

**VILLAGE OF SOUTH LEBANON, OHIO  
RESOLUTION NO. 2021-34**

**A RESOLUTION AUTHORIZING THE MAYOR AND FISCAL OFFICER TO SIGN  
A PRE-ANNEXATION AGREEMENT WITH 1770 MMM, LLC, AND DECLARING  
AN EMERGENCY**

**WHEREAS**, 1770 MMM, LLC is the current owner of 1770 Mason-Morrow-Millgrove Road containing 6.107 acres in Union Township, Warren County, Ohio, (Sidwell# 12-07-100-003-1 & 12-07-100-003-2); and

**WHEREAS**, 1770 MMM, LLC is requesting to annex to the Village of South Lebanon; and

**WHEREAS**, immediate action is required to expedite filing of annexation documents with the Warren County Board of Commissioners, and such action is necessary in order to preserve the public peace, health, safety or welfare of the Village.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the Village of South Lebanon, at least two-thirds of all members elected thereto concurring:

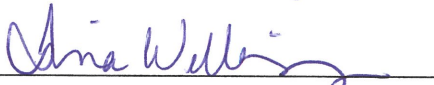
**Section 1.** The Village Council does hereby authorize the Mayor and Fiscal Officer to execute the attached Agreement, as approved as to form by the Village Solicitor, attached hereto and incorporated by reference.


**Section 2.** That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

**Section 3.** That this Resolution is hereby declared to be an emergency measure in accordance with Ohio Rev. Code § 731.30 for the immediate preservation of the public peace, health, safety and general welfare; and, this Resolution shall be in full force and effective immediately upon its passage.

**Section 4.** That it is found and determined that all formal actions of the Council concerning and relating to passing this Resolution were adopted in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 5<sup>th</sup> day of August, 2021.


Attest:   
Petrina D. Williams, Fiscal Officer/Clerk

  
James D. Smith, Mayor

Rules Suspended: / /2021 (if applicable)	Effective Date – / /2021
Vote - <u>6</u> Yeas ___ Nays	
First Reading – / /2021	Effective Date – / /2021
Second Reading – / /2021	
Third Reading – / /2021	
Vote - ___ Yeas ___ Nays	

Prepared by and approved as to form:

ANDREW P. MEIER  
VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By:   
Date: 8/5/2021

## PRE-ANNEXATION AGREEMENT

This Pre-Annexation Agreement (hereinafter the "Agreement") is entered into by and between the Village of South Lebanon, Ohio, an Ohio municipal corporation (hereinafter "Village"), and 1770 MMM, LLC, an Ohio limited liability company, with a mailing address of ~~1770 Mason-Morrow-Millgrove Rd., Lebanon, Ohio 45036~~ (hereinafter "1770 MMM" or "Owner") and shall be effective upon the date last executed below.

### R E C I T A L S

WHEREAS, 1770 MMM, LLC is the owner of approximately 6.603 acres (two parcels) of land in Union Township, Warren County, Ohio located under, adjacent to and north of West Mason-Morrow-Millgrove Road, whose street address is 1770 W. Mason-Morrow-Millgrove Road, being a 6.107 acre parcel (Sidwell No. 1207100003-1, Account No. 6603246) and a 0.496 acre parcel (Sidwell No. 1207100003-2, Account No. 6603211), (hereinafter "Property"); and

WHEREAS, the corporate offices and operations of HuDawn Construction are located on the Property; and

WHEREAS, the Property is across a portion of West Mason-Morrow-Millgrove Road from the corporate limits of the Village; and

WHEREAS, the Owner desires to obtain water and sewer service from the Village; and

WHEREAS, the Village requires that all users of its municipal services be located within the corporate limits of the Village; and

WHEREAS, the Village is willing to make municipal services available to the Property, including water and sewer service, upon its annexation into the Village as provided in the ordinances of the Village upon the same terms and conditions as are afforded to other properties within the Village except as otherwise provided in this Agreement; and

WHEREAS, the Property would benefit from municipal services provided by the Village and Owner desires to annex its property to the Village; and

WHEREAS, the mutual purposes of both Village and 1770 MMM can be accomplished through the annexation of Owner's property, together with others, into the Village.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound, the Village and the Owner hereby agree and bind themselves, their agents, officers, elected officials, employees, heirs, devisees, successors and assigns as follows:

1. Annexation Petition. The Village shall, at its expense, prepare a petition for annexation (hereinafter the "Petition"), including a map, plat, and description of the annexation area, and will provide it to the Owner for signature. The Owner will sign the Petition agreeing to

annex its Property to the Village and appointing James D. Smith as its agent. Owner understands that the Petition will include its total 6.603 acres Property identified above and shown on attached Exhibit A. Owner understands and agrees that its Property may be included in an annexation territory and petition that includes other property to be annexed to the Village. Owner also understands that it is anticipated that the Petition will be filed as an Expedited Type-2, 100% owner supported annexation provided for in Ohio Revised Code Section 709.023 and agrees to the filing of a petition for annexation under any of the statutory processes provided for in Ohio, including an expedited petition process.

2. Processing and Support of Petition. Owner agrees to support the Petition and not remove its name from the Petition so long as its signature remains effective within the statutory period provided by law before the petition is filed and agrees to continue to support the annexation to the Village throughout the annexation process after the petition is filed, including any appeal, mandamus or other court action. Owner further agrees to sign and support a new annexation petition, should the initial petition fail or should a new petition become necessary to accomplish the annexation, even if the annexation territory is reconfigured, as long as this Agreement is in effect. All expenses connected with the preparation of the petition, map and legal description and any annexation proceedings before the county commissioners will be borne by the Village. The Village may, in its sole discretion, pay all costs, fees and expenses associated with any appeal or court action relating to the annexation and Owner agrees to participate in those proceedings and support the annexation for so long as the Village pays the expenses. Should the Village elect, at any time, to stop paying the costs, fees and expenses associated with any challenges to the annexation, Owner may continue to pursue the annexation, at Owner's expense, and the Village agrees that it will support the annexation for so long as Owner pays all costs, fees and expenses associated with the annexation.

3. Service Resolution. The Village agrees that it shall timely enact and file with the Warren County Board of County Commissioners the appropriate ordinance or resolution required by law indicating what services the Village will provide to the annexation territory. Services shall be provided to the Property upon the same terms and conditions as are afforded to other properties within the Village except as otherwise provided in this Agreement.

4. Acceptance of Annexation. The Village agrees that it is in the interest of the Village to have the Property annexed into the Village. Upon the approval of the annexation by the board of county commissioners and/or a court of law and the village fiscal officer's receipt of the record of the annexation proceedings from the clerk of the Warren County Board of County Commissioners, the Village shall timely consider and accept the annexation and process it according to law.

5. Water and Sanitary Sewer. The Village agrees that it has the capacity necessary to supply both water and sanitary sewer to the Property to support its existing use. The parties acknowledge that the Village has a capital improvements project that includes extending water and sewer lines adjacent to the Property. Upon acceptance of the annexation by the Village, the Village shall make water and sanitary sewer available to the property within a reasonable time and shall waive its fee for one water tap and one sanitary sewer tap for the Property for the current business use on the Property. The Owner shall be responsible for extending service lines from the City's water and sewer lines to service its Property. In the event that Village sewer and water service is

available to the Property after the Warren County Commissioners have approved the annexation of territory that includes the Property to the Village but before the first available date Ohio statutes permit the acceptance of such annexation Village Council, and no appeal or challenge to the annexation has been filed, the Village agrees that it will permit Owner to connect its Property to Village water and sewer service pending acceptance of the annexation by Village Council.

6. Zoning. The Property is currently subject to zoning in unincorporated Union Township in Warren County, Ohio and is zoned Community Commercial Business Zone (B2). Section 15.7.13 of the Village Zoning Ordinance provides that, upon annexation, the Property will be classified as being in whichever Village zoning district that most closely resembles the zoning district that existed in the annexation. The Village agrees that the Village zoning classification that most closely resembles the county zoning district that currently applies to the property is the B-2 General Business District in the Village.

7. Successors and Assigns. This Agreement underwrites an obligation of the parties hereunder, shall be subject to the terms and conditions hereof and inure to the benefit of and be binding on the respective successors and assigns.

8. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings and agreements between the parties. This Agreement may be amended or modified only by a writing executed by the Parties and their duly authorized officers or representatives where applicable.

9. Severability. If for any reason one or more articles, sections, sentences, clauses or parts of this Agreement are held invalid, void or unenforceable by any court of law or duly authorized public body to any extent, such provision shall be enforced to the greatest extent permitted by law. Such determination shall not affect, impair, invalidate or prejudice in any way the validity of the remaining portions of this Agreement in any other instance, which shall be enforced to the greatest extent permitted by law.

10. No Assignment. This Agreement or any of the rights or obligations hereunder shall not be assigned by Owner without the express written consent of the Village.

11. Binding Effect. This Agreement shall be binding upon the parties, Owner's Property, and shall run with the land and shall be binding upon and insure to the benefit of the parties hereto and their respective successors and/or permitted assigns. This Agreement comprises the complete agreement between the parties. There is no guarantee that the property will be annexed. If a dispute arises, the appropriate courts of Warren County, Ohio shall have jurisdiction to resolve any disputes unless the parties agree to mediate or arbitrate the disputed matter.

12. Applicable Law. This Agreement shall be governed by, construed, and interpreted in accordance with the ordinances of the Village of South Lebanon and the laws of the State of Ohio. The parties hereto further agree that any action, suit or proceeding in respect of or arising out of this Agreement, its validity or performance shall be initiated and prosecuted as to all parties and their heirs, successors and assigns and consent to and submit to the exercise of jurisdiction

over its person and the Property by any state court with original jurisdiction and venue in Warren County Ohio having jurisdiction over the subject matter.

13. Headings and Captions. Headings and captions in this Pre-Annexation Agreement are for the convenience of reference only and shall not limit or affect the meaning hereof.

14. Waiver. No delay or failure on the part of any party hereto in exercising any right, power, or privilege under this Agreement or under any other instruments given in connection with or pursuant to this Agreement shall impair any such right, power, or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power, or privilege shall preclude the further exercise of such right, power, or privilege, or the exercise of any other right, power or privilege.

15. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument.

16. Construction/Entire Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of Ohio. This Agreement shall constitute the entire agreement of the Village and the Owner, and no oral, verbal, or implied agreement or understanding shall cancel, modify, or vary the terms of this Agreement.

The parties represent that each of the undersigned has the authority and capacity to sign on behalf of each of them in the capacity shown below and executed this Agreement in such authorized capacity on date written below. This Agreement is effective on the date last executed.

**VILLAGE OF SOUTH LEBANON,  
OHIO, an Ohio municipal corporation**

**1770 MMM, LLC, an Ohio limited  
liability company**

By: James D. Smith  
Its: Mayor

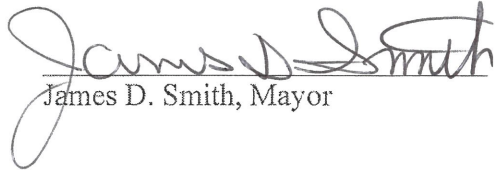
By: Chris Nahr  
Its: member

Date: 8/5/2021

Date: 7/31/21

This Agreement was authorized by the Village of South Lebanon by Resolution No. 2021-34 adopted on August 5, 2021 at an open meeting and in accordance with the laws of the State of Ohio, and the ordinances and Charter of the Village of South Lebanon, is executed by the Mayor on this 5<sup>th</sup> day of August, 2021 and is effective upon the date provided above.

VILLAGE OF SOUTH LEBANON, OHIO

By:   
James D. Smith, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Andrew Meier  
Village Law Director

