

BILL NO. 1980

SPECIAL ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF CUBA, MISSOURI, ON BEHALF OF SAID CITY, TO ENTER INTO A CONTRACT FOR THE TRANSFER OF REAL ESTATE TO CUBAN REVITALIZATION DEVELOPMENT GROUP, LLC

WHEREAS, the Board of Aldermen of the City of Cuba, Missouri (City), has determined that it is in the best interests of the City to enter into a contract with Cuban Revitalization Development, LLC for the transfer of real estate.

BE IT ORDAINED, by the Board of Aldermen of the City of Cuba, Missouri, as follows:

Section 1: The City of Cuba, Missouri, shall enter into a contract with Cuban Revitalization Development, LLC for the transfer of real estate.

A copy of said Agreement is attached hereto as Exhibit "A".

Section 2: The Mayor of the City of Cuba, Missouri, is authorized to execute the Contract on behalf of the City.

Section 3: This ordinance shall be in full force and effect from and after its passage and approval.

READ TWO TIMES AND PASSED BY THE BOARD OF ALDERMEN OF THE CITY OF CUBA, MISSOURI, THIS ____ DAY OF _____, 2020.

CODY LEATHERS, MAYOR

Attest:

CHRISTINE NASH, CITY CLERK

(City Seal)

Approved this _____ day of _____, 2020.

CODY LEATHERS, MAYOR

Attest:

CHRISTINE NASH, CITY CLERK

(City Seal)

Approved as to the form.
WILLIAMS, ROBINSON, RIGLER & BUSCHJOST, P.C.

By: _____
Lance B. Thurman, #51214
901 North Pine Street, Fourth Floor
Post Office Box 47
Rolla, Missouri 65402
(573) 341-2266

ATTORNEYS FOR THE CITY OF CUBA, MISSOURI

| Alderman | Vote on First Reading On _____, 2020 | Vote on Second Reading On _____, 2020 |
|---------------|---|--|
| Kevin Copling | | |
| Sam Black | | |
| Debbie Martin | | |
| Warren Graddy | | |
| Cody Leathers | | |
| Jeff Bouse | | |

Contract for the Donation of Real Estate

This **Contract for the Donation of Real Estate** (“**Contract**”) is entered into as of the date of the last party to sign this Contract (“**Effective Date**”) by and between the **City of Cuba**, a Missouri municipality of the fourth class (“**Donor**”), and **Cuban Revitalization Development, LLC**, a Missouri limited liability company (“**Donee**”).

RECITALS

A. Donor owns certain real property located in Crawford County, Missouri, and which is legally described on Exhibit A, attached hereto and incorporated by reference herein, together with any and all hereditaments and appurtenances thereunto belonging (collectively, the “**Property**”).

B. Donee has proposed an economic development revitalization project on the Property, which will bring an investment to the City of Cuba and which will result in job creation, an increase in local taxes, and the development of underutilized property in the City.

C. Donor desires to donate the Property to Donee, and Donee desires to accept donation of the Property for the aforementioned reasons.

D. Donor and Donee have agreed to the donation of the Property upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants, promises, and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Donor and Donee hereby agree as follows:

1. Property - Subject to the terms and conditions described below, Donor agrees to donate and Donee agrees to accept, upon the terms and conditions set forth herein, the Property, located in Cuba, Missouri, subject to the terms and conditions set forth herein. The donation of the Property shall include the real property described on Exhibit A and all rights, privileges and easements appurtenant to the Property, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the Property, as well as all development rights, air rights, water, water rights, riparian rights, and water stock relating to the Property and any rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Property, and all of Donor’s right, title and interest in and to all roads and alleys servicing the Property.

2. Post-closing Covenants of Donee - As further consideration for donation of the Property by Donor, Donee covenants and agrees that Donor has a reversionary interest, which Donor may exercise in the event the Donee fails to begin construction of (i) a facility designed to be not less than 45,000 usable square feet, and (ii) installation of utilities on the Property (“**Improvements**”), within twelve (12) months following closing (“**Improvement Period**”). The Improvement Period shall be reasonably extended if performance and satisfaction is prevented, hindered or delayed as a consequence of matters *force majeure* or otherwise beyond the control of Donee. If Donee fails to begin construction of the Improvements during the Improvement Period, Donor may exercise its reversionary interest by providing written notice to Donee, within thirty (30) days of the expiration of the Improvement Period, of Donor’s intent to exercise its reversionary interest. Upon delivering such written notice to Donee, the parties shall agree to a closing date for the transfer of the Property back to the Donor, which closing date shall be within thirty (30) and sixty (60) days from the date of delivery of such notice. If Donor exercises its reversionary interest, each party shall be responsible for its own fees and costs, including attorney’s fees, in transferring the Property back to the Donor, which transfer shall be via Special Warranty Deed.

Donee shall be deemed to have begun construction on the Improvements if Donee has commenced grading of the Property, installation of above or below-ground facilities, fully or partially erected a structure or building on the Property, or taken any similar actions with respect to the Property. Donor agrees to act in good faith and cooperate with Donee in Donee’s (or any agent, contractor, developer or affiliated party of Donee’s) acquisition of any and all necessary or appropriate permits, licenses, approvals and/or consents

(including, but not limited to, zoning approvals and consents) necessary to effectuate the construction and completion of the Improvements.

As used in this Contract, the term "*force majeure*" shall refer to strikes, lockouts, sitdowns, material or labor restrictions by any governmental authority or regulatory body, delays in acquiring necessary or required permission, approval, consent, permits or licenses from any governmental authority or regulatory body, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including wet grounds or inclement weather), acts of the public enemy, wars, insurrections, epidemics, pandemics and any other cause not within the control of the Donee.

3. Conveyance and Title Standards – Donor warrants and represents to Donee that it has marketable title in fact to the Property. The Property shall be conveyed by special warranty deed in the form attached hereto as Exhibit "B" free and clear of all encumbrances except as herein provided, and which deed shall include the reversionary rights provided for in this Contract. The title herein required to be furnished is marketable title as set forth in Title Examination Standards of The Missouri Bar. Any encumbrance or defect in the title which is within the scope of any of said Title Standards shall not constitute a valid objection on the part of Donee; provided Donor furnishes the affidavits or other title papers, if any, described in the applicable title standard.

4. Title Requirements – Within thirty (30) days of the Effective Date, Donor shall deliver to Donee a commitment to issue an owner's policy of title insurance in the amount of the Purchase Price naming Donee as the insured, written by a title insurance company acceptable to Donee, which policy shall insure the Donee's title to be in the condition called for by this Contract and which commitment shall provide that said policy shall be issued forthwith after Donor's special warranty deed shall be placed of record. After delivery of said title insurance commitment, Donee shall have reasonable time to examine said title insurance commitment and notify Donor in writing of any objections thereto. If there be any objections, Donor shall within a reasonable time furnish to Donee a new or amended title insurance commitment satisfying any such objections, but if such commitment shall not be furnished within a reasonable time after said notice, Donee at Donee's election may terminate this Contract by written notice to Donor. If the failure to furnish a title insurance commitment is due to the fact that title defects cannot be corrected, then this Contract shall be void unless Donee gives notice to Donor in writing of Donee's election to waive such defects. Donor shall pay the cost for the issuance of the title insurance commitment. Donee shall pay the cost for the title insurance premium.

5. Contingencies – The duty to close hereunder is contingent upon:

- a. Donee being satisfied that the Property is or will be zoned for a use consistent with Donee's intended use of the Property.
- b. There being no easements or obstructions on the Property which would prevent or interfere with construction of the improvements herein contemplated.
- c. Donee's satisfaction with the title of the Property, pursuant to Section 4.

From and after the Effective Date, Donee, its employees, agents and representatives shall have the full right of access to the Property for purposes of inspecting the same, causing surveys to be prepared, making soil tests, conducting boring tests and to conduct such other engineering/mechanical/environmental investigations and inspections as Donee may desire. Donee may terminate this Contract at any time if, in Donee's sole discretion, any of the contingencies referenced in this Contract are not satisfied.

6. Taxes - Donee shall assume responsibility for the payment of real property taxes assessed for the year of closing (if any) and each year thereafter.

7. Representations - Neither Donor nor any other person on Donor's behalf has made and does not now make any representations, warranties, or agreements as to the value, condition, quality or suitability of the Property except as stated in this Section 7. Prior to execution by each party, this Contract shall be duly approved by Donor's Board of Aldermen and by Donee's Manager(s). In addition to the foregoing, the Donor makes the following representations and warranties which will be true as of the Effective Date and as of the date of Closing:

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- a. Due Authority. Donor has full power and authority to enter into and perform this Contract in accordance with its terms, to execute and deliver the documents required of Donor herein, and to perform its obligations hereunder.
 - b. Zoning. Donor has no actual knowledge of any pending or threatened change of zoning affecting the Property.
 - c. Litigation. There are no actions, suits or proceedings pending or threatened before or by any judicial body or any governmental authority, against or affecting Donor or the Property.
 - d. Change. Up to the date of the Closing, if Donor becomes aware of any fact or circumstance that would materially change a representation or warranty, then Donor shall immediately give written notice of such changed fact or circumstance to Donee. Upon notification of any fact or circumstance which would materially change any representation or warranty contained herein which Donor has not committed to cure, Donee shall have the option of (i) waiving the change, (ii) agreeing with Donor to adjust the terms hereof to compensate Donee for such change, or (iii) terminating this Contract.
 - e. Other Agreements. Donor has not entered into and is not otherwise aware of any leases, licenses or other agreements or contracts materially affecting the Property. The performance of this Contract will not result in any breach of, or constitute any default under, or result in the imposition of, any lien or encumbrance upon the Property pursuant to any agreement or other instrument to which Donor is a party or by which Donor is bound. Further, there is no purchase option or right of first refusal, whether recorded or unrecorded in the real property records, applicable to or encumbering the Property.

8. Environmental - Donor represents that Donor has no knowledge of any toxic or hazardous substances, waste materials, or gases ("Hazardous Materials") being generated, treated, stored or disposed of on or about the Property. Donor has not received any written notice from any federal, state, county, municipal or other Governmental Authority concerning, nor does Donor have any knowledge of the existence of, any petroleum product or other Hazardous Materials discharge, release, seepage or presence. There are no on-site underground storage tanks at the Property or any Hazardous Materials at, in or under the Property.

9. Survival – As necessary to give force and effect thereto, the terms and conditions of this Contract shall survive closing and shall inure to the benefit of and be enforceable by the respective successors and assigns of the parties.

10. Notices - Any notice or demand provided for herein may be given to the party to be served by personal service or by certified mail addressed to Donor at City of Cuba, ATTN: Mayor, P.O. Box K, Cuba, MO 65453, or to Donee at 200 N. 3rd Street, St. Charles, MO 63301, to the attention of K. Andrew Weber.

11. Closing - This transaction shall be closed on _____, at 3:30 p.m., at Cuba City Hall, Cuba, Missouri, at which time possession of the property shall be delivered to Donee. At Closing, Donor shall, in addition to any other obligations of Donor as set forth in this Contract, deliver or cause to be delivered to Donee, the following items, all of which shall be duly executed and acknowledged in recordable form, where appropriate:

- a. A Special Warranty Deed in a form reasonably satisfactory to Donee, conveying fee simple, good and marketable title to the Property to Donee.
- b. Written release of any lien, security interest, mortgage or deed of trust, mechanic's lien or other encumbrance affecting the Property.
- c. A Donor's Affidavit in form satisfactory to Donor and customarily used by the Title Company to permit Donee to obtain the ALTA (Form B) owner's policy of title insurance.

- d. An affidavit of Donor in form and substance satisfactory to Donee setting forth Donor's United States taxpayer identification number and certifying that Donor is not a foreign person as that term is used and defined in Section 1445 of the United States Internal Revenue Code.

12. Damages - In the event either party performs that party's part of this Contract or tenders performance thereof, and the other party materially defaults in the other party's part of this Contract to close, the non-defaulting party shall be entitled to actual damages, costs, expenses and reasonable attorney's fees. Either party shall have the right to require specific performance of this Contract. The foregoing, and anything contained in this Contract, notwithstanding, Donor's sole and absolute remedy for Donee's failure to undertake, perform or complete the post-closing covenants set forth in Section 2 of this Contract shall be to exercise its reversionary right provided for in this Contract, and with respect to any breach or default under Section 2, Donor hereby irrevocably waives and releases Donee from any other remedy or cause of action, whether at law or equity.

13. Assignment – The terms and conditions of this Contract, and the obligations, rights and duties of Donee shall not be assigned except to another entity the ownership of which is substantially the same as that of Donee at the time this Contract was executed.

14. Code Compliance – Nothing herein to the contrary withstanding, Donee shall in all respects comply with all City of Cuba Code provisions relating to the construction, use and operation of the improvements upon the Property, including applicable building and development code provisions.

15. Counterpart and Facsimile - This Contract may be signed in one or more identical counterpart copies which counterpart copies when signed by all the parties hereto shall constitute a fully binding Contract. An electronically scanned, digital or facsimile signature shall have the same effect as an original.

16. No Third Party Beneficiaries - This Contract creates no third party rights or obligations between Donee and any other person. It is understood and agreed that the parties do not intend that any third party should be a beneficiary of this Contract

Signed by the parties as follows:

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| <p>Donor: City of Cuba, Missouri</p> <p>Date: _____, 2020</p> <p>By: _____ Cody Leathers, Mayor</p> <p>Attest: _____ Christine Nash, City Clerk</p> | <p>Donee: Cuban Revitalization Development, LLC</p> <p>Date: _____, 2020</p> <p>By: _____ _____, Manager</p> |
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Exhibit "A" to Contract

Commencing at the SW Corner of the N 1/2 of the SE 1/4 of the NE 1/4 of said Section 25; thence along the Subdivision line N 0°08'41" E, a distance of 11.02' to the POINT OF BEGINNING; thence continue N 0°08'41"E, a distance of 654.66 feet to the NW Corner of said 1/2 1/4 1/4 Section; thence along the North line thereof N 88°25'26" E, a distance of 905.34 feet; thence leaving said subdivision line S 18°44'27" E, a distance of 682.68 feet; thence S 88°19'04" W, a distance of 1126.48 feet to the POINT OF BEGINNING; said described tract containing 15.24 acres.

TOGETHER WITH a 60 foot wide roadway and Utility Easement as described in Book 557, at Page 430 of the Crawford County Records.

ALSO, TOGETHER WITH a 60 foot wide roadway and Utility easement of the which the East line is described as follows: BEGINNING at the SE Corner of the N 1/2 of the NW 1/4 of the SE 1/4 of said Section 25; thence N 0°01'09" E, a distance of 663.23 feet; thence N 0°08'41" E, a distance of 665.67 feet to the POINT OF ENDING.

ALSO, TOGETHER WITH a 60 foot wide ingress and egress roadway and utility easement lying immediately South of and adjacent to the South line of the above described 15.24 acre tract of land.

ALSO, SUBJECT TO a 30 foot wide Utility Easement lying along the North, East and West sides of the above described 15.24 acre tract of land.