

CITY OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2022-11

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

WHEREAS, MNR Investment LLC is the current owner of a certain property on Mason-Morrow-Millgrove Road containing 1.032 acres in Union Township, Warren County, Ohio, (Sidwell# 12-01-207-003); and

WHEREAS, MNR Investment LLC is requesting to annex to the City 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 City.

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

Section 1. The City Council does hereby authorize the Mayor and Fiscal Officer to execute the attached Agreement, as approved as to form by the City 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.

Resolution No. 2022-11

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Adopted this 17th day of March, 2022.

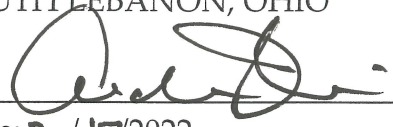
Attest: 
Petrina D. Williams, Fiscal Officer/Clerk


James D. Smith, Mayor

Rules Suspended: <u>3/17</u> 2022 (if applicable)	Effective Date - <u>3/17</u> 2022
Vote - ___ Yeas ___ Nays	
First Reading - / /2022	Effective Date - / /2022
Second Reading - / /2022	
Third Reading - / /2022	
Vote - ___ Yeas ___ Nays	

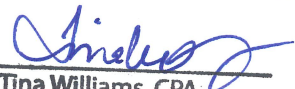
Prepared by and approved as to form:

ANDREW P. MEIER
CITY SOLICITOR
SOUTH LEBANON, OHIO

By: 
Date: 3/17/2022

CERTIFICATE OF POSTING

I, Tina Williams, CPA, Fiscal Officer of the City of South Lebanon, Ohio do hereby certify I posted a true and accurate copy of this ordinance or resolution, summary of ordinance or resolution, or statement, order, proclamation, notice or report, at five public places within the City as authorized by Section 731.25 of the Ohio Revised Code and Ordinance 98-08 of the City of South Lebanon, Ohio

3/18/22 
Date Tina Williams, CPA
Fiscal Officer
City of South Lebanon, Ohio

AGREEMENT

This Agreement is made and entered into on this 4TH day of MARCH 2022, 2022, by and between the City of South Lebanon, Ohio, an Ohio municipal corporation (“South Lebanon” or “City”) and MNR Investment LLC, an Ohio limited liability company (“the Owner”) for the purpose of providing certain municipal services to real estate owned by MNR Investment LLC and located on Mason-Morrow-Millgrove Road, South Lebanon, Ohio 45065 (the “MNR Property”) upon its annexation to South Lebanon, which real estate is more particularly described and shown in “Exhibit A” attached hereto.

WHEREAS, the MNR property is approximately 1.032 acres and is now primarily located in unincorporated Union Township, Warren County, Ohio (0.894 acres) with a small approximately 0.138 acre corner of the MNR Property in South Lebanon being Warren County Auditor’s Parcel No. 12-01-207-003; and

WHEREAS, the Owner seeks to annex to South Lebanon and obtain sewer and water from South Lebanon for the entire MNR Property that is located in close proximity to but is not currently within the South Lebanon corporate limits or South Lebanon’s sewer and water service area; and

WHEREAS, South Lebanon requires that new users of South Lebanon municipal sewer and water services be located within the corporate limits of South Lebanon.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained to be performed by the parties hereto, it is agreed by South Lebanon and the Owner as follows:

(1) **Annexation**

(A) The Owner shall petition for annexation of all of the MNR Property to South Lebanon individually, at its sole cost and expense or together with other properties at a proportionately shared cost and expense at such time as South Lebanon may request annexation of all of the MNR Property. The Owner shall, within thirty (30) days following receipt of any written request for annexation from South Lebanon, cause a petition to be filed with the Warren County Board of Commissioners requesting annexation of its property together with any other area properties desiring to annex to South Lebanon, and will support such petition in any and all proceedings before the Warren County Board of Commissioners as may be necessary to accomplish annexation of all of the MNR Property to South Lebanon.

(B) The Owner may petition, at its sole cost and expense, for annexation of all of the MNR Property to South Lebanon at any time it deems annexation appropriate, and South Lebanon will support the petition in any and all proceedings before the Warren County Board of Commissioners and such other actions and/or proceedings as may be necessary to accomplish annexation of all of the MNR Property to South Lebanon.

(C) South Lebanon may, in its sole discretion and at its own cost, continue to support and/or prosecute the annexation in any other proceedings relating to the annexation beyond the proceedings before the Warren County Board of Commissioners, including any referendum or court proceedings, including mandamus, injunction and appeal, until the matter is finally determined beyond any right of referendum or appeal. The Owner agrees that it shall continue to sign, support and prosecute the annexation through the final conclusion of all proceedings, including any referendum or court proceedings for so long as South Lebanon elects to support the annexation at its cost, fees and expenses. The Owner may also independently support and defend the annexation at its cost irrespective of whether South Lebanon elects to proceed at the cost of the City and South Lebanon agrees to continue to support the annexation at Owner's cost.

(D) 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 City 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 and South Lebanon pays all expenses connected therewith. Should South Lebanon 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 South Lebanon agrees that it will support the annexation for so long as Owner pays all costs, fees and expenses associated with the annexation.

(2) **Commitments by South Lebanon**

(A) Service Resolution. The City 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 City 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 City except as otherwise provided in this Agreement.

(B) Acceptance of Annexation. The City agrees that it is in the interest of the City to have the Property annexed into the City. Upon the approval of the annexation by the Warren County Board of County Commissioners and/or a court of law and the City municipal clerk's receipt of the record of the annexation proceedings from the clerk of the Warren County Board of County Commissioners, the City shall timely consider and accept the annexation and process it according to law.

(C) Zoning. The MNR Property (now in Union Township) is currently zoned B-2 Community Commercial Businesses Zone. South Lebanon agrees that, upon annexation to South Lebanon and upon request of the Owner, staff shall recommend to the Planning Commission the South Lebanon zoning district that is most closely related to the existing Union Township B-2 Community Commercial Businesses zoning of the MNR Property. This Agreement is currently subject to Section 15.7.13(2) of the South Lebanon Zoning Code now in effect which provides that upon annexation, newly annexed property (the MNR Property) shall be classified as being in whichever district established by these Regulations most closely

resembles the zoning district that existed in the annexation as recommend by the Planning Commission and approved by Council. The parties agree that this Agreement shall remain subject to Section 15.7.13 currently in effect for the rezoning of the MNR Property upon annexation to South Lebanon, unless otherwise mutually agreed to by the parties in writing.

(D) Utilities. Upon completion of and acceptance of the annexation of the MNR Property by City Council beyond any right of referendum or appeal, the South Lebanon will make water and sanitary sewer available to the MNR Property within a reasonable time for the MNR Property for a business use permitted by the South Lebanon Zoning classification on the MNR Property. The Owner shall be responsible for extending service lines from the City's water and sewer lines to service its Property and shall pay all other costs and utility fees for water and sewer service in South Lebanon as provided and required by city ordinances (except for the payment of the tap fees provided herein).

(3) Binding Effect

This Agreement shall be a covenant running with the land and shall inure to the benefit of and be binding upon the MNR Property and the respective successors and assigns of the parties hereto. 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 mutually agree in writing to mediate or arbitrate the disputed matter.

(4) 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.

(5) Wording

Any word used in this Agreement shall be construed to mean either singular or plural as indicated by the number of signatures hereto.

(6) 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 South Lebanon and the Owner, and no oral, verbal, or implied agreement or understanding shall cancel, modify, or vary the terms of this Agreement. This Agreement may be amended or modified only by a writing executed by the Parties and their duly authorized officers or representatives where applicable.

(7) 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.

(8) Applicable Law.

This Agreement shall be governed by, construed, and interpreted in accordance with the ordinances of the City 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.

(9) 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.

(10) 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.


(11) Authority and Effective Date

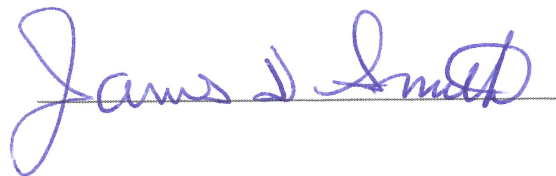
The parties represent that each of the undersigned has the authority and capacity to sign on behalf of each of them in the capacity shown below and executed this Agreement in such authorized capacity on date written below. This Agreement is effective on the date last executed.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed the day and year first written above.

WITNESS:

CITY OF SOUTH LEBANON, OHIO


Name Andrew P. Meier



WITNESS:

MNR INVESTMENT LLC

Name MAULIK PATEL

Maulik Patel

STATE OF OHIO

SS:

COUNTY OF WARREN

This instrument was acknowledged before me by _____,
the _____ of the City of South Lebanon, on this ____ day of
_____, 2022.

Notary Public

STATE OF OHIO

SS:

COUNTY OF Butler

This instrument was acknowledged before me by
Maulik Patel, the owner LLC
of MNR INVESTMENT LLC, on this 4th day of March, 2022.

Matthew Eakins
Notary Public

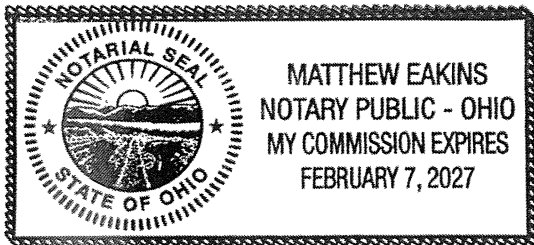


EXHIBIT A

Situated in Section 1, T4E, R3N, part Union Township and Part Village South Lebanon, Warren County, State of Ohio and more particularly described as follows:

Beginning at the northeast corner-of the grantor's property said corner being in the center line of Mason-Millgrove Road (sometimes known as Mason-South Lebanon Road) 59.0 feet west of the intersection of the center line of Lebanon Road (State Route 48) with the center line of Mason-Millgrove Road, measured along the center line of Mason-Millgrove Road; thence from said beginning point southwardly along the east-boundary line of the grantor's property 225.0 feet to a point; thence westwardly, parallel to the center line of Mason-Millgrove Road 200.0 feet to a point; thence northwardly, parallel to the east boundary line of the grantor's property 225.0 feet to a point in the center line of Mason-Millgrove Road; thence eastwardly along the center line of said road 200.0 feet to a point the-place of beginning containing 1.032 acres, more or less, subject to legal highways. Of the 1.032 acres, 0.894 acres is in Union Township and 0.138 acres is in Village South Lebanon

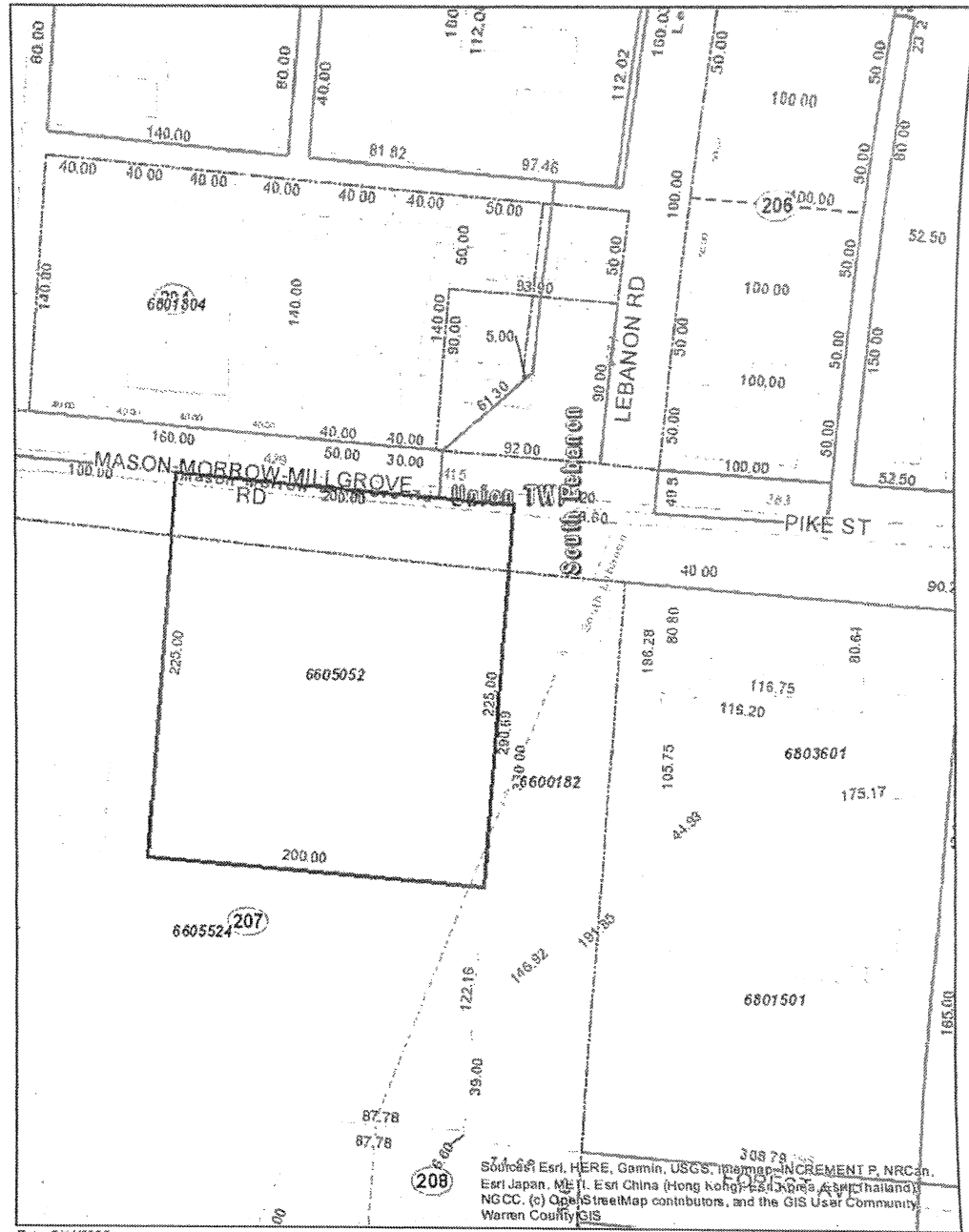
Subject to all easements, condition and restrictions of record and in existence.

It is the intention of the parties that any easement or other rights, recorded or unrecorded, in the above-described property held by the Duke Energy Ohio, Inc., or any other person or entity, are specifically excluded from this conveyance and shall continue to be separate and distinct rights in Duke Energy Ohio, Inc. or any other person or entity, as the case may be.

Grantor covenants specially that Grantor is lawfully seized of the estate hereby conveyed, that Grantor has full right and power to convey the same, and that the Property is free from all liens and encumbrances created by, through or under Grantor (but none others) except easements, restrictions, conditions and covenants, if any, currently of record or presently existing and real estate taxes and installments of assessments assessed but not yet due and payable, which have been adjusted between Grantor and Grantee, and all real estate taxes and assessments due and payable thereafter.

Being the same property acquired by The Cincinnati Gas & Electric Company, an Ohio corporation by deed dated June 15, 1955 and recorded June 24, 1955 in Deed Book 242, Page 443 of the Warren County Ohio Records. On September 19, 2006, The Cincinnati Gas & Electric Company changed its name with the Ohio Secretary of State to Duke Energy Ohio, Inc.

Property Address: 1.032 acres Mason-Millgrove Road, South Lebanon, Ohio
Parcel: 12-01-207-003



Date: 2/14/2022

Category of Lines	Symbol/Color	Description
Property Lines	Solid Line	Property Lines
Right of Way	Dashed Line	Right of Way
Utility Lines	Dotted Line	Utility Lines
Other	Other Symbols	Other

R Investment LLC (Auditor's Parcel No. 12-01-207-003)

The data was provided by Warren County GIS Department. It is the responsibility of the user to verify the accuracy of the data. Warren County GIS Department is not responsible for any errors or omissions in this data. The user assumes all liability for any use of this data. Warren County GIS Department is not responsible for any damages, including consequential damages, arising from the use of this data.

1 inch = 64 feet