

ORDINANCE NO. 2014 - 92

**AUTHORIZING THE CITY MANAGER TO ENTER INTO A
COOPERATIVE EXCHANGE AGREEMENT WITH RCR/MSR
INVESTMENTS II, LLC**

BE IT ORDAINED by the Council of the City of Mason, Ohio, six members elected thereto concurring:

Section 1. That the City Manager is hereby authorized to enter into a Cooperative Exchange Agreement with RCR/MSR Investments II, LLC, substantially in the form of the Agreement attached hereto as Exhibit "A" and incorporated herein by reference.

Section 2. That the City Manager is further authorized to execute any and all documents in order to carry out the terms of the Agreement.

Section 3. That the Finance Director to make any and all payments to RCR/MSR Investments II, LLC, pursuant to the terms of said Agreement.

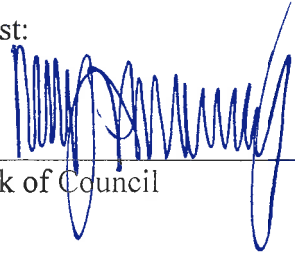
Section 4. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed this 13th day of October, 2014.



Mayor

Attest:



Clerk of Council

10/2/14
1870252.1

CO-OPERATIVE EXCHANGE AGREEMENT

This Co-Operative Exchange Agreement (the "Agreement") is hereby entered into by and between the City of Mason, Ohio (the "Mason"), RCR/MSR Investments II, LLC ("Rhein"), as of the later date of execution by the parties set forth below.

WHEREAS, upon passage of legislation approved by the City Council of Mason, Mason, may exchange and transfer any real property belonging to Mason; and

WHEREAS, Mason is the owner of the real property identified by the Warren County, Ohio Auditor as Parcel No. 12193250010 and is described in Exhibit "A" attached hereto and recorded at Official Record Book 5366, page 142, Warren County, Ohio records (the "Mason Property"); and

WHEREAS, in exchange for the Mason Property Mason and Rhein shall also provide additional consideration to one another as more fully set forth below, (collectively, the "Exchange"); and

NOW, THEREFORE, in exchange of the mutual promises and covenants below, as well as other consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the following terms and conditions:

1. Mason shall:
 - A. From the Mason Property, dedicate the necessary right of way for the extension of Stone Ridge Drive and S.R. 741 Improvements, as may be necessary as determined by Mason, and take all other actions necessary to dedicate such property as a public roadway; and
 - B. Subdivide the Mason Property into three buildable lots and obtain approval for the preliminary plat and final plat from the City of Mason, Ohio Planning Commission and City Council; and
 - C. After the recordation of final plat identified in section 1.(B) above, convey the balance of Mason Property in its current "AS IS, WHERE IS, WITH ALL FAULTS," condition, to Rhein, by limited warranty deed, in exchange for the payment by Rhein to Mason of the sum of \$165,000.00 at a closing to occur on or before July 1, 2015; and
 - D. Construct the extension of Stone Ridge Drive as generally depicted on Exhibit "B" by December 31, 2015. Rhein shall have the right to review and comment on the related engineering drawings but shall not have and final approval rights; and
 - E. Provide Rhein with Building Permits in an amount not to exceed \$20,000.00; and



F. Construct the Route 741 median in front of Carmelle Woods Drive by December 31, 2015.

G. Give Rhein the opportunity to review and approve:

1. the Environmental Phase I report performed on the Mason Property, and
2. the title examination report performed on the Mason Property and/or Mason's Owner's Policy of Title Insurance, which was prepared for Mason's sole benefit and use and which Rhein may not rely upon.

In the event that the above reports are not satisfactory to Rhein, then the parties may renegotiate the terms of this Agreement only as to the effect of the results of these reports.

2. Rhein shall:

A. Pay Mason the sum of \$165,000.00 for the balance of the Mason Property after recordation of record plat by Mason; and

B. Pay Mason the sum of \$10,000.00, in addition to the previously identified sum of \$165,000.00, toward the cost of Mason constructing the Route 741 median at the front entrance of Carmelle Woods Drive; and

C. Construct/install the entrance wall to Stone Ridge Drive, including placement of landscaping, etc. and contribute expenses toward maintenance and landscaping, etc. until such time as maintenance assumed by the appropriate homeowners' association.

3. Mason and Rhein agree that each party shall bear its own legal costs associated with this Agreement.

4. The parties further agree that with the execution of this Agreement, but subject to any necessary approval from Mason Planning Commission, the temporary connection from the future phase of Reserves of Carmelle to Mason-Morrow-Millgrove Road will not be required.

4. The rights and obligations set forth in this Agreement as to the Exchange shall be subject to renegotiation in the event that Greater Cincinnati Water Works ("GCWW") requires looping water under Route 741.

5. The rights and obligations of the parties to this Agreement shall be subject to approval by Mason City Council and the terms and conditions hereof and will inure to the benefit of, and be binding on, the respective successors and assigns.

6. This Agreement between the parties contains the entire agreement of the parties with respect to the subject matter. This Agreement may not be modified except by a written document signed by all parties.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

8. This Agreement may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

The remainder of this page intentionally left blank. Signature page to follow.

CITY OF MASON, OHIO:

By: _____
Eric Hansen, City Manager

Date: _____

RCR/MSR INVESTMENTS II, LLC

By: _____

Its: _____

Date: _____

Approved as to form:

Jeffrey D. Forbes, Law Director

EXHIBIT A

Mason Property

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EXHIBIT B

Depiction of Stone Ridge Drive Proposed Right-of-Way

10/1/2014

10/1/2014