

BILL NO. 447

ORDINANCE NO. 435

INTRODUCED BY: Trustees Slama, Fortune, Young, Graves and Whitmore

**AN ORDINANCE AUTHORIZING EXECUTION OF A DONATION AGREEMENT
BETWEEN TWIN-OAKS-MANCHESTER, LLC AND THE VILLAGE OF TWIN OAKS**

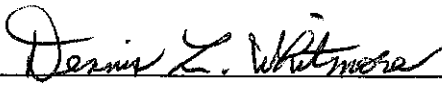
BE IT ORDAINED by the Board of Trustees of the Village of Twin Oaks, St. Louis County, Missouri, as follows:

Section 1. A Donation Agreement, as more particularly set forth in EXHIBIT 1, attached hereto and incorporated herein by reference, is approved.

Section 2. The Board Chairman and Village Clerk are authorized to execute said Agreement and to prepare or have prepared such further documentation as required to be provided by Donee at closing.

Section 3. This Ordinance shall be in full force and effect from and after its passage as provided by law.

PASSED and APPROVED this 20 day of August, 2014.



Dennis L. Whitmore, Chairman
Board of Trustees

ATTEST:



Kathy A. Runge, Village Clerk

First Reading: 8-20-2014

Second Reading: 8-20-2014

DONATION AGREEMENT

This Donation Agreement ("Agreement") is dated as of August 20, 2014 (the "Effective Date"), by and between the VILLAGE OF TWIN OAKS, an incorporated Municipality (as "Donee"), and TWIN OAKS-MANCHESTER, LLC, a Missouri limited liability company (as "Donor").

1. **Donation of Real Estate.** Donor agrees to donate to Donee, and Donee agrees to accept from Donor, that certain real property containing approximately 47,045 square feet commonly known as 1381 Big Bend Road, Twin Oaks, MO, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"), pursuant to the terms set forth herein.
2. **Value of the Property.** Donor and Donee agree that the value of the Property will be determined prior to the Closing (as defined below) by an appraisal performed in accordance with industry standards by a mutually acceptable appraiser engaged by Donor, at Donor's expense (the "Appraised Value"). Excepting its obligations set forth herein, Donee shall bear no responsibility for defending the Appraised Value against challenge by a third party (not a signatory hereto), including but not limited to a Federal or State taxing authority. Donor agrees to indemnify, save harmless and defend Donee from any liability, cost or expense arising out of or connected with any such challenge and this indemnity provision shall survive the closing herein. Subject to the foregoing, each party shall assist and cooperate as reasonably requested by the other party in connection with the donation of the Property.
3. **Inspection Period.** Donee shall have through 5:00 p.m. CST on September 19, 2014 (the "Inspection Period"), to obtain and review environmental and soils reports and a commitment for title insurance concerning the Property. Donee shall have the right to terminate this Agreement due to any reasonable objection to matters shown on such environmental report, soils report, and/or title commitment that would impair Donee's ability to develop the Property for its intended purposes. If Donee elects to terminate this Agreement pursuant to this Section, it shall do so by notifying Donor in writing of such election prior to the expiration of the Inspection Period. If Donee fails to so timely terminate this Agreement, then Donee shall be deemed to have approved all matters shown on the title commitment and agreed to proceed to Closing in accordance with the terms of this Agreement.
4. **Closing.** Subject to the terms and conditions contained herein, the transaction contemplated by this Agreement shall be closed (the "Closing") through St. Louis Title, LLC, at its office located at 7701 Forsyth Blvd., Suite 200, Clayton, Missouri 63105, Attn: Kelly Cochran (the "Title Company") within fifteen (15) days after the expiration or earlier waiver by Donee of the Inspection Period, on a date mutually agreed to by the parties. Each party's obligation to close is contingent on determination of the Appraised Value in accordance with Section 2 above, and on the fulfillment of the other party's obligations contained herein. Donee's obligation to close is further contingent on its receipt from USR-DESCO TWIN OAKS, LLC of an executed, recordable First Amendment to Restriction and Easement Agreement in substantially the form attached hereto as Exhibit C.
5. **Tax-Exempt Status.** Donee hereby represents and warrants to Donor that Donee is a tax-exempt entity.
6. **Closing Documents.**
 - 6.1 At Closing, Donor shall execute and deliver the following documents:
 - (A) A Special Warranty Deed conveying the Property to Donee, using Donor's vesting legal description, subject to existing building lines, declarations, easements, encroachments, encumbrances, conditions, covenants, instruments, plats, reservations, restrictions, rights of way, and all other matters of record, as well as underground and overhead cables, lines, and utility services, whether or not of record; any matters which would be shown by an inspection or a survey of the Property; and for real property taxes and assessments for 2014 and thereafter, and for water charges and sewer assessments due and payable after the closing (the "Deed");
 - (B) A standard seller's title affidavit, in form reasonably required by Title Company and acceptable to Donor;

(C) A release of any mortgage, deed of trust, or other security interest granted by Donor and encumbering the Property; and

(D) A termination of the Settlement Agreement (as defined below) in form reasonably acceptable to Donor and Donee (the "Termination Agreement").

6.2 At Closing, Donee shall execute and deliver the following documents:

(A) A certificate of value for St. Louis County reflecting the Appraised Value of the Property;

(B) A letter to Donor acknowledging the Appraised Value in substantially the form attached hereto as Exhibit B; and

(C) The Termination Agreement.

7. Closing Costs and Adjustments. At Closing, all ad valorem property taxes and special assessments related to the Property, based on the most recent and available bills, and all sewer service charges and/or other utilities provided to the Property (if applicable) shall be prorated as of the date of Closing, with Donor responsible for the portion of taxes, assessments, and other charges up to the date of Closing. Donee shall be responsible for all of the Title Company's settlement fees, all recording costs, and any other fees, costs, or expenses related to the Closing and Donee's acquisition of the Property, including but not limited to any title policy premiums. Donor and Donee shall each pay their own legal and professional fees and fees of other consultants incurred by Donor and Donee, respectively.

8. Broker's Commission. Upon Closing, Donee shall pay the commission due to The DESCO Group (the "Broker") in the amount of \$36,000, which the parties understand to be the sole broker commission due in connection with the transactions under this Agreement. Donee represents and warrants to Donor, and Donor represents and warrants to Donee, that no broker or finder has been engaged or retained by them, other than the foregoing Broker, in connection with any of the transactions contemplated by this Agreement. Donor and Donee each agree to indemnify, save harmless, and defend the other from any liability, cost, or expense arising out of or connected with a breach of the foregoing representations, warranties and/or covenants. This indemnity provision shall survive the Closing or any earlier termination of this Agreement.

9. Waiver of REA Payments. Donor and Donee acknowledge and agree that the Property is subject to that certain Restriction and Easement Agreement dated November 30, 2004, and recorded January 5, 2005, in Book 16295, page 2553 of the St. Louis County land records (the "REA"). Pursuant to Section 5.10 of the REA, and a certain Agreement dated May 1, 2013 between Donor and Donee (the "Settlement Agreement"), Donor is required to pay certain amounts to Donee in connection with the Property. Donee hereby agrees that, upon Closing, Donor shall be released from any and all obligations to pay amounts under the REA and Settlement Agreement that accrue from and after March 1, 2014, and Donee, as successor in title to the Property, assumes all obligations concerning the Property pursuant to the REA. Donee hereby confirms that Donor has paid all amounts owed pursuant to the REA and Settlement Agreement through March 1, 2014, and, effective upon Closing, the parties will terminate the Settlement Agreement, and Donee waives all rights to collect such amounts from and/or to enforce such amounts against Donor from and after March 1, 2014. This Section shall survive the Closing.

10. Condition of Property. Donor has not made and does not hereby make any representations, warranties, or other statements as to the condition of the Property, and Donee acknowledges that Donee will be purchasing the Property on an "AS IS, WHERE IS" basis and without relying on any representations or warranties by Donor of any kind whatsoever concerning the Property. DONEE ACKNOWLEDGES AND AGREES THAT UPON CLOSING DONOR SHALL CONVEY AND TRANSFER THE PROPERTY TO DONEE "AS IS, WHERE IS, AND WITH ALL FAULTS." DONEE ACKNOWLEDGES AND AGREES THAT DONOR HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES,

PROMISES; COVENANTS, AGREEMENTS, OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OF, AS TO, CONCERNING, OR WITH RESPECT TO (A) THE NATURE, QUALITY, OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES THAT DONEE MAY CONDUCT ON THE PROPERTY, (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, OR (D) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY.

11. Notices. All notices and other communications hereunder shall be in writing (whether or not a writing is expressly required hereby), and sent by courier, overnight delivery service, or mailed by registered or certified mail, postage prepaid, return receipt requested, or via receipted facsimile transmission or email transmission (but only if duplicate notice is also given via courier, overnight delivery service, or registered or certified mail as provided above, in which event the notice shall be deemed effective upon receipt of the facsimile transmission or email transmission between the hours of 9 a.m. and 5 p.m. in the time zone of the recipient), addressed to the addresses set forth on the signature page of this Agreement (or at such other address as a party may hereafter designate by prior notice to the other party as required hereby), and are effective on the earlier of the date of delivery or the date of first attempt to deliver (if delivery is refused).

Any notices sent to Donor shall also be sent to Lewis, Rice & Fingersh, L.C., Attn: David Lemkemeier, 600 Washington Avenue, Suite 2500, St. Louis, Missouri 63101; Fax: (314) 612-7636; Email: dlemkemeier@lewisrice.com.

Any notices sent to Donee shall also be sent to Robert L. Hartzog, Attorney At Law, P.O. Box 127, Glencoe, Mo. 63038; Fax:636-451-2027; Email: RLH@dearingandhartzog.com.

12. Assignment. Neither party shall assign all or any part of its rights, interests, or obligations hereunder to another party without the written consent of the other party.

13. Binding on Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto.

14. Further Assurances. The parties will execute and deliver such further instruments and do such further acts and things as may be reasonably required to carry out the intent and purpose of this Agreement.

15. Severability. Any provision of this Agreement that shall be prohibited or unenforceable shall be deemed ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

16. Business Day. If any day on which any notice must be sent or on which any time period described herein commences or ends is not a business day, then such day will be deemed for all purposes of this Agreement to fall on the next succeeding business day.

17. Entire Agreement. This Agreement constitutes the entire understanding of the parties and neither party shall be bound by any matter within the subject thereof unless expressly set forth in this Agreement or in a written amendment executed by and between the parties.

18. Execution in Counterparts. This Agreement may be executed in counterpart originals, each of which when duly executed and delivered shall be deemed an original and all of which when taken together shall constitute one instrument. This Agreement may be signed and transmitted by facsimile machine or electronic mail, and if so, is to be treated as an original document, and the signature of any party thereon is to be considered as an original signature.

19. Survival. The terms and conditions contained herein shall survive the Closing and delivery of the Deed.

20. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Missouri.

[Remainder of page intentionally left blank.]

In Witness Whereof, the parties have caused their duly authorized representatives to execute this Agreement as of the date first above written.

DONEE:

VILLAGE OF TWIN OAKS

By: Dennis L. Whitmore
_____, Chairman

ATTEST: Kathy A. Runge
Village Clerk

Address:
Village of Twin Oaks
1393 Big Bend Road, Suite F
Twin Oaks, MO 63021
Attn: Village Clerk/Controller
Fax: 636-225-6547
Email: krunge@vil.twin-oaks.mo.us

DONOR:

TWIN OAKS - MANCHESTER, LLC

By: [Signature]
Name: Marc Goldstein
Title: _____

Address:
Attn: Marc Goldstein
135 North Meramec Avenue
St. Louis, MO 63105
Fax: 314-727-2434
Email: mgoldstein@covingtonrealtypartners.com

EXHIBIT A

Legal Description

Lot 1 of the Twin Oaks Center Subdivision, as recorded in Plat Book 352, page 889 of the St. Louis County, Missouri Recorder of Deeds Office.

EXHIBIT B

Form of Letter from Donee to Donor

[Insert Donee Letterhead]

[Date of Closing]

[Donor Address]

Re: Property Donation

Dear _____:

_____ (“Donee”) hereby confirms the following information to _____ (“Donor”). Donee’s address is _____, and Donee’s federal identification number is _____.

Donee has accepted from Donor a donation of that certain real property located at _____ (the “Property”). The Property has an appraised value of \$ _____, pursuant to an appraisal dated _____, 2014, performed by _____.

The Property was donated by Donor and accepted as a gift by Donee with no strings attached or encumbrances or obligations imposed by Donor in connection therewith. The Property was donated to Donee with nothing given in return to Donor.

This letter is given by Donee to Donor to confirm the donation of the Property, and the party signing below on behalf of Donee is duly authorized to execute and deliver this letter on behalf of Donee.

Sincerely,

Title: _____

EXHIBIT C

**FIRST AMENDMENT TO
RESTRICTION AND EASEMENT AGREEMENT**

This First Amendment to Restriction and Easement Agreement, made and entered into this _____ day of _____, 2014 by and between USR-Desco Twin Oaks, L.L.C., a Delaware limited liability company (“Developer”) and Twin Oaks-Manchester, LLC, a _____ limited liability company (“Purchaser”), and

WHEREAS, Developer (as successor in interest to SM Properties Twin Oaks, L.L.C.) and Purchaser (as successor in interest to Bank of America, N.A.) entered into a Restriction and Easement Agreement (the “REA”) on November 30, 2004, in conjunction with Purchaser’s acquisition of real property within the Twin Oaks Shopping Center, which acquired parcel is legally described on Exhibit A attached hereto (the “Purchaser Parcel”); and

WHEREAS, the OEA provides, among other things, allowable uses for the Purchaser Parcel, as well as certain uses which are prohibited thereon; and

WHEREAS, said Agreement permits its amendment by document in writing to be signed by the parties; and

WHEREAS, the parties desire to amend certain provisions of said document.

NOW THEREFORE, the parties hereto agree as follows:

1. From and after the date of this Amendment, the Purchaser Parcel may be used for general office use associated with a municipal government center for the Village of Twin Oaks, Missouri, subject to all remaining terms and conditions of the REA, including, without limitation, those contained in Section 5.3, Section 5.4, Section 5.5 and Section 5.6.

2. The first sentence of section 5.10(a)(ii) shall be deleted in its entirety and of no further force or effect.

3. Subsection (10) contained in the second sentence of Section 5.10(a)(ii) shall be deleted in its entirety and the following shall be inserted in its place:

‘(10) any office use, classroom, meeting hall, health or exercise club, arcade, theater, bowling alley, bingo parlor, flea market, or any use or operation which may cause high traffic volume, provided, however, that so long as the same is incidental to the operation of a municipal government center, the Purchaser Parcel may be used for office use, or as a classroom or meeting hall;’

4. Except for the specific provisions contained in this First Amendment, the REA currently existing shall remain in full force and effect according to its original

terms.

Executed as of the day and year first above written:

USR-DESCO TWIN OAKS, LLC, a Delaware limited liability company

By: USR-Desco Member, LLC, a Delaware limited liability company, its sole member

By: USR-Desco, LLC, a Delaware limited liability company, its sole member

By: Desco 2, LLC, a Missouri limited liability company, its managing member

By: The DESCO Group, Inc., a Missouri corporation, its sole manager

By: _____

Name: Mark J. Schnuck

Title: President

Twin Oaks-Manchester, LLC, a _____ limited liability company

By:

Name: _____

Title: _____

STATE OF MISSOURI)

) SS.
COUNTY OF ST. LOUIS)

On this ____ day of _____, 2014, before me personally appeared _____ to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as the _____ of USR-Desco Twin Oaks, L.L.C. a Delaware limited liability company, and acknowledged that the foregoing instrument was executed as the free act and deed of said limited liability company.

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

Notary Public

(SEAL)

My term expires: _____

STATE OF MISSOURI)

) SS.
COUNTY OF ST. LOUIS)

On this ____ day of _____, 2014, before me personally appeared _____, to be known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as the _____ of _____, and acknowledged that the foregoing instrument was executed as the free act and deed of said association.

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

Notary Public

(SEAL)

My term expires: _____

LEWIS RICE

F I N G E R S H

Attorneys at Law

600 Washington Avenue
Suite 2500
St. Louis, Missouri 63101
www.lewisrice.com

David B. Lemkemeier
DLemkemeier@lewisrice.com
314.444.7636 (direct)
314.612.7636 (fax)

August 26, 2014

VIA FEDEX

Sharon Ratliff
Village of Twin Oaks
1393 Big Bend Road, Suite F
Twin Oaks, MO 63021

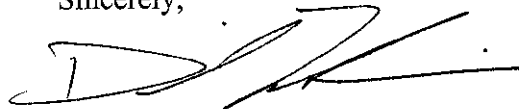
Re: Village of Twin Oaks / Twin Oaks – Manchester, LLC

Dear Sharon:

Enclosed for your records please find one (1) fully executed original of the Donation Agreement in connection with the above referenced matter.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



David B. Lemkemeier

DBL:dvh

Enclosures

Established 1909



1393 Big Bend Road, Suite F • Twin Oaks, MO 63021
(636) 225-7873 • fax (636) 225-6547 • www.vil.twin-oaks.mo.us

August 21, 2014

David B. Lemkemeier
600 Washington Avenue
Suite 2500
St. Louis, MO 63101-1311

Dear Mr. Lemkemeier:

Enclosed please find two copies of the "Donation Agreement" between Twin-Oaks-Manchester, LLC and the Village of Twin Oaks. I have also included a certified copy of the ordinance that the Village of Twin Oaks Trustees approved. Upon signature of the owner for Twin Oaks-Manchester, LLC's, please forward a copy back to us and keep one copy for your records.

If you have any questions, please do not hesitate to contact me at 636-225-7873.

Sincerely,

Sharon Ratliff, MCM/MRCC
Assistant Village Clerk

Enclosures