

VILLAGE OF SOUTH LEBANON, OHIO
ORDINANCE NO. 2016-15

A ORDINANCE FINDING THE PROPERTY LOCATED AT 83 N. SECTION STREET, BEING A PART OF THE PROPERTY COMMONLY KNOWN AS THE SOUTH LEBANON COMMUNITY CENTER, IS NOT NEEDED FOR ANY MUNICIPAL PURPOSE, AND APPROVING A LEASE AGREEMENT WITH JOSHUA'S PLACE INC. AND AUTHORIZING THE MAYOR AND FISCAL OFFICER TO SIGN DOCUMENTS

WHEREAS, Section 721.01 of the Ohio Revised Code (ORC) enables the Village Council to lease real estate belonging to the Village when such real estate is not needed for any municipal purpose, and upon making such a finding, such power must be exercised in accordance with the applicable provisions ORC Chapter 721; and,

WHEREAS, in accordance with ORC Section 721.03 and Village Resolution No. 2015-27, bids were solicited for the lease of the Village-owned property located at 83 N. Section Street and commonly known as the South Lebanon Community Center, with the sole bid being submitted by Joshua's Place, Inc.; and,

WHEREAS, the Village Council desires to enter into a lease agreement with Joshua's Place, Inc. for the lease of the South Lebanon Community Center property, as shown as Lot 2 on Exhibit A of said lease; and

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

Section 1. That the Council finds the real estate and improvements at 83 N. Section Street is owned by the Village, and is not needed for any municipal purpose; and

Section 2. That the Council desires to and does hereby approve a lease agreement with Joshua's Place for the lease of the South Lebanon Community Center at 83 N. Section Street (illustrated as Lot 2 of Exhibit A of said lease); and

Section 3. That the Council hereby authorizes the Mayor and/or the Fiscal Officer to execute the lease agreement with Joshua's Place, Inc., attached hereto as Exhibit B; and

Section 4. That the Council is acting in its administrative capacity in adopting this Resolution.

Section 5. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

Section 6. 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.

Adopted this 16th day of June, 2016.

Attest: Sharon Louallen James D. Smith
Sharon Louallen, Fiscal Officer/Clerk James D. Smith, Mayor

Rules Suspended: 0 / /2016 (if applicable)

Effective Date - / /2016

Vote - ___ Yeas

___ Nays

First Reading - 5/19/2016

Effective Date - / /2016

Second Reading - 6/2/2016


Third Reading - 6/16/2016

Vote - 6 Yeas

___ Nays

Prepared by and approved as to form:

PAUL R. REVELSON
VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

By:  _____

Date: 6/16/2016

Lease Agreement

This Lease Agreement (the "Lease") is entered into by and between the VILLAGE OF SOUTH LEBANON, OHIO, an Ohio municipal corporation, whose mailing address is 99 High Street, South Lebanon, OH 45065, and telephone number is (513) 494-2296, acting by and through its elected Village Council (hereinafter, "Lessor") and JOSHUA'S PLACE, INC., organized as an Ohio not-for-profit corporation, whose mailing address is P.O. Box 68, South Lebanon, Ohio 45065, and telephone number is (513) 617-9099 (hereinafter, "Lessee"), the effective date being the last date upon which all parties have fully executed this Lease.

The Parties do hereby enter into this Lease based on the following terms and conditions:

A. Lease of Premises

In consideration of the monthly rent payment and in-kind consideration set forth in Section B.2. of this Lease, and other promises and covenants herein of Lessee, Lessor hereby leases to Lessee the right to occupy the building located at 83 N. Section Street, South Lebanon, Ohio, consisting of the one story former school which is part of the premises commonly known as the South Lebanon Community Center (the "Community Center"), with the right to use of entrances, foyers, hallways, rooms, gymnasium, restrooms, parking areas, sidewalks and any other common areas and facilities as provided herein (collectively the "Leased Premises").

Nothing herein shall be construed to entitle Lessee to use or have access to, or require Lessee to be responsible for any monetary, operational or maintenance obligations of or relating to, the separate two story former school building that is part of the Community Center (the "Excluded Premises").

The rights of Lessee (and any sub-lessees as permitted herein) to use the parking spaces located on the Leased Premises shall be non-exclusive and first-come, first right to use. The parties acknowledge that Lessor and any lessees, renters, tenants, and short term users, and their invitees and guests, of the Excluded Premises shall also have non-exclusive rights to use the parking spaces located on the Leased Premises.

The leasehold rights of Lessee shall be subject to existing leases, and their rights to renew, of certain areas of the Leased Premises, to-wit:

- KINGS LOCAL SCHOOL DISTRICT AREA COMMUNITY SERVICES INCORPORATED (dba KINGS FOOD PANTRY), an Ohio corporation not for profit, whose address is 10 N. High Street, South Lebanon, Ohio 45065, and telephone number is (513) 494-2692, including without limitation Rooms 120 and 122, and the non-exclusive use of the entrances, foyers, hallways, restrooms, parking areas, sidewalks and any other common areas and facilities in accordance with the lease, a copy of which has been provided to Lessee.
- Mt. ZION BAPTIST CHURCH, an Ohio corporation not for profit, whose address is 100 East Broadway, South Lebanon, Ohio 45065, and telephone number is (513) 494-1067, including without limitation the gymnasium and Room 133 on Thursday nights year round for youth recreation and/or Bible Study, and the non-exclusive use of entrances, foyers, hallways, restrooms, parking areas, sidewalks and any other common areas and facilities in accordance with the lease, a copy of which has been provided to Lessee.

Lessee does further agree to make all reasonable efforts to enter into and sublease the space identified to each existing tenant under same or similar terms in the event any existing lease has no right to renew, or the existing tenant fails to timely exercise its rights to renew, subject to Lessee's right to relocate the existing tenants to a different space within the Leased Premises.

Lessee does further agree to make all reasonable efforts to designate areas in the Leased Premises and make the same available for community functions if reasonably requested by Lessor.

B. Term; Rent; Holdover Tenancy

1. Term

The term of this Lease shall be ten (10) years, beginning on ____, 2016, and ending on _____, 2026.

2. Rent: Monetary and in-kind Consideration

A. Periodic Monetary Rent Payment. The rent for the term under this Lease shall be the sum of ONE DOLLAR (\$1.00) per month, each in advance, with the first rent installment due and payable ____, 2016, and subsequent rent installments due and payable on the first business day of each month thereafter. These periodic rent payments may be prepaid in advance at Lessee's discretion.

B. In-kind Consideration. Lessee shall be solely responsible for making capital improvements to the Leased Premises that fully comply with the Capital Improvement Plan ("CIP") and all other bid documents submitted by Lessee dated November 2, 2015, a true, accurate and complete copy of which is attached hereto and made a part hereof, and relied upon by Lessor to approve and authorize this Lease in accordance with Ordinance No. 2016-_____. All capital improvements made by Lessee in accordance herewith, or otherwise permitted herein, shall become affixed to the Leased Premises and shall be a permanent part of the property owned and retained by Lessor at the expiration of this Lease.

3. Holdover Tenancy

Lessee may not remain in possession of any part of the Leased Premises after expiration or termination of this Lease, absent a new Lease or other written agreement between the parties.

C. Use and Occupancy

1. Manner and Purpose

The Leased Premises will be used and occupied by Lessee in a careful, safe, sanitary and proper manner.

2. Hazardous Activities

Lessee will not carry on or allow any hazardous activity or use of the Leased Premises, nor will Lessee knowingly take any action which will invalidate insurance coverage on the Leased Premises. Lessee will observe all reasonable precautions for the prevention of fire, explosion, or escape of fumes, and reasonable and necessary measure to protect the safety of persons and property.

D. Inspection of Leased Premises by Lessee; No Warranty of Fitness

Lessee has inspected the Leased Premises and acknowledges that Lessor has made no representation, and there is no express or implied warranty by Lessor with respect to the fitness of the Leased Premises for any particular use or purpose. Lessee acknowledges that it is currently occupying a part of the Leased Premises and Lessee hereby accepts the Leased Premises, including any part currently occupied by other tenants, as-is and where-is.

E. Obligations of Lessor and Lessee Not Otherwise Provided Herein

1. Utilities

Utility bills shall remain in the name of and be mailed to Lessor. Lessee shall be solely responsible for timely re-paying Lessor, within a reasonable time after Lessee's receipt of copies of the billing statements from Lessor, all utility billings regardless whether the utilities were used by Lessor or any sub-lessee as herein permitted, including but not limited to water and sewer, gas and electric, and refuse, for the duration of the Lease; except, Lessor shall separate the utility costs related to the Excluded Premises which Lessee shall not be responsible for paying.

Lessee shall be solely responsible for any telephone, cable and all other services that Lessee elects to have connected, or any sub-lessee herein permitted elects to have connected, to the Leased Premises. Lessee shall be solely responsible for removal of such services once Lessee (or sublessee) vacates the Leased Premises.

2. Lessee's Expenses for Maintenance and Improvements

Lessee will promptly pay all obligations incurred by Lessee in maintaining any improvements of the interior or exterior of the Leased Premises pursuant to the CIP or as otherwise provided herein. Nothing in this Lease shall be construed to require Lessor to make any interior or exterior improvements prior to or during the term of this Lease.

3. Items to be Maintained by Lessee

Each of the following will be maintained at the expense of Lessee in good condition, repair, and working order: Interior paint and decoration, interior floor finish and coverings, interior of windows and interior window treatments; interior and exterior doors and security system; HVAC system; electrical system; lighting system and light bulb replacement; bathroom facilities and fixtures, and any exterior signage as herein may be permitted.

4. Items to be Maintained by Lessor

Each of the following will be maintained at the expense of Lessor in good condition, repair, and working order: roof, walls, foundation, structural portions of floor, sidewalks and parking lots, asphalt and parking spaces, sprinkler system, drain and septic system,

fire equipment and controls. Common area maintenance will be limited to snow and ice removal but such service will have secondary priority to snow and ice removal for all public streets and alleys throughout the Village of South Lebanon.

5. No Cleaning or Janitor Service

No cleaning or janitor services for the Community Center will be provided by Lessor. Lessee shall provide for its own trash removal, and otherwise keep and maintain the Leased Premises in a clean and safe condition.

6. Taxes and Assessments

The parties acknowledge that the Leased Premises currently enjoys the benefit of tax-exempt status from real property taxes as granted by the Ohio Department of Taxation and/or the Warren County Auditor. In the event that the actions of the Lessee shall cause that tax-exempt status to be revoked, then Lessee shall be responsible for reimbursing to Lessor, within 60 days of receipt, any and all paid receipts from Lessor for real property taxes or assessments.

F. Alterations

The Lessee agrees fully comply with the CIP per the bid dated November 2, 2015, as attached. Any additional alterations or additions, interior or exterior, to the Leased Premises may only be made by Lessee with the prior written consent of Lessor, which shall not be unreasonably withheld or delayed.

G. Signs

Lessee may install and maintain a suitable sign on the outside of the Leased Premises that complies with all applicable governmental regulations. Before installing or changing any signage, Lessee shall obtain Lessor's approval of the design, color, size, style, and material of the sign, such approval not to be unreasonably withheld or delayed. At the expiration or termination of the Lease, Lessee at its sole expense shall remove all signs installed by Lessee.

H. Waste

Lessee will not commit or allow any waste on the Leased Premises.

I. Insurance; Hold Harmless & Indemnification

1. Insurance [TO BE CONFIRMED BY LESSEE]

As consideration for Lessor leasing the Premises to Lessee under the terms in this Lease, Lessee shall carry general liability insurance, with no interruption of coverage during the entire term of this Lease. Lessee further agrees that in the event that its general liability policy is maintained on a "claims made" basis, and in the event that this Lease is terminated, Lessee shall continue such policy in effect for the period of any statute or statutes of limitation applicable to claims thereby insured, notwithstanding the termination of the Agreement. Lessee shall provide Lessor with a certificate of insurance evidencing such coverage, and shall provide thirty (30) days' notice of cancellation or non-renewal to Lessor. Cancellation or non-renewal of insurance shall be grounds to terminate this Agreement. The insurance shall comply with all of the following provisions:

- (a) The insurer shall have an AM Best rating of A- or better, unless otherwise agreed by Lessor in writing;
- (b) The insurance coverage must have general liability limit of \$1,000,000 per occurrence for bodily injury, personal injury and property damage and the minimum general aggregate shall be \$2,000,000;

The general liability insurance shall name Lessor, its elected and appointed officials, agents, employees and volunteers as additional insureds on the insurance policy with waiver of subrogation against Lessor, and shall furnish Lessor with a certificate of insurance naming such individuals and entities as additional insureds. The coverage shall be primary to the additional insureds and not contributing with any other insurance or similar protection available to the additional insured's, whether available coverage is primary, contributing or excess, and shall provide the additional insured with the same coverage and duty to defend as the primary coverage provides for Lessee.

In the event Lessee should ever have employees during the term of this Lease, Lessee shall maintain statutory Worker's Compensation and Employer's Liability insurance coverage in compliance with all laws of the State of Ohio.

2. Hold Harmless and Indemnification

Lessee agrees to indemnify and hold harmless Lessor and its elected and appointed officials, agents and employees, and their successors and assigns (the "Lessor Indemnitees") from any and all third party claims against any of the Lessor Indemnitees for wrongful death, bodily or personal injury and/or property damage, including costs of investigations, all expenses of litigation including reasonable attorney fees arising out of the negligence or willful misconduct relating to the occupancy, use or misuse of the Leased Premises by Lessee, its guests and invitees.

J. Entry by Lessor

Lessee will permit Lessor or its agents to enter the Leased Premises at all reasonable times to examine and/or inspect the Leased Premises. Lessor shall give at least 24 hours' prior written notice prior to entering the Leased Premises, except in the case of an emergency no prior notice shall be required.

K. Assignment and Subletting

Lessee will not assign this Lease, or sublet any part of the Leased Premises, without Lessor's express written consent. Any sublease must be approved as the form and content by Lessor including review by its insurer and legal counsel.

L. Covenants of Title and Quiet Enjoyment

Lessor warrants that it is the lawful owner of the Leased Premises and has good right and power to enter into this Lease. If Lessee pays the rent as agreed, and fulfills all other conditions and obligations under this Lease, Lessee may quietly enjoy the Leased Premises without hindrance by Lessor or any person lawfully claiming under Lessor.

M. Liens and Encumbrances

Lessee or any sub-lessees herein permitted shall not engage in any activities or take any action, or fail to take any action that will create or that may result in the creation of a lien or encumbrance against the Leased Premises. In the event a lien or encumbrance against the Leased Premises results from the actions or inactions of Lessee or any sub-lessee herein permitted, the Lessee shall be solely responsible for discharging such lien or encumbrance, and in the event Lessee fails to fully discharge and release such lien or encumbrance within a reasonable time after being notified by Lessor of such lien or encumbrance, Lessor is entitled to take action to remove such lien or encumbrance, and all costs and expenses, including without limitation, reasonable attorney's fees and costs shall be paid by Lessee to Lessor.

N. Responsibility for Personal Property

Lessee is solely responsible for the safe keeping and insuring all tangible and intangible personal property located on the Leased Premises that belongs to Lessee or its sub-lessees herein permitted, and its agents, employees, licensees, guests and invitees. Lessee shall be solely responsible for obtaining its own contents insurance coverage for personal property.

O. Damage to Leased Premises; Appropriation of Leased Premises

1. Damage or Destruction of the Leased Premises

If any part of the Leased Premises is damaged or destroyed without Lessee's fault, rendering the Leased Premises unfit for occupancy, Lessee may surrender possession of the Leased Premises and thereby terminate the Lease with respect to all provisions, remaining liable only for accrued and unpaid rent under the Lease.

2. Eminent Domain

If any part of the Leased Premises is taken under a right of eminent domain, this Lease shall terminate on the date possession is required for the public use, and the taking shall constitute neither an eviction of Lessee nor a breach by Lessor of the covenant of quiet enjoyment. Until possession is required for public use, Lessee may continue to occupy and will pay the rent and observe all other covenants of the Lease.

Lessee shall not be entitled to any part of the award of compensation for a taking under eminent domain, or damages to the residue; Lessor is entitled to the entire amount without deduction for any estate or interest of Lessee.

P. Default by Lessee; Remedies of Lessor

1. What Constitutes Default by Lessee

Lessee is in default under this Lease if: (a) any installment of rent is not paid within ten (10) days after its due date; (b) Lessee fails to perform any other obligation under this Lease, including Lessee's failure to fulfill its obligations contained in the CIP, within thirty (30) days after written notice of the alleged breach is provided by Lessor to Lessee; (c) Lessee vacates the Leased Premises during the term; (d) Lessee makes an assignment for the benefit of creditors, or is subjected to receivership; (e) Lessee's interest in the Leased Premises is subjected to execution, attachment, or other legal process; or, (f) Lessee is adjudicated bankrupt in a voluntary or involuntary proceeding.

2. Remedies of Lessor

If Lessee defaults, Lessor may enter and repossess the Leased Premises as if this Lease had not been made, and the Lease will thereby terminate without prejudice to Lessor's rights of action for past due rent, breach of covenant, present and prospective

damages, or other cost or expense resulting from Lessee's default. For purposes of this section, the commencement of an action in forcible entry and detainer, ejectment, or similar action following default by Lessee is equivalent to an actual entry of the Leased Premises by Lessor.

3. Waiver of Default

The waiver by Lessor of any default by Lessee shall not constitute a waiver of any other default or of any subsequent default of the same or similar kind.

Q. Notices

Except as provided in Paragraph J, all notices under this Lease shall be in writing. Unless the party concerned designates another address, notices to Lessor and Lessee shall be mailed or delivered to the address as set forth on the first page of this Lease.

R. Lease Binding on Parties and Successors

This Lease and its provisions shall inure to the benefit of and bind the heirs, personal representatives, successors, and assigns of the parties, except that no assignment of all or any part of this Lease by Lessee in violation of its terms shall vest any right, title, or interest in the purported assigns.

S. Law and Venue.

This Lease shall be construed under the laws of the State of Ohio. This Lease and all other documents referenced herein shall be subject to the parties stipulating hereby to the venue for any and all claims, disputes, interpretations and litigation of any kind arising out of or related thereto in any way being exclusively in the Warren County, Ohio Court of Common Pleas (unless both parties mutually agree in writing to alternate dispute resolution), as well as waiving any right to bring or remove such matters in or to any other state or federal court.

T. Liability for Attorney's Fees

In the event any legal action is brought by on behalf of Lessor against Lessee based upon Lessee's default under this Lease, Lessee shall be obligated to pay Lessor's reasonable attorney's fees, plus court costs and expenses relating to such legal action, regardless of whether the action is prosecuted to judgment.

U. Termination.

This Lease may be terminated by either party with cause for the other party's default of its obligations herein; provided, that any such termination must be made by written notice from the non-defaulting party to the defaulting party which specifies the default in reasonable detail. Further, this Lease may be terminated by Lessor in the event Lessor shall determine, in its sole discretion that the leased Premises is needed for a municipal purpose. In the event the Lessor terminates the lease for municipal purposes prior to the end of the lease, the Lessor shall give twelve (12) months written notice and agrees to refund the Lessee the pro-rated amount of the ten (10) year amortized costs of the approved and completed capital improvements.

[Remainder of page intentionally left blank – signature pages follow]

V. Execution

LESSOR

IN EXECUTION WHEREOF, the Council of the Village of South Lebanon, Ohio, has caused this Agreement to be executed by its Mayor, and its Fiscal Officer, on the date stated below, pursuant to Ordinance Number 2016-15, dated 6-16-16.

SIGNATURE: James D. Smith
NAME: James D. Smith
TITLE: Mayor
DATE: 6-16-16

SIGNATURE: Sharon Louallen
NAME: Sharon Louallen
TITLE: Fiscal Officer
DATE: 6-16-16

STATE OF OHIO, COUNTY OF WARREN, ss.

BE IT REMEMBERED, that on the 16th day of June, 2016, before me, the subscriber, a Notary Public, in and for said County and State, personally appeared the persons known or proven to me to be James D. Smith, Mayor, and Sharon Louallen, Fiscal Officer, of the Village of South Lebanon, Ohio, and acknowledged the signing and execution of this Agreement is their free and voluntary act and deed, in accordance with the above referenced Village Ordinance authorizing such act.

[seal]

NOTARY PUBLIC: [Signature]
MY COMMISSION EXPIRES: does not expire

PREPARED AND APPROVED
AS TO FORM AND CONTENT BY:

PAUL R. REVELSON
VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

By: [Signature]
Village Solicitor
Date: 6/16/16

CERTIFIED COPY
I, Sharon Louallen, Fiscal Officer, of the Village of South Lebanon, Ohio do hereby certify this to be a true and accurate copy of a document on file with my office.

Date: _____
Sharon Louallen
Fiscal Officer
Village of South Lebanon
Ohio

LESSEE

IN EXECUTION WHEREOF, JOSHUA'S PLACE , INC., the Lessee herein, has caused this Lease be executed by Jeffrey D. Sharp, its Secretary, on the date stated below, pursuant to corporate Resolution authorizing such act.

WITNESS AS TO LESSEE:

LESSEE:

SIGNATURE: Tracy Goddard
NAME: Tracy Goddard
DATE: 6-20-16

JOSHUA'S PLACE, INC.
SIGNATURE: Jeffrey D. Sharp
NAME: Jeffrey D. Sharp
TITLE: Secretary
DATE: June 20, 2016

STATE OF OHIO, COUNTY OF WARREN, ss:

On this 20th day of June, 2016, before me personally appeared Jeffrey D. Sharp, whose title is Secretary of JOSHUA'S PLACE, INC., the Lessee in the foregoing Lease, and acknowledged the signing and execution of this Agreement is his free and voluntary act and deed, in accordance with the aforementioned corporation resolution authorizing such act.



KEVIN M. DINEEN
ATTORNEY AT LAW
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

NOTARY PUBLIC: Kevin M. Dineen
MY COMMISSION EXPIRES: No expiration

Exhibit A

VILLAGE OF SOUTH LEBANON
83 N. Section Street
Lot 1 - vacant building
Lot 2 - Community Center
Lot 3 - Early Learning Center

