

ORDINANCE NO. 15-01

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF A LAND DONATION AGREEMENT FOR TWO PARCELS OF REAL PROPERTY WITHIN THE ROCK CREEK ESTATES SUBDIVISION, THIRD ADDITION, BY AND BETWEEN ROCK CREEK ESTATES, INC. AND THE VILLAGE OF MANTENO

WHEREAS, the Village of Manteno ("Village") is a municipal corporation duly existing under the laws of the State of Illinois;

WHEREAS, Rock Creek Estates, Inc. ("Donor"), is an Illinois corporation and owner of two parcels of real property of approximately 20.04 acres in size ("subject property") located southeast of Rock Creek Drive and Diamond Drive in the Rock Creek Estates Subdivision, 3rd Addition, legally described as follows:

Parcel 1:

Outlot A, Rock Creek Estates Subdivision, Third Addition, being a Subdivision of a part of the southwest ¼ of Section 14, in Township 32 North, Range 12 East of the Third Principal Meridian, in Kankakee County, Illinois

PIN: (03) 02- 14-300-019-0000;

WHEREAS, the subject property is open, and Donor is desirous of gifting the subject property to the Village for development and use as a public park;

WHEREAS, the provisions of 65 ILCS 5/1-61-1.5 authorize the Village of Manteno to acquire by gift, legacy, or grant any real estate for purposes authorized under the Illinois Municipal Code as it deems proper;

WHEREAS, the provisions of 65 ILCS 5/2-3-8 authorize the Village of Manteno to acquire and hold real property for corporate purposes; and,

WHEREAS, the Village of Manteno has determined that acquisition of the subject property would be useful, necessary and convenient.

NOW THEREFORE BE IT ORDAINED by the President and Board of Trustees of the Village of Manteno, Kankakee County, Illinois, as follows:

Section 1

The recitals set forth in preamble are hereby adopted as the findings of the Village of Manteno and are expressly incorporated as a part of this ordinance.

Section 2

The Land Donation Agreement, in substantially the same form as attached hereto as Exhibit "A," is hereby accepted and approved, and incorporated herein by reference as though fully set forth in this resolution, subject to such revisions as the Village Attorney deems necessary and advisable. That the Village President and Village Clerk are hereby authorized and directed to execute the Land Donation Agreement and such other documents as may be necessary to effect the transfer of the property, or to carry out the purposes of the Land Donation Agreement.

Section 3

If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this ordinance.

Section 4

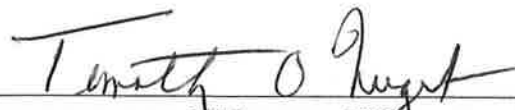
This Ordinance shall be in full force and effect after passage and approval as provided by law.

PASSED by the Board of Trustees of the Village of Manteno, Illinois and deposited in the office of the Village Clerk this 18th day of May, 2015.

DEPOSITED with the Village Clerk this 18th day of May, 2015.


ALISA BLANCHETTE, Village Clerk

APPROVED by me this 18th day of May, 2015.


TIMOTHY O. NUGENT, Village President

LAND DONATION AND USE AGREEMENT

Donor: Rock Creek Estates, Inc.
300 Rock Creek Drive
Manteno, Illinois 60950

Attorney for Donor: Randy Chaplinski
815 939-3316

Donee: Village of Manteno
98 East Third Street
Manteno Illinois 60950

Attorney for Donee: Joseph Cainkar, Louis F. Cainkar, Ltd.
30 N. LaSalle Street, Ste. 3922, Chicago, IL 60602
Telephone: 312-236-3985
Email: joe@lfcld.net
Facsimile: 312-236-3989

Closing Date: May __, 2015 at 10:00 A.M., or later upon agreement of the Parties.

Property Address: 20.40 acres of open land lying southeast of Rock Creek Drive and Diamond Drive in the Rock Creek Estates Subdivision, 3rd Addition, Manteno, Illinois 60950

Legal Description: See attached Exhibit A.

P.I.N.: (03)-02-14-300-019

Personal Property: All utility improvements situated thereon or thereunder

Agreement Date: May __, 2015

This Land Donation Agreement ("Agreement") is made between Donor and Donee, as follows:

1. **DONATION OF PROPERTY.** Donor agrees to gift to Donee the Property by donation on the terms and conditions set forth in this Agreement. The Personal Property, now on the Property, and the Sign to be purchased by Donor for installation on the Property pursuant to paragraph 17 of this Agreement, is included in the donation. The Donor agrees and understands that the gift being made under this Agreement is irrevocable and that once the Property, Personal Property and Sign is donated, Donor shall have no rights, title or interest therein.

2. **CONVEYANCE.** The Donor shall convey title to the Donee by a recordable Warranty Deed ("Deed"), subject only to: (a) covenants, easements, conditions and restrictions of record; (b) private, public and utility easements and roads and highways; and (c) general real

estate taxes not yet due and payable (collectively, "Permitted Exceptions"). None of the foregoing exceptions are permissible if they are violated by the existing improvements.

3. **EARNEST MONEY.** No earnest money is required by this Agreement.

4. **CLOSING DATE.** The closing shall occur on the Closing Date, or as otherwise mutually agreed by the parties, at HomeStar Title Company ("Title Company"), 222 North Industrial Drive, Bradley, Illinois 60915.

5. **CONDITION OF PROPERTY.** Donor agrees to deliver possession of the Property in the same condition as it is at the date of this Agreement, with ordinary wear and tear being acceptable.

6. **CLOSING DOCUMENTS.** At closing, Donor shall provide the following executed documents: (a) warranty deed, (b) affidavit of title covering the date of closing, (c) bill of sale transferring the Personal Property, (d) transfer declarations required for State, County and local transfer stamps, and (e) ALTA statement.

7. **TAXES.** Donor warrants the Property is not being currently assessed for real estate tax purposes and, therefore, there shall be no tax proration calculation or settlement at the Closing. Notwithstanding the above, Donor agrees and covenants that it shall reimburse Donee for amounts Donee pays to satisfy general real estate taxes which are levied against the Property for tax year periods prior to the Closing which are not yet due and payable as of the Closing, said reimbursement to occur no later than thirty (30) days following the Donee's written demand to Donor.

8. **POSSESSION.** Donor shall deliver possession to Donee on the Closing Date.

9. **LEASES.** Donor warrants that there are no oral or written leases in effect with respect to the Property. Donor will not enter into any leases with respect to the Property from and after the date Donor signs this Contract without the express prior written consent of Donee.

10. **EVIDENCE OF TITLE.** Not less than ten (10) days before the Closing Date, Donor shall deliver to the Donee a commitment for a standard American Land Title Association Owner's policy of title insurance ("Title Commitment") covering the Property issued by the Title Company. At the Closing, Donor shall deliver a "later date" or "updated" Title Commitment dated as of the Closing Date that reflects no exceptions to title other than the Permitted Exceptions. Donor shall provide copies to the Donee and the Title Company of all unrecorded agreements, liens, mortgages and other encumbrances not less than five (5) days prior to the Closing Date. In the event Donor is unable to deliver title to the Donee subject only to the Permitted Exceptions by the Closing Date, the Donee may: (a) grant one (1) thirty (30) day extension of time to Donor to remove the unpermitted exceptions; or (b) terminate this Agreement by written notice to Donor. Donee shall be responsible for the cost and expense of the Title Commitment, later date, and an ALTA Owner's Policy with extended coverage in the amount of one hundred thousand dollars (\$100,000.00) dated as of the Closing Date, insuring fee simple title in the Property to the Donee. The Donee may, at its expense, obtain such additional endorsements to the title policy as it deems necessary at its own cost and expense.

11. **SURVEY.** Donee shall be responsible for the cost and expenses associated with the preparation of a plat of survey ("Survey") of the Property dated not earlier than the date of this Agreement. The Survey shall be certified to the Donee and the Title Company as having been prepared in accordance with the "Minimum Standard Detail Requirement for Land Title Surveys" jointly established and adopted by the American Title Association and the American Congress of Surveying and Mapping. In the event the Survey reflects any encroachments, easements or other matters ("Survey Matters") that are not Permitted Exceptions and which, in the Donee's sole judgment, materially impair the value or utility of the Property, then the Donee may: (a) grant one (1) thirty (30) day extension of time to Donor to remove the Survey Matters; (b) terminate this Agreement; or (c) close and accept title to the Property subject to the Survey Matters.

12. **CLOSING COSTS.** Donee agrees that it shall be responsible for the closing costs of the Parties as charged by the Title Company.

13. **ATTORNEY'S FEES.** Donor and Donee shall be responsible for any fees, costs and expenses of their respective attorney.

14. **TRANSFER TAXES.** The Parties acknowledge that the instant real estate transaction is deemed exempt for purposes of transfer taxes, but the exemption shall not alleviate Donor from delivering transfer declarations at Closing.

15. **ENVIRONMENTAL MATTERS.** Donor represents and warrants that it has no knowledge of any adverse environmental matters or conditions concerning the Property. As used herein, the term "environmental condition" means any condition that constitutes a violation of any environmental law, or requires a clean-up under any environmental law, or presents a risk to the health and safety of the public.

16. **CASUALTY.** Damage to any improvements located on the Property shall be at the sole risk of Donor until Closing. Donee may terminate or cancel this Agreement in the event of such damage.

17. **APPRAISAL OF PROPERTY.** Before the Closing Date, the Donee shall obtain, at Donee's sole cost and expense, an appraisal for the Property. The appraisal shall be completed by a qualified Illinois licensed appraiser of Donee's choosing to substantiate the fair market value of the Property. The Donee shall provide a copy of said appraisal to Donor upon its receipt of the same.

18. **FUTURE PARK CONTRIBUTION.** Reference is hereby made to Title 11, Impact Fees, Chapter 3, Recreation and Parks Land and Cash Contributions, of the Municipal Code for the Village of Manteno. The Donation of the Property shall be deemed to fully satisfy Donor's future obligations to dedicate sites for recreation and parks in relation the property legally described in Exhibit "C" ("Other Property"), if and when the Other Property becomes subject to those ordinances. The Donor and Donee acknowledge and agree that the donation of the Property may or may not constitute an exact match in acreage as would need to be

dedicated pursuant to the said provisions based upon the manner in which such calculations are/will be made now or in the future. Both Donor and Donee hereby accept such risk of inequity and hereby waive and forever discharge and release each other, their successors and assigns, to and from any and all claims that the donation ultimately proved advantageous or detrimental to one or the other based on any actual calculation at the time the dedication would have been made but for the donation.

19. **USE OF PROPERTY.** Upon donation, the Property shall be used and held open as a public park and shall continue to be used as such unless the Donee determines that said use is no longer necessary, desirable, or in its best interests. The Donee shall name the public park "William Reiter Memorial Park."

20. **SIGN.** No later than sixty (90) days following the Closing Date, Donors shall submit a rendering and specifications for a sign ("Sign") identifying the park as a Village of Manteno public park named as aforesaid, the design of which shall be subject to the approval of the Donee. Upon approval of the design, Donor shall contract for and bear all expense and costs associated with the purchase, production, and delivery of the Sign to the Donee. The Sign shall be deemed the property of Donee, as gifted by the Donor pursuant to this Agreement.

21. **DELAY.** The Parties agree that time is of the essence in the performance of their obligations under this Agreement and every provision hereof in which time is an element. No extension of time for the performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act. If any date for performance falls on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

22. **BREACH.** In the event of a default by a Party in the performance of its obligations under this Agreement, such Party upon written notice from the other shall immediately proceed to cure or remedy such default. In the event of a default by Donor that has not been cured within fifteen (15) days after notice of default, the Donee may terminate this Agreement by giving written notice thereof to Donor, or the Donee may institute such proceedings in equity to compel specific performance. In the event of a default by the Donee that has not been cured within fifteen (15) days after notice of default, Donor may terminate this Agreement by giving written notice thereof to the Donee, or Donor may institute such proceedings in equity to compel specific performance.

23. **WAIVER AND ESTOPPEL.** Any delay by either Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or operate to deprive said Party of or limit such rights in any way. No waiver made by either Party with respect to any specific default by the other Party shall be construed, considered or treated as a waiver of the rights of said Party with respect to any other defaults of the other Party.

24. **PERSONAL LIABILITY.** No covenant contained in this Agreement shall be deemed to be the covenant of any official, officer, partner, member, director, agent, employee, planning consultant, manager, shareholders or attorney of the Donor or Donee in his or her

individual capacity, and no official, officer, partner, member, manager, director, agent, employee, manager, shareholders or attorney of the Donor or Donee shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery, and performance of this Agreement, or any failure in connection therewith.

25. **MERGER.** The provisions of this Agreement shall not be merged with the Deed, and the Deed shall not be deemed to affect or impair the provisions of this Agreement.

26. **NOTICE.** Required notices shall be in writing and shall be deemed served when mailed to the Donor or Donee, or their respective attorney at the address shown above, by certified mail with return receipt requested. Notice may also be delivered by facsimile transmission, provided that the notice transmitted shall be sent during business hours (Monday through Friday, excluding legal holidays: 9:00 A.M. to 5:00 P.M. Central Time). In the event fax notice is transmitted during non-business hours, the effective date and time of notice is the first hour of the first business day after transmission. Notice may also be given by e-mail transmission if an e-mail address has been furnished by the recipient Party or the recipient Party's attorney to the sending Party or is shown on this Agreement. Notice shall be effective as of date and time of e-mail transmission, provided that, in the event e-mail notice is transmitted during non-business hours, the effective date and time of notice is the first hour of the next Business Day after transmission. An attorney or Party may opt out of future e-mail notice by any form of notice provided by this Agreement.

27. **HEADINGS.** The headings of the various sections of this Agreement have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions thereof.

28. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

29. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties and supersedes and replaces any prior agreements between the Parties with respect to the subject matter hereof. This Agreement shall not be modified or amended in any manner other than by supplemental written agreement executed by the Parties.

30. **SEVERABILITY.** If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof, is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

31. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall constitute an original instrument.

32. **BROKERS.** The Parties represent and warrant to each other that no person or entity has been engaged, utilized, or dealt with that would be entitled to a broker's commission or finder's fee in connection with the sale of the Property. In the event that any claim is

asserted for such commission or fee, the Party deemed to be responsible for such claim shall indemnify, defend and hold the non-responsible Party harmless from and against any such claim.

33. **SUCCESSORS AND ASSIGNS.** The terms of this Agreement shall be binding upon the Donor and Donee, and their respective legal representatives, successors and assigns. Notwithstanding the foregoing, prior to the Closing, neither Party may assign its rights hereunder without the prior written consent of the other Party.

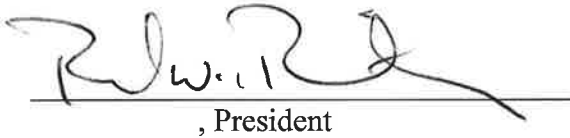
34. **OTHER COSTS AND EXPENSES.** Unless otherwise specifically set forth in this Agreement, each Party shall bear its own costs and expenses incurred in connection with this Agreement and the transaction contemplated thereby.

35. **OTHER ACTS.** The Parties agree to perform such other acts, and to execute, acknowledge and deliver such other instruments, documents and materials as may be reasonably to consummate the transaction contemplated in this Agreement.

DONOR:

ROCK CREEK ESTATES, INC.

May 11, 2015



, President

DONEE:

VILLAGE OF MANTENO

May 18, 2015



Timothy O. Nugent, Mayor



Alisa Blanchette, Village Clerk

EXHIBIT A

Tax Bill

EXHIBIT B

Legal Description of Property

Outlot A, Rock Creek Estates Subdivision, Third Addition, being a Subdivision of a part of the southwest $\frac{1}{4}$ of Section 14, in Township 32 North, Range 12 East of the Third Principal Meridian, in Kankakee County, Illinois

PIN: (03) 02- 14-300-019-0000

EXHIBIT C

Legal Description of Other Property

Approximately 67.51 acres of land described as follows:

The West 2227.5 Feet of the South 1,331.71 Feet of the Northwest Quarter of Section 14, in Township 32 North, Range 12 East of the Third Principal Meridian, in Kankakee County, Illinois:

PINs: (03) 02-14-100-010-0000 and (03) 02-14-100-005.

EXHIBIT D

CHAPTER 3 (VILLAGE OF MANTENO)
RECREATION AND PARKS LAND AND CASH CONTRIBUTIONS