

Teresa Mollette

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Correspondence#: 08-001

February 11, 2008

Michael Jones, Solicitor
728 Second Street
Portsmouth, Ohio 45662

Dear Mr. Jones

Re: Marting Foundation Grant and Settlement Agreement Time Limitation

First Ward City Council appointee Michael Mearan publicly declared during the March 12, 2007, City Council Meeting having "hit a milestone" with regard to the Marting building saying, "the city only has a year left on its agreement with the Foundation". I believe Mr. Mearan appears to be guilty of fuzzy math. By my computation the city should have approximately three and one-half months to come up with a plan before losing the \$2 million that was swindled from the taxpayers of Portsmouth and then misappropriated, which created the Marting charade.

The relevant section from the final Grant and Settlement Agreement dated May 24 2005, between the Marting Foundation and the City of Portsmouth, representing the city of Portsmouth was Mayor Kalb, is as follows:

Item 18. Delivery and Conditions, Section d (page 9) Time Limitation (Attachment 1):

"In the event each and every condition to disbursement of the Foundation Assets set forth in this Paragraph of this Agreement has not been fully satisfied within thirty-six (36) calendar months next following recordation of the Quitclaim described in Paragraph 8 hereof, the undertaking of the Foundation to grant the Foundation Assets shall terminate, and the City shall forfeit any and all rights to grants from the Foundation for the purposes mentioned herein as to the Foundation Assets."

The Quit Claim deed (Attachment 2) signed on May 31, 2005, was recorded and filed in the Scioto County Recorder's office on June 2, 2005. Thirty-six months from June 2, 2005, is June 2, 2008, not March 2008. By my calculations, the city of Portsmouth has until June 2, 2008 to come-up with a plan before the 36 months run out.

I believe that, as City Solicitor, you have the responsibility to clarify this matter and, if Mr. Mearan's math is wrong, to correct him and any others, including the Marting Foundation, who may mistakenly believe the deadline is March 14, 2008.

Sincerely,


Teresa Mollette

tkm

Attachment 1 - Grant and Settlement Agreement, May 24, 2005 (2 pages)
Attachment 2 - Quit Claim deed, recorded on June 2, 2005 (2 pages)

Cc: Mayor Jim Kalb
Jo Ann Aeh, City Clerk
Council (6)

CONVEYANCE YLL
INDEXED sc
RECORDED sc
PROOF READ _____
ABSTRACTED _____
PAGED _____

PRESENTED FOR RECORD

OR BOOK NO. 4 PAGE 41

2005 JUN -2 PM 3:48

IRENE ASHLEY
SCIOTO COUNTY RECORDER**QUIT CLAIM**

Ohio Statutory Form

#60.00

BER
005053**Know All Men By These Presents**

THAT The Marting Brothers Company aka The Marting Bros. Company, an Ohio corporation in dissolution acting in accord with Section 1701.88 of the Ohio Revised Code, and Richard D. Marting Foundation, Inc., an Ohio nonprofit corporation, Grantors, of Scioto County, State of Ohio, grant to City of Portsmouth, Ohio, an Ohio municipal corporation, Grantee, whose tax mailing address is 728 Second Street, Room 1, Portsmouth, Ohio 45662, the following real property:

OK Situate in the City of Portsmouth, County of Scioto and State of Ohio, to-wit:

PARCEL ONE:

First Tract: The South Twenty-eight and Nineteen one-hundredths (28 19/100) feet of the North Sixty-seven and Thirty-one one-hundredths (67 31/100) feet of In-Lot Number Two Hundred and Eighty-eight (288) in Oldfields Canal Addition in and to the said City of Portsmouth, and being Twenty-eight and Nineteen One-hundredths (28 19/100) feet front on the West side of Chillicothe Street, between Fifth and Sixth Streets, and extending back and West the same width Eighty-two and One-half (82 1/2) feet.

Second Tract: The South Twenty-eight and Nineteen One-hundredths (28 19/100) feet of the North Sixty Seven and Thirty-one one-hundredths (67 31/100) feet of the East one-half (1/2) of the East one-half (1/2) of In-Lot Number Three Hundred and One (301) in Oldfield's Canal Addition in and to the said City of Portsmouth, Ohio.

Third Tract: The West Sixty-one (61) feet Three (3) inches of In-Lot Number Three Hundred and One (301) in Oldfield's Canal Addition in and to said City and being Sixty-one (61) feet three (3) inches front on the South side of Sixth Street between Chillicothe and Washington Streets and extending back and South the same width One Hundred and Seven (107) feet Three (3) inches to an alley.

Said three Tracts of Real Estate are more particularly described as follows: Beginning at a point in the West line of Chillicothe Street Thirty-nine and Twelve One-hundredths (39 12/100) feet south of the South West corner of Sixth and Chillicothe Streets; thence West

WITNESS its hands this 31st day of May, 2005.

Transferred 5-2-05

This Conveyance has been examined and the Grantor has complied with section 310.202 of the Revised Code.

FEE \$
 EXEMPT. C.....

DAVID L. GREEN, County Auditor

David L Green Sr

THE MARTING BROTHERS COMPANY
AKA THE MARTING BROS. COMPANY

By *Julia S. Wisniewski*
Julia S. Wisniewski
Its Chairperson

RICHARD D. MARTING FOUNDATION,
INC.

By *Julia S. Wisniewski*
Julia S. Wisniewski
Its Chairperson

STATE OF OHIO, COUNTY OF SCIOTO, SS:

BEFORE ME, a Notary Public, in and for said County and State, personally appeared the above named The Marting Brothers Company aka The Marting Bros. Company, by Julia S. Wisniewski, its Chairperson, who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed of her personally and as such Chairperson.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 31st day of May, 2005.

Amy C. Sand



AMY C. SAND
Notary Public, State of Ohio
My Commission Expires Nov. 27, 2005

STATE OF OHIO, COUNTY OF SCIOTO, SS:

BEFORE ME, a Notary Public, in and for said County and State, personally appeared the above named Richard D. Marting Foundation, Inc., by Julia S. Wisniewski, its Chairperson, who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed of her personally and as such Chairperson.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 31st day of May, 2005.

Amy C. Sand



AMY C. SAND
Notary Public, State of Ohio
My Commission Expires Nov. 27, 2005

This Instrument Prepared By:

JOHNSON & OLIVER
By: Stephen L. Oliver

GRANT AND SETTLEMENT AGREEMENT

THIS GRANT AND SETTLEMENT AGREEMENT made and concluded at Portsmouth, Ohio, this 24th day of May, 2005, by and among City of Portsmouth, Ohio, a municipal corporation (hereinafter the "City"), Richard D. Marting Foundation, Inc., an Ohio corporation not for profit (hereinafter the "Foundation"), and The Marting Brothers Company, an Ohio corporation in dissolution, acting pursuant to the authority contained in Section 1701.88 of the Ohio Revised Code (hereinafter "Marting Brothers").

1. Recitations. On May 29, 2002, the City, Marting Brothers and the Foundation entered into a Real Estate Purchase Agreement (the "Purchase Agreement") for the sale of certain real property described in an attachment hereto, marked Exhibit "A", and incorporated by reference herein (hereinafter the "Marting Properties"). Pursuant to the Purchase Agreement, on June 4, 2002, Marting Brothers executed a deed to the City, which was subsequently recorded on June 4, 2002, in Deed Volume 971, Page 448, Recorder's Office, Scioto County, Ohio (the "Deed"). Prior to such recording, the City paid the purchase price pursuant to the Purchase Agreement. On or about May 28, 2004, Teresa Mollette and Robert Mollette filed an action against Portsmouth City Council captioned Teresa Mollette et al., vs. Portsmouth City Council, Case No. 04-CIH-110 (the "Mollette Litigation"). On November 23, 2004, the trial judge in the Mollette Litigation issued a Judgment Entry Nunc Pro Tunc, reference to which is hereby made. The Foundation was granted leave to intervene to appeal in the Mollette Litigation

and coherent plans for one (1) or more of the Permitted Uses (as defined above). In this regard, for any Permitted Use, the City agrees to prepare and deliver to the Foundation the following:

- i) A specific plan for a Permitted Use represented by architectural plans and written specifications.
 - ii) A source and use of funds analysis for each Permitted Use showing definitive costs, certified by an architect or engineer, and all sources of funding, which may include the Foundation Assets, showing the existence of financial resources which, when combined with the Foundation Assets, shall be adequate to fund the total cost of the Permitted Use. If the proposed Permitted Use involves occupancy by a party other than the City or an agency thereof (e.g., retail), the plan shall include a legally enforceable commitment from a financially solvent regional or national company or companies.
 - iii) A construction schedule.
 - iv) A commitment by the City that payment for construction of the Permitted Use shall be made from a construction fund as construction progresses, pursuant to certifications prepared by a project architect.
- c) **Delivery.** Upon satisfaction of the conditions defined in Paragraph 18 b) above, the Foundation shall deliver the Foundation Assets to the City in increments as construction of a Permitted Use progresses, or may deposit the Foundation Assets, in whole or in part, in a construction fund to be held either by the City or a third party, for a Permitted Use, in accord with the source and use of funds analysis described above.
- d) **Time Limitation.** In the event each and every condition to disbursement of the Foundation Assets set forth in this Paragraph of this Agreement has not been fully satisfied within thirty-six (36) calendar months next following recordation of the Quitclaim described in Paragraph 8 hereof, the undertaking of the Foundation to grant the Foundation Assets shall terminate, and the City shall forfeit any and all rights to grants from the Foundation for the purposes mentioned herein as to the Foundation Assets.
- e) **Market Understandings.** The parties hereto understand and acknowledge that the description of the Foundation Assets set forth above is based on face values, and that market values of the Foundation Assets may vary based upon market conditions, costs and expenses of the Foundation related to expenses of litigation, legal and accounting fees, reporting requirements, liquidation, dissolution