership (Infiniti) on Lot and Block: 98-F-215 (Parcel No. 1); and

WHEREAS, in consideration of the conveyance of Lot and Block: 98-F-215 (Parcel No. 1), Cochran is desirous of conveying Lot and Block: 98-G-95 (Parcel No. 3) and Lot and Block: 98-G-129, 98-G-132, 98-G-133, 98-G-135 and 98-G-136 (Parcel No. 8) to Borough.

NOW, THEREFORE, intending to be legally bound, the parties hereto agree as follows:

1. Land Swap. Subject to the terms and conditions set forth herein, Cochran agrees to convey Parcel No. 3 and Parcel No. 8 to Borough, and Borough agrees to convey Parcel No. 1 to Cochran. The conveyances described in this Paragraph 1 are individually and collectively referred to herein as the "Conveyances".

2. Title. For each of the Conveyances, the conveying party shall deliver good and marketable title to its respective parcels, free and clear of all tenancies and monetary encumbrances and subject only to such non-monetary encumbrances as appear of public record, provided, however, Parcel No. 1 shall be subject to the easement set forth in Section 5 below.

3. Closing. Closing shall occur on the day that is ten (10) days after the date the Conditions Precedent (as hereinafter defined) set forth in Paragraph 4 are satisfied or waived by the respective parties, at such place and time as is mutually agreed upon by the parties (the "Closing"). At Closing, Borough shall convey Parcel No. 1 to Cochran, and Cochran shall convey Parcel No. 3 and Parcel No. 8 to Borough.

4. Conditions Precedent. The following conditions shall be satisfied by the parties prior to Closing (the "Conditions Precedent"):

a. Cochran shall have obtained all necessary municipal and quasi-municipal approvals necessary for the development and use Parcel No. 1 as a motor vehicle sales and service facility;

b. Cochran shall have razed the existing improvements on Parcel No. 8 and erected thereon a metered parking lot, landscaped and configured as is shown on that certain plan prepared by Fahringer, McCarty and Grey, Inc. and currently pending before the Borough, subject to such revisions as are reasonably acceptable to Borough; and

c. Cochran shall be satisfied with the condition of Parcel No. 1, as determined in its sole discretion, including, without limitation, all surface and subsurface characteristics thereof.

5. Easement. Borough's conveyance of Parcel No. 1 shall be subject to an easement in favor of the Borough, in a form reasonably acceptable to both parties, providing for the erection and maintenance of a "Welcome to Dormont" sign at the corner of West Liberty Avenue and McFarland.

6. Approvals. Cochran shall be responsible all approvals necessary for the development of Parcel No. 1, as well as all approvals required for the razing of the improvements situate on Parcel No. 8 and erection of the parking lot thereon in accordance with Section 4(b) above.

7. Representations and Warranties of Borough. Borough represents and warrants to Cochran as of the date of this Agreement, and represents as of Closing, the following:

a. Borough is a borough organized under the laws of the Commonwealth of Pennsylvania. The transactions contemplated herein will not violate the charter, ordinances or other governing documents of Seller. Seller has obtained all consents and approvals required to permit the transactions contemplated by this Agreement including the conveyance of Parcel No. 1 to Cochran. The signatories to this Agreement on behalf of Borough have the power and authority to enter into this Agreement and to bind Borough to the provisions hereof.

b. There are no leases, tenancies, licenses or other rights of possession, occupancy or use for any portion of Parcel No. 1.

c. There are no actions, suits or proceedings pending, or to Borough's knowledge, threatened against, or affecting Parcel No. 1 or any portion thereof, or relating to or arising out of the ownership, management, operation or occupancy of Parcel No. 1.

d. The current zoning of Parcel No. 1 is Commercial.

e. Borough owns legal title to Parcel No. 1, free and clear of all liens and encumbrances except for those encumbrances as of public record and those that will be discharged at Closing. All persons having a legal interest in Parcel No. 1 have been made a party to this Agreement.

f. There are no rights of first refusal, rights of first offer and/or options to lease and/or purchase Parcel No. 1.

g. Public water and sewer are available to serve Parcel No. 1.

h. Borough has adopted a resolution in accordance with Section 1201.1(d)(1) of the Borough Code, 53 P.S. §46201.1(d)(1), and the transactions contemplated herein constitute an "exchange" permitted by that section, and all such authorizations required for the Conveyances have been obtained. The provisions of this Section 7(h) shall survive Closing.

8. Representations and Warranties of Cochran.

a. Cochran is a limited partnership organized under the laws of the Commonwealth of Pennsylvania. The transactions contemplated herein will not violate the certificate of limited partnership, partnership agreement or other governing documents of Cochran. Cochran has obtained all consents and approvals required to permit the transactions contemplated by this Agreement including the conveyance of Parcel No. 3 and Parcel No. 8 to Borough. The signatories to this Agreement on behalf of Cochran have the power and authority to enter into this Agreement and to bind Cochran to the provisions hereof.

b. There are no leases, tenancies, licenses or other rights of possession, occupancy or use for any portion of Parcel No. 3 and Parcel No. 8.

c. There are no actions, suits or proceedings pending, or to Cochran's knowledge, threatened against, or affecting Parcel No. 3, Parcel No. 8 or any portion thereof, or relating to or arising out of the ownership, management, operation or occupancy of Parcel No. 3 or Parcel No. 8.

d. The current zoning of Parcel No. 3 and Parcel No. 8 is Commercial.

e. Cochran owns legal title to Parcel No. 3 and Parcel No. 8, free and clear of all liens and encumbrances except for those encumbrances as of public record and those that

will be discharged at Closing. All persons having a legal interest in Parcel No. 3 and Parcel No. 8 have been made a party to this Agreement.

f. There are no rights of first refusal, rights of first offer and/or options to lease and/or purchase Parcel No. 3 and/or Parcel No. 8.

g. Public water and sewer are available to serve Parcel No. 3 and Parcel No. 8.

9. Allocation of Costs at Closing. Costs at Closing shall be allocated as follows:

a. Real estate taxes shall be prorated as of the date of Closing.

b. Realty transfer taxes shall be paid entirely by Cochran.

c. The parties shall pay the costs of recording their respective deeds.

d. The parties shall bear the costs of their respective legal counsel.

10. Documents Delivered at Closing. At Closing, the parties shall deliver to each other the following documents:

a. Deeds conveying the applicable parcels, in accordance with the provisions of this Agreement;

b. Title affidavits required by the parties' respective title companies; and

c. Such other documents as are reasonably required to complete the transactions contemplated hereunder.

11. Due Diligence. Commencing on the date this Agreement is approved by the Borough Council, and ending on the date that is one hundred twenty (120) days thereafter (the "Due Diligence Period"), Cochran shall have the right to conduct such inspections, tests and/or studies as Cochran deems necessary or desirable to determine whether the title, physical condition and characteristics of Parcel No. 1 are satisfactory, in Cochran's sole judgment, for use and development of Parcel No. 1 for the Infiniti dealership. If, prior to the expiration of the Due Diligence Period, Cochran determines that the condition of Parcel No. 1 is unacceptable to Cochran, in Cochran's sole

judgment, then in such instance Cochran may cancel this Agreement upon written notice to Borough, and upon such cancellation the parties shall have no further liability to each other.

12. Challenges. In the event this Agreement or the Conveyances are challenged, then in such instance Cochran may, upon written notice to the Borough, terminate this Agreement upon written notice to the Borough, and the parties shall have no further liability to each other. In the event Cochran elects not to terminate this Agreement in accordance with this Section, then both Borough and Cochran (to the extent Cochran is joined in the challenge) shall defend this Agreement and the Conveyances with utmost diligence. In the event the conveyance of Parcel No. 1 is successfully challenged after Closing, Borough shall convey Parcel No. 3 and Parcel No. 8 back to Cochran. In the event of a challenge to this Agreement and/or the Conveyances, all times fixed for performance or exercise of rights shall be suspended until final resolution of the challenge. The provisions of this Section 12 shall survive Closing.

13. Time is of the essence with respect to any time fixed for performance of any requirements set forth in this Agreement.

14. All notices provided for in this Agreement, if not delivered in person, shall be sent by U.S. First Class Mail, Certified Mail, Return Receipt Requested, or by national overnight courier with delivery information, to Borough at:

Borough of Dormont
1444 Hillsdale
Suite 10
Pittsburgh, Pennsylvania 15216

To Cochran at:

Cochran R.E., L.P.
4520 William Penn Highway
Monroeville, PA 15146

With copy to:

Amy Capobianco Marsar, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108

Either party shall have the right to designate a new address for the receipt of notices by written notice to the other party as provided in this paragraph.

15. This Agreement constitutes the entire Agreement between the parties hereto and there are no other understandings, oral or written, relating to the subject matter hereof. This Agreement may not be changed, modified or amended, in whole or in part, except in writing, signed by all parties.

16. Wherever used in this Agreement, the singular shall include the plural, the plural the singular, and the gender shall be applicable to all genders.

17. The parties agree not to record this Agreement and any such recording shall constitute a default by the party recording said Agreement.

18. Neither party has the right to assign its interest or any part thereof under this Agreement except with the written consent of the other party.

19. This Agreement and all of its terms and conditions shall extend to be binding upon the parties hereto and upon their respective heirs, executors, administrators, successors and assigns.

20. The parties agree that each provision of this Agreement is severable and further agree that if any term or provision is held to be invalid, void or unenforceable by a court of competent jurisdiction or an administrative agency for any reason whatsoever, such ruling shall not affect the validity of the remainder of this Agreement.

21. This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania.

22. This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed with the express intention to be legally bound as of the day and year first above written.

ATTEST:

ATTEST:

Borough Secretary

COCHRAN R.E., L.P.

By: Cochran Pontiac, Inc.,
its General Partner

By: _____

Robert E. Cochran, President

BOROUGH OF DORMONT

By: _____

Willard McCartney, President
Borough Council

Parcel No. 3

Tax Parcel No. 98-G-95

ALL that certain parcel of land situate in the Borough of Dormont, County of Allegheny, Commonwealth of Pennsylvania, being Lots 1, 2, and 3 in the Lebanon Heights Land Company's Plan of Lots recorded in Plan Book Volume 20, pages 124 and 125, described as follows:

BEGINNING at a masonry nail set on the northerly right-of-way line of West Liberty Avenue at the dividing line between Lot Nos. 3 and 4 in said plan; thence along the northerly right-of-way line of West Liberty Avenue South $53^{\circ} 54' 50''$ West, 101.23 feet to a masonry nail set on the easterly right-of-way line of Biltmore Avenue; thence along the easterly right-of-way line of Biltmore Avenue North $33^{\circ} 57' 10''$ West, 105.07 feet to a railroad spike set on the southerly right-of-way line of Boyd Way (also known as Boyd Alley), twelve feet wide; thence along the southerly right-of-way line of Boyd Way North $53^{\circ} 54' 50''$ East, 97.32 feet to a capped survey pin set on the northwest corner of Lot No. 4 in said plan; thence along the westerly line of said Lot No. 4 and lands now of the Borough of Dormont recorded in Deed Book Volume 6781, page 486, South $36^{\circ} 05' 10''$ East, 105.00 feet to the point of beginning.

CONTAINING an area of 10.424 square feet.

BEING designated as Block and Lot No. 98-G-95.

BEING the same premises conveyed to Cochran R.E., L.P. by deed dated June 16, 2004 and recorded in Deed Book Volume 25, page 499.

Parcel No. 8

Tax Parcel No. 98-G-129

ALL THAT CERTAIN lot or piece of land situate in the Borough of Dormont, County of Allegheny and Commonwealth of Pennsylvania, being Lots Nos. 557 and 558 in the Delmont Plan of Lots, recorded in the Recorder's Office of Allegheny County in Plan Book Volume 24, pages 170 and 171, together bounded and described as follows, to-wit:

BEGINNING on the southeasterly side of West Liberty Avenue (as relocated by Dormont Borough Ordinance No. 798) at the dividing line between Lots Nos. 557 and 556 in said plan thence northeastwardly along said side of West Liberty Avenue, 60 feet to the dividing line between Lots Nos. 558 and 559 in said plan; thence southeastwardly along side dividing line, 105 feet to the northwesterly side of First Alley; thence southwestwardly along said side of First Alley, 60 feet to the dividing line between Lots Nos. 556 and 557; thence northwestwardly along said dividing line, 105 feet to the southeasterly side of West Liberty Avenue, at the place of beginning.

BEING designated as Block 98-G, Lot 129.

BEING the same premises conveyed from Edward Charles and Cathern V. Charles, also known as Cathern Charles, husband and wife, by their agent, James Scott Charles, to Cochran R.E., L.P., a Pennsylvania limited partnership, dated June 1, 2006 and recorded June 2, 2006 in Deed Book Volume 12868, page 380.

Tax Parcel No. 98-G-132

ALL that certain parcel of land situate in the Borough of Dormont, County of Allegheny and Commonwealth of Pennsylvania, being Lot 559 in the Delmont Land Company's Plan of Lots recorded in Plan Book Volume 24, pages 170 and 171, described as follows:

BEGINNING at a masonry nail set on the southerly right-of-way line of West Liberty Avenue, sixty feet wide, common with the northwest corner of Lot No. 560 in the Delmont Plan of Lots recorded in Plan Book Volume 25, pages 108 and 109; thence from said point of beginning along the westerly line of said Lot 560 South $36^{\circ} 44' 10''$ East, 105.00 feet to a capped survey pin set on the northerly right-of-way line of First Alley, fifteen feet wide; thence along said line of First Alley South $53^{\circ} 15' 50''$ West, 30.00 feet to a capped survey pin set on the southeast corner of Lot 558 in said Delmont Plan of Lots recorded in Plan Book Volume 24, pages 170-171; thence along the easterly line of said Lot 558 North $36^{\circ} 44' 10''$ East, 105.00 feet to a masonry nail set on the southerly right-of-way line of West Liberty Avenue; thence along the southerly right-of-way line of West Liberty Avenue North $53^{\circ} 15' 50''$ East, 30.00 feet to the point of beginning.

CONTAINING an area of 3,150 square feet.

BEING the same premises conveyed to Cochran R.E., L.P. by deed dated June 16, 2004 and recorded in Deed Book Volume 25, page 499.

Tax Parcel No. 98-G-133

ALL that certain parcel of land situate in the Borough of Dormont, County of Allegheny and Commonwealth of Pennsylvania, being part of Lot 561 and all of Lot 560 in the Delmont Land Company's Plan of Lots recorded in Plan Book Volume 25, pages 108 and 109, described as follows:

BEGINNING at a masonry nail set on the southerly right-of-way line of West Liberty Avenue common with the northwest corner of lands of McMinn Oldsmobile, Inc., recorded in Deed Book Volume 7433, page 390; said point being South 53° 15' 50" East, 0.58 feet from the westerly line of Lot 562 in said plan; thence from said point of beginning along said westerly line of McMinn Oldsmobile South 36° 44' 10" East, 105.00 feet to railroad spike set on the northerly right-of-way line of First Alley; thence along the northerly right-of-way line of First Alley South 53° 15' 50" West, 59.42 feet (deed: 60.00 feet) to a capped survey pin set on the southeast corner of Lot 559 in the Delmont Plan of Lots recorded in Plan Book Volume 6785, page 648; thence along said Lot 559 North 36° 44' 10" West, 105.00 feet to a masonry nail set on the southerly right-of-way line of West Liberty Avenue; thence along the southerly right-of-way line of West Liberty Avenue North 53° 15' 50" East, 59.42 feet (deed: 60.00 feet) to the point of beginning.

CONTAINING an area of 6,239 square feet.

BEING designated as Block and Lot No. 98-G-133.

BEING the same property which Nancy Jean Keelan and Robert K. Nolan, Co-Trustees of the Nolan Family Trust No. 2, successor in interest to W. Paul Nolan Trustee and Trust dated May 24, 1983, granted and conveyed unto Cochran R.E., L.P. by deed recorded July 15, 2008 in Deed Book Volume 13672, Page 555.

Tax Parcel No. 98-G-135

ALL that certain parcel of land situate in the Borough of Dormont, County of Allegheny and Commonwealth of Pennsylvania, being all of Lot 562 and northeasterly seven inches (0.58 feet) to Lot 561 in the Delmont Land Company's Plan of Lots recorded in Plan Book Volume 25, pages 108 and 109, described as follows:

BEGINNING at a masonry nail set on the southerly right-of-way line of West Liberty Avenue common with the northwest corner of Lot 563 in said plan; thence along the westerly line of said Lot 563 South 36° 44' 10" East, 104.91 feet to a capped survey pin set on the northerly right-of-way line of First Alley, fifteen feet wide; thence along the northerly right-of-way line of First Alley South 53° 15' 50" West, 30.58 feet to a railroad spike set on the southeast corner of Lot 561 in said plan; thence along the easterly line of said Lot 561 North 36° 44' 10" West, 105.00 feet to a masonry nail set on the southerly right-of-way line of West Liberty Avenue; thence along the southerly right-of-way line

of West Liberty Avenue the following two courses: North 53° 15' 50" East, 22.85 feet; and North 53° 54' 50" East, 7.73 feet to the point of beginning.

CONTAINING an area of 3,211 square feet.

BEING designated as Block and Lot No. 98-G-135.

BEING the same premises conveyed to Cochran R.E., L.P. by deed dated June 16, 2004 and recorded in Deed Book Volume 25, page 499.

Tax Parcel No. 98-G-136

ALL that certain lot or ground situate in the Borough of Dormont, County of Allegheny and Commonwealth of Pennsylvania, being Lot No. 563 in the Delmont Plan of record in the Recorder's

BEING designated as Block 98-G, Lot 136.

BEING the same premises which vested in Cochran R.E., L.P. by deed of Kenneth H. Moeslein and Linda J. Moeslein, husband and wife, dated April 28, 2005 and recorded in Deed Book Volume 12426, page 393.



BOROUGH OF DORMONT
ALLEGHENY COUNTY, PENNSYLVANIA

RESOLUTION NO. 22-2012

A RESOLUTION OF THE COUNCIL OF THE BOROUGH OF DORMONT, ALLEGHENY COUNTY, PENNSYLVANIA AUTHORIZING THE PROPER BOROUGH OFFICIALS TO ENTER INTO AN AGREEMENT WITH COCHRAN R.E., L.P., A PENNSYLVANIA LIMITED PARTNERSHIP, FOR THE PURPOSE OF ACQUIRING REAL PROPERTY OWNED BY COCHRAN R.E., L.P., KNOWN AS LOT AND BLOCK NUMBERS 98-G-129, 98-G-132, 98-G-133, 98-G-135 AND 98-G-136 AND LOT & BLOCK 98-G-95 IN EXCHANGE FOR PROPERTY OWNED BY THE BOROUGH OF DORMONT, KNOWN AS LOT AND BLOCK 98-F-215.

WHEREAS, the Borough Code, 53 P.S. Section 46201.1(d) (1), provides that a Borough Council shall have the authority to exchange real property without complying with the provisions of 53 P.S. Section 46201.1(a) (b) (c) which requires advertising and competitive bidding;

WHEREAS, the Council of the Borough of Dormont is desirous of exchanging Lot and Block Number 98-F-215 for Lot and Block Numbers 98-G-129, 98-G-132, 98-G-133, 98-G-135, 98-G-136 and Lot & Block 98-G-95 for the municipal purpose of providing public parking for the residents of the Borough of Dormont.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Dormont and it is hereby resolved, as follows:

Section 1. The proper Borough Officials are hereby authorized to enter into an agreement with Cochran R.E., L.P., a Pennsylvania limited Partnership, for the purpose of buying property owned by Cochran and known as Lot and Block Numbers 98-G-129, 98-G-132, 98-G-133, 98-G-

135, 98-G-136 and Lot & Block number 98-G-95.

Section 2. In consideration of the conveyance of the property owned by Cochran, as identified in Section 1 of this Resolution, the Borough of Dormont shall convey to Cochran the Property known as Lot and Block Number 98-F-215 located in the Borough of Dormont, Allegheny County, Pennsylvania.

Section 3. A legal description of the properties identified in Section 1 and 2 of this Resolution are attached hereto and incorporated herein as Exhibit A.

Section 4. A Resolution and part of the Resolution conflicted within is hereby appealed.

RESOLVED this _____ day of _____, 2012.

ATTEST:

BOROUGH OF DORMONT

By _____
Jeff Naftal
Board Secretary

By _____
Willard McCartney
Board President

Examined and approved by me this _____ day of _____, 2012

By _____
Thomas R. Lloyd
Borough of Dormont Mayor

**AMENDMENT TO
GROUND LEASE AGREEMENT**

THIS AMENDMENT is being made this ___ day of December, 2012 to the Ground Lease Agreement entered into by and between the Borough of Dormont, a political subdivision of the Commonwealth of Pennsylvania, County of Allegheny, having its principal offices located at 1444 Hillsdale Avenue, Suite 10, Pittsburgh, Pennsylvania, 15216 (hereinafter "Lessor")

A
N
D

Cochran South Hills, Inc., a Pennsylvania Corporation, having its principal office located at 3200 West Liberty Avenue, Pittsburgh, Pennsylvania, 15216 (hereinafter "Lessee") dated July 2, 2007.

WHEREAS, Lessor and Lessee entered into a Ground Lease Agreement dated July 2, 2007 for the purpose of the Lessee leasing two (2) parcels of real estate situated in the Borough of Dormont and more fully described in Exhibit "A" of the Ground Lease Agreement of July 2, 2007; and

WHEREAS, the original term of the Ground Lease Agreement was for a period of five (5) years ending on July 1, 2012 and which has been extended on a month to month basis; and

WHEREAS, Lessee is paying the sum of Eight Hundred (\$800.00) Dollars, payable in monthly installments; and

WHEREAS, Lessor and Lessee desire to amend the original Ground Lease Agreement dated July 2, 2007 for the purpose of extending the term of the original Lease, to add an additional parcel of real estate to the Leased Premises and increase the monthly rental for the Leased Premises.

WITNESSETH

1. Title: Lessor is the fee simple owner or lessee of three (3) parcels of real estate situated within the Borough of Dormont and more fully described in Exhibit "A", attached and incorporated as an integral part of this Amended Lease Agreement (hereinafter "Leased Premises"). The Leased Premises is subject to all zoning regulations, restrictions, easements, rules, ordinances, building

restrictions and other laws and regulations now in effect or which may in the future be adopted by any governmental authority having jurisdiction. Lessee has examined the title to the Leased Premises and has found the same to be satisfactory. The parties acknowledge and agree that the Leased Premises shall include Parcel Nos. 98-G-95, 98-G-90, 98-G-88, and 98-G-86, and further agree that Parcel No. 98-G-95 shall not be part of the Leased Premises unless and until Lessor acquires legal title to Parcel No. 98-G-95.

2. Term: Subject to the terms, provisions, covenants and conditions of this Lease Agreement, Lessee shall have, hold, possess, and enjoy the Leased Premises for a term of two (2) years which shall begin on the commencement date of this Lease Agreement, and may be extended on a month to month basis on the expiration of the original term.

3. Rent: Lessee hereby covenants and shall pay to Lessor as rent for during the Lease Term, of this Lease Agreement the sum of One Thousand Two Hundred (\$1,200.00) Dollars due on the first (1st) day of each month. In the event that Rent is not received on or before the tenth (10th) of the month, a five (5%) percent late charge shall be due and payable as additional rent. If on the termination or expiration of the Lease Term, Lessee still owes amounts due under this Lease Agreement, Lessee will pay those amounts in full on that date.

4. Approvals: The temporary occupancy permit issued in February, 2010 shall be extended by Dormont through the term of the Lease at no additional cost to Cochran.

5. This Amendment to the original Ground Lease Agreement is being made pursuant to Paragraph 24 – Modification of the Ground Lease Agreement, dated July 2, 2007.

6. All other terms and conditions of the Ground Lease Agreement dated July 2, 2007 shall remain in full force and effect during the term of this Amendment, unless modified pursuant to Paragraph 24 of the original Ground Lease Agreement and this Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Ground Lease Agreement on the day and year first above written.

ATTEST:

BOROUGH OF DORMONT

By _____
Willard McCartney
Council President

ATTEST:

COCHRAN SOUTH HILLS, INC.
(COCHRAN RELP, A Pennsylvania Limited Partnership)

By _____
Robert E. Cochran
President

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TIF PARTICIPATION AGREEMENT

THIS TIF PARTICIPATION AGREEMENT (this "Agreement") is made this ____ day of _____, 2012 by and between the BOROUGH OF DORMONT, a Municipal Corporation, with offices located at 1444 Hillsdale Avenue, Suite 10, Pittsburgh, Allegheny County, Pennsylvania 15216, (hereinafter referred to as "Borough"),

A
N
D

COCHRAN R.E., L.P., a Pennsylvania limited partnership, with offices located at 4520 William Penn Highway, Monroeville, Pennsylvania 15146, (hereinafter referred to as "Cochran").

R E C I T A L S :

WHEREAS, Cochran currently is the title owner of real estate in the Borough of Dormont known as Lot and Block: 98-G-117 ("Parcel No. 2") and Lot and Block: 98-G-115 ("Parcel No. 2A"); is the legal owner of Lot and Block: 98-G-129, 132, 133, 135 and 136 (collectively, "Parcel No. 8"); and the equitable owner of Lot and Block: 98-F-215 ("Parcel No. 1"); and

WHEREAS, Cochran currently operates an automobile car dealership (Nissan) on Parcel No. 2 and Parcel No. 2A; and

WHEREAS, Cochran is desirous of developing an automobile car dealership (Infiniti) on Parcel No. 1, with related improvements to be constructed on Parcel No. 2 and Parcel No. 2A; and

WHEREAS, in conjunction with the development of the Infiniti dealership, Cochran intends to construct a parking lot on Parcel No. 8; and

WHEREAS, the Borough is desirous of creating a tax increment financing district (the "TIF District") in the Borough that would include, among other properties, Parcel No. 1, Parcel No. 2, Parcel No. 2A and Parcel No. 8; and

WHEREAS, Cochran and the Borough now desire to enter into an agreement whereby if the TIF District is created, Cochran will agree to certain levels of taxation for Parcel No. 1, Parcel No. 2 and Parcel No. 2A, and Cochran's costs of construction of the parking lot on Parcel No. 8 will be reimbursed from revenue realized from the TIF District.

NOW, THEREFORE, intending to be legally bound, the parties hereto agree as follows:

1. Creation of TIF District. The parties' obligations hereunder are contingent upon the Borough, in conjunction with Allegheny County and Keystone Oaks School District, creating the TIF District, which shall include the parcels shown on Exhibit "A", attached hereto and incorporated herein by reference. The TIF District shall be for a term not to exceed twenty (20) years. In the event the TIF District is not created in accordance with the Pennsylvania Tax Increment Financing Act by June 30, 2014, then in such instance this Agreement shall automatically terminate, and the parties shall have no further liability to each other under this Agreement.

2. Acquisition and Development of Parcels. Cochran's obligations hereunder are contingent upon Cochran acquiring Parcel No. 1 and constructing the Infiniti dealership thereon and constructing the parking lot on Parcel No. 8. In the event any of the contingencies set forth in this Section are not satisfied by June 30, 2014, then in such instance Cochran may terminate this Agreement upon written notice to the Borough, then in such instance this Agreement shall automatically terminate, and the parties shall have no further liability to each other under this Agreement.

3. Taxation of Cochran Parcels. In the event the TIF District is established, the contingencies set forth in Section 2 are satisfied and the agreement specified in Section 5 is executed, Cochran will guarantee a minimum payment of One Hundred Thousand (\$100,000.00) Dollars more than the current aggregate real estate taxes (school, borough and county taxes) paid on Parcel Nos. 1, 2 and 2A (approximately Eighty Thousand (\$80,000.00) Dollars) for the term of the TIF (twenty (20) years).

The minimum payment may increase but will never decrease below the amount of the minimum payment.

4. Reimbursement of Parking Lot Expenses. In conjunction with Cochran's development of a parking lot on Parcel No. 8, the cost of which shall not exceed Two Hundred Thousand Dollars (\$200,000.00), Cochran will be reimbursed for its costs in excess of the demolition cost (demolition costs are estimated to cost up to Forty Thousand (\$40,000.00) Dollars) from the proceeds generated from a TIF District. The repayment of costs in excess of the demolition costs shall be completed within five (5) years and shall commence not later than one hundred eighty (180) days after the TIF District is established and funds from the TIF District are received by the taxing bodies.

5. Memorialization of Agreement. Upon the creation of the TIF district, the parties, Allegheny County and Keystone Oaks School District shall enter into an agreement incorporating the terms of this Agreement, as well as such other terms as are reasonably necessary so as to effectuate the terms herein. The terms and conditions of the agreement between the parties, Allegheny County and Keystone Oaks School District shall be reasonably acceptable to Cochran and Borough. In the event such an agreement is not executed by the parties by June 30, 2014, then in such instance this Agreement shall automatically terminate and shall no longer have any force or effect.

6. Choice of Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania.

7. Multiple Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

8. Time of the Essence. Time is of the essence of each and every provision of this Agreement.

9. Notices. All notices provided for in this Agreement, if not delivered in person, shall be sent by U.S. First Class Mail, Certified Mail, Return Receipt Requested, or by national overnight courier with delivery information, to Borough at:

Borough of Dormont
1444 Hillsdale
Suite 10
Pittsburgh, Pennsylvania 15216

To Cochran at:

Cochran R.E., L.P.
4520 William Penn Highway
Monroeville, PA 15146

With copy to:

Amy Capobianco Marsar, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108

Either party shall have the right to designate a new address for the receipt of notices by written notice to the other party as provided in this paragraph.

10. Binding Effect. This Agreement and all of its terms and conditions shall extend to be binding upon the parties hereto and upon their respective heirs, executors, administrators, successors and assigns.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed with the express intention to be legally bound as of the day and year first above written.

ATTEST:

COCHRAN R.E., L.P.

By: Cochran Pontiac, Inc.,
its General Partner

By: _____
Robert E. Cochran, President

ATTEST:

Borough Secretary

BOROUGH OF DORMONT

By: _____
Willard McCartney, President
Borough Council

Cochran R.E., L.P.
4520 William Penn Highway
Monroeville, PA 15146

December 12, 2012

Willard McCartney, President
Borough of Dormont Council
1444 Hillsdale
Suite 10
Pittsburgh, Pennsylvania 15216

Dear Mr. McCartney:

We are excited that Dormont Borough is seeking to establish an improvement district in the Borough on West Liberty Avenue. In connection with our redevelopment of property in the proposed improvement district, Cochran R.E., L.P. ("Cochran") is prepared to commit to following improvements and contributions to the efforts to improve the area:

1) Cochran, in conjunction with the development of Allegheny County Parcel No. 98-F-215 ("Parcel 1") into an Infiniti dealership, will construct on the corner of West Liberty Avenue and McFarland Road a "Welcome to Dormont" sign, with a design acceptable to the Borough, at a cost not to exceed Ten Thousand Dollars (\$10,000.00).

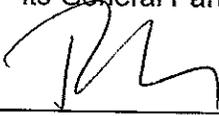
2) In light of the effect Cochran's redevelopment of Parcel 1 will have on public parking in the Borough, Cochran agrees to cooperate with Dormont to obtain and develop alternative parking spaces. Cochran and Dormont will use their best efforts to replace as many of the existing seventy-five (75) metered spaces on Parcel 1 during the period Cochran is developing Parcel 1. As part of our effort, Cochran agrees to make a good faith effort to provide alternative parking during the period Cochran is developing Parcel 1. If they are unable to find alternative parking, Cochran agrees to reimburse Dormont for the cost of a shuttle bus or other alternative parking solution, not to exceed the sum of Two Thousand Five Hundred (\$2,500.00) Dollars per month until Cochran's development of Parcels 1, 2 and 2A is complete.

The promises set forth in this letter are contingent upon Cochran undertaking the Infiniti dealership project, which shall include acquiring Parcel 1 and receiving all approvals and permits necessary for the construction and operation of the Infiniti dealership.

We look forward to working with the Borough in the redevelopment of West Liberty Avenue.

COCHRAN R.E., L.P.

By: Cochran Pontiac, Inc.,
its General Partner

By: 
Robert E. Cochran, President



MEMORANDUM

Date: December 11, 2012

To: President, Vice-President, Council and Mayor

From: Jeff Naftal, Borough Manager *JN*

Subject: Resolution #23-2012 – Authorizing Pursuit of TIF Plan

Background:

In September, Council voted to move forward with plans to develop West Liberty Avenue including a Transportation Oriented Development (TOD) adjacent to the Dormont Junction “T” Stop. As part of that process, Council also agreed to proceed with the creation of a Tax Increment Financing (TIF) District to help provide infrastructure improvements for the developer of the TOD.

Discussion:

As noted through our previous discussions, the process of creating a TIF district is fairly lengthy and has a number of prescribed steps which must be met along the way. The first of those steps is for each of the taxing authorities involved (Allegheny County, Keystone Oaks School District, and the Borough) to pass a resolution indicating their desire to pursue a TIF plan. As the authority where the project is located, we are the lead in this process and so we will be passing the resolution first. That resolution is attached for your review.

As you can see, it does not bind the Borough to anything other pursuing the TIF plan. Should one of the other two authorities not want to proceed, then the process stops. Should everyone want to proceed, but no agreement can be reached later in the process on the taxing distribution, then the process stops. And we have the right to opt out of the process at any time. As the process can take up to a year, time is of the essence in beginning so that we can have everything in order when we issue a Request for Proposals for the TOD project.

Once the three taxing authorities have passed this resolution, then the TIF committee will meet and begin to outline the details of the TIF plan. Those details come back to Council and the public for subsequent approval.

Recommendation:

I recommend that Council approve Resolution #23-2012 authorizing pursuit of a TIF plan so that we can begin the process.

JN

Attachment



BOROUGH OF DORMONT

RESOLUTION NO. - 23-2012

RESOLUTION OF THE BOROUGH OF DORMONT, ALLEGHENY COUNTY, PENNSYLVANIA AUTHORIZING PURSUIT OF A TAX INCREMENT FINANCING PLAN

WHEREAS, Pennsylvania's Tax Increment Financing Act, 53 P.S. §6930.1 et seq., (the "Act") provides local taxing bodies authority to cooperate in providing financing for development of blighted areas within their respective jurisdictions in order to increase the tax base, provide new employment opportunities and improve the general economy; and

WHEREAS, under the Act the Redevelopment Authority of Allegheny County ("RAAC") may prepare a Tax Increment Financing ("TIF") Plan to provide financing for the elimination and prevention of the development or spread of blight within designated tax increment districts located in Allegheny County and to present such Plan to the Council of the Borough of Dormont for consideration; and

WHEREAS, a preliminary proposal has been presented to the Council of the Borough of Dormont for the use of TIF for a portion of the costs certain infrastructure and other improvements along West Liberty Avenue situated within the jurisdiction of the Municipality (the "Project"); and

WHEREAS, the Borough of Dormont is expected to benefit from the use of tax increments to pay certain project costs as defined by the Act, by stimulation of private investment, increases in property values, creation of employment opportunities and improvement of surrounding properties; and,

WHEREAS, the implementation of any TIF Plan is fully dependent on the cooperation and participation of all local taxing bodies, namely the County of Allegheny, the Borough of Dormont, and the Keystone Oaks School District.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE BOROUGH OF DORMONT AS FOLLOWS:

1. The TIF concept for financing a portion of the costs of the project is endorsed and RAAC is requested to prepare a detailed TIF Plan for a redevelopment area in the Municipality as required by the Act.

2. The respective governing bodies of the Borough of Dormont, Keystone Oaks School District and the County of Allegheny will be notified of this action and requested to undertake similar favorable consideration and cooperation in implementing a TIF Plan with respect to the Project.

3. The Borough Manager is hereby designated as the Borough of Dormont's representative to work on the TIF Committee with the Developer, RAAC, Keystone Oaks School District and any other parties in preparing the TIF Plan, as required by the Act.

4. This resolution is non-binding on the Borough of Dormont. The Borough of Dormont's participation in the TIF Committee shall not in any way be construed as constituting approval, acceptance, or endorsement of the TIF Plan. The Borough of Dormont reserves the right to opt out of participation in any phase of the TIF proposal at any time, with or without cause.

5. The proper officers of the Borough of Dormont are hereby authorized and directed to take such other actions and to execute such other documents as may be necessary or proper to carry out the intent and purpose of this Resolution.

RESOLVED AND ENACTED this ____ day of _____, 2012, by the Council of the Borough of Dormont in this lawful session regularly assembled.

ATTEST:

BOROUGH OF DORMONT

Jeffrey Naftal, Borough Manager

Willard McCartney, Council President