

**CITY OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2022-41**

**A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE
A DONATION AGREEMENT WITH MAINEVILLE HOLDINGS, LLC RELATING
TO THE PROPERTY KNOWN AS 706 CORWIN NIXON BOULEVARD AND
DECLARING AN EMERGENCY**

WHEREAS, Maineville Holdings, LLC acquired the property located at 706 Corwin Nixon Boulevard (Parcel No. 12-02-335-001) on or about June 4, 2019; and,

WHEREAS, Maineville Holding, LLC now desires to donate said property to the City of South Lebanon; and,

WHEREAS, both parties desire to enter into a donation agreement prior to the transfer of the property to the City; and

WHEREAS, immediate action is required to expedite the transfer of the donated property in order for the City to begin maintaining the property, 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, Ohio, at least two-thirds of all members elected thereto concurring:

Section 1. That the Council approves and authorizes the Mayor to execute the Donation Agreement as attached hereto.

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

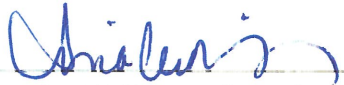
Section 3. That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.


Section 4. 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.

Resolution No. 2022-41

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Adopted this 4th day of October, 2022.

Attest: 
Petrina D. Williams, Fiscal Officer/Clerk


James D. Smith, Mayor

Rules Suspended: 10/4/2022 (if applicable)

Effective Date - 10/4/2022

Vote - 6 Yeas
 ___ Nays

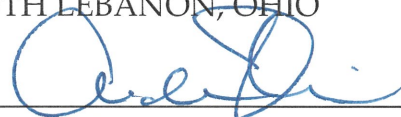
First Reading - / /2022
Second Reading - / /2022
Third Reading - / /2022

Effective Date - / /2022

Vote - ___ Yeas
 ___ Nays

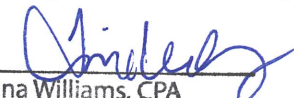
Prepared by and approved as to form:

ANDREW P. MEIER
CITY SOLICITOR
SOUTH LEBANON, OHIO

By: 
Date: 10/4/2022

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

10/10/22 
Date Tina Williams, CPA
Fiscal Officer
City of South Lebanon, Ohio

DONATION AGREEMENT

This is a Donation Agreement (the "Donation Agreement") for certain real property located at **706 CORWIN NIXON BLVD., SOUTH LEBANON, OH 45065** ("Property"), dated and effective as of this 4th day of October, 2022, between **Maineville Holdings, LLC a limited liability company**, ("Donor") and the **CITY OF SOUTH LEBANON, an OHIO MUNICIPAL CORPORATION** ("Donee").

RECITALS

This Donation Agreement is made and entered into on the basis of the following facts and understandings of the parties hereto:

- A. Donor acquired the Property identified on Exhibit A on or about June 4, 2019.
- B. Donor has not constructed any improvements on the Property.
- C. Due to Donor's lack of familiarity with the Property, Donor is unwilling to make any representations or warranties whatsoever regarding the Property and Donor is only willing to grant Donee the Property on an "**as is, where is**" and "**with all faults**" basis.
- D. Donee has been given a full and complete opportunity to conduct its own investigation as to any matter, fact or issue that might influence Donee's decision to accept the Property from Donor. Accordingly, Donee is willing to accept the Property from Donor without any representations or warranties whatsoever regarding the Property and on an "**as is, where is**" and "**with all faults**" basis.

AGREEMENT

1. DONATION.

- 1.1 **Closing Costs.** Donee shall pay all costs associated with the transfer of the Property, including but not limited to attorney's fees, agents' fees, and recording costs ("Closing Costs").
- 1.2 **Transfer.** Donor agrees to donate the Property to Donee and Donee agrees to accept the Property from Donor on the terms and conditions set forth herein. In consideration of Donor's transfer of the Property to Donee, Donee shall perform all of Donee's obligations hereunder including but not limited to the release set forth in Section 2 of this Donation Agreement.
- 1.3 **Title.** Title shall be transferred on the Closing Date by a quit claim deed or its equivalent.

- 1.4 **Further Assurances.** Donee and Donor agree to execute all instruments and documents and to take all actions reasonably necessary and appropriate to consummate the transfer and donation of the Property and shall use their best efforts to close in a timely manner.

2. **ACKNOWLEDGMENTS AND RELEASE.**

- 2.1 **DONEE'S ACKNOWLEDGMENTS.** DONEE ACKNOWLEDGES THAT DONEE IS ACCEPTING THE PROPERTY SOLELY IN RELIANCE ON DONEE'S OWN INVESTIGATION, AND THE PROPERTY IS IN "AS IS, WHERE IS" CONDITION WITH ALL FAULTS AND DEFECTS, LATENT OR OTHERWISE. DONEE EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENT OF DONOR HEREIN, AND EXCEPT AS OTHERWISE SPECIFIED HEREIN, DONOR MAKES AND HAS MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY AS TO CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, WITH RESPECT TO ANY PROPERTY OR ANY MATTER RELATED THERETO, OR (WITHOUT LIMITATION) TO ANY OF THE FOLLOWING MATTERS:

- (a) Soils, Etc. Soils, seismic, hydrological, geological and topographical conditions and configurations.
- (b) Artifacts. Archeological, prehistoric and historic artifacts, remains and relics.
- (c) Endangered Species. Endangered plant, animal and insect species.
- (d) Hazardous Materials. Hazardous Materials and other environmental conditions, including without limitation, lead-based paint, asbestos and mold.
- (e) Physical Defects. Physical and mechanical defects in or on any Property, including without limitation, the plumbing, heating, air conditioning and electrical systems and the roof, floor, ceilings, walls and other internal structural components of any buildings or improvements.
- (f) Land and Floor Area. The area of the land and the square footage contained in any buildings or improvements.
- (g) Utilities, Schools, Etc. Availability of adequate utilities, water, schools, public access, and fire and police protection.
- (h) Assessment Districts. The status and nature of any assessment districts and the amount of any assessment liability.

- (i) Planning and Zoning. Present, past or future conformity of any Property with planning, building, zoning, subdivision and development statutes, ordinances, regulations and permits, the general plan and the specific plan.
- (j) Development Fees. The character and amount of any fee, charge or other consideration which must be paid by Donee to develop any Property.
- (k) Title. The condition of title to any Property, including but not limited to the existence of any easement, license or encroachment whether or not a matter of public record, and whether or not visible upon inspection of such Property.
- (l) Taxes. The status of any general or special real property taxes or assessments or personal property taxes or any other taxes and assessments applicable to the Property.
- (m) Owner's Association. The financial condition of any owner's association, including, without limitation, the adequacy of any reserves held by any owner's association.
- (n) Other Matters. Any other matter relating to any Property or to the development or operation of any Property, including, but not limited to, value, feasibility, cost, governmental permissions or entitlements, marketability and investment return.
- (o) **EFFECTIVENESS. THE PROVISIONS OF THIS SECTION 2 SHALL BE EFFECTIVE AS OF THE CLOSING DATE AND SHALL SURVIVE THE CLOSING DATE OR TERMINATION OF THIS DONATION AGREEMENT.**

3. **CLOSING DATE. CLOSING SHALL OCCUR ON OR BEFORE 10/31/2022, 2022, UNLESS OTHERWISE AGREED BY THE PARTIES IN WRITING.**

- 3.1 Donor Deliveries. At the Closing, Donor will deliver or cause to be delivered all of the following items to Donee:
- (a) A transferable and recordable quit claim deed;
 - (b) Authorization for the execution, delivery, and performance of this Donation Agreement, and the consummation of the transactions contemplated hereby, by Donor;
 - (c) An affidavit to the effect that Donor is not a "foreign person" within the meaning of Internal Revenue Code Section 1445; and
 - (d) The Settlement Statement (as defined below).

- 3.2 Donee Deliveries. At the Closing, Donee will deliver or cause to be delivered all of the following items to Donor:
- (a) A certified resolution of Donee authorizing the execution, delivery, and performance of this Donation Agreement, and the consummation of the transactions contemplated hereby;
 - (b) Any documentation requested by Donor to evidence the completion of this transaction and the amount of consideration being paid for the Property for IRS tax reporting purposes; and
 - (c) The Settlement Statement.
- 3.3 Prorations and Adjustments Prior to Closing the parties will prepare a settlement statement (the "Settlement Statement") which will show all Closing Costs being paid by Donee at Closing.
- 3.4 Taxes. Real estate taxes and assessments due in connection with the Property ("Taxes") will be prorated to the closing date, it being understood and agreed that Donee will apply for an exemption from payment of all Taxes following the Closing.

4. GENERAL PROVISIONS

- 4.1 Successors and Assigns. This Donation Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.
- 4.2 Entire Agreement. This Donation Agreement contains the entire agreement between the parties concerning the Donation and sale of the property and supersedes all prior written or oral agreements between the parties to this Donation Agreement. No addition to or modification of any term or provision shall be effective unless in writing, signed by both Donor and Donee.
- 4.3 Time of Essence. Donor and Donee hereby acknowledge and agree that time is strictly of the essence with respect to each term and condition of this Donation Agreement and that the failure to timely perform any of the terms and conditions by either party shall constitute a breach and default under this Donation Agreement by the party failing to so perform.
- 4.4 Partial Invalidity. If any portion of this Donation Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Donation Agreement and the remaining parts shall remain in full force as fully as though the invalid, illegal or unenforceable portion had never been part of this Donation Agreement.
- 4.5 Governing Law. The parties intend and agree that this Donation Agreement shall be governed by and construed in accordance with the laws of the state in which the Property is located.

- 4.6 **No Third Party Benefits.** No person other than Donor and Donee, and their permitted successors and assigns, shall have any right of action under this Donation Agreement.
- 4.7 **Waivers.** No waiver by either party of any provision shall be deemed a waiver of any other provision or of any subsequent breach by either party of the same or any other provision.
- 4.8 **Captions.** The captions and Section numbers of this Donation Agreement are for convenience and in no way define or limit the scope or intent of the Sections of this Donation Agreement.
- 4.9 **Counterparts** To facilitate execution, this Donation Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.
- 4.10 **No Presumption.** All the parties hereto and their attorneys have had full opportunity to review and participate in the drafting of the final form of this Donation Agreement and all documents attached as exhibits. Accordingly, such documents shall be construed without regard to any presumption or other rule of construction whereby any ambiguities within this Donation Agreement would be construed or interpreted against the party causing the document to be drafted.
- 4.11 **Notices.** Any notices or other communication required or permitted under this Donation Agreement shall be in writing, and shall be (a) personally delivered, or (b) sent by certified or registered United States mail, postage prepaid, return receipt requested, or (c) by overnight delivery by a reputable courier to the address of the party set forth in this Section or (d) telecopied to the Fax number of the party set forth in this Section. Such notice or communication shall be deemed given (i) if sent by personal delivery or by overnight courier, when delivered in person, (ii) if sent by telecopier, when evidence of successful transmission by telecopier has been received by sender or, (iii) in the case of mailed notice, forty-eight (48) hours following deposit in the United States mail. Notice of change of address shall be given by written notice in the manner detailed in this Section.

If to the Donee: **CITY OF SOUTH LEBANON**
10 N. High Street
South Lebanon, Ohio 45065
Attention: Jerry Haddix, City Administrator

If to the Donor: **MAINEVILLE HOLDINGS, LLC**
8600 Governors Hill Drive, Suite 160
Cincinnati, Ohio 45249

With a copy to:

Dinsmore & Shohl LLP
255 East Fifth Street
Suite 1900
Cincinnati, OH 45202
Attn: Charles E. Baverman III

- 4.12 **Joint and Several.** If more than one person or entity has executed this Donation Agreement as Donee, the obligations of all such persons or entities hereunder shall be joint and several.

[Signatures on the next page]

DONEE:

CITY OF SOUTH LEBANON

Pursuant to Resolution 2022-41

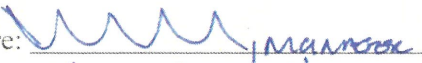
Signature: 

Print Name: James D. Smith

Title: Mayor

DONOR:

MAINEVILLE HOLDINGS, LLC

Signature: 

Print Name: Christopher R. Hildebrand

Title: MANAGER

EXHIBIT "A"

PROPERTY ADDRESS

706 CORWIN NIXON BLVD.
SOUTH LEBANON, OHIO 45065

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF WARREN, STATE OF OHIO, AND IS DESCRIBED AS FOLLOWS:

LOCATED IN SECTION 2, TOWN 4, RANGE 3 BETWEEN THE MIAMIS, UNION TOWNSHIP, CITY OF SOUTH LEBANON, WARREN COUNTY, OHIO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF LOT 3 OF RIVERS CROSSING WEST, SECTION 2, AS RECORDED IN PLAT BOOK: 99, PAGES 34 AND 35 OF THE OFFICIAL RECORDS OF THE WARREN COUNTY, OHIO RECORDER'S OFFICE.

PARCEL ID NO. 12-02-335-001 (LOT 3)