

VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2017-28

**A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT
WITH KANTA OIL, LLC, ASHOK PATEL, AND VINAY PATEL RELATING TO
THE INSTALLATION OF SEWER LINES, AND DECLARING AN EMERGENCY**

WHEREAS, Village staff have negotiated an Agreement, attached hereto as Exhibit A, which establishes terms for reimbursement of costs by Kanta Oil, LLC, Ashok Patel, and Vinay Patel ("Patel") to the Village for a sewer line extension to property located on State Route 22&3; and,

WHEREAS, immediate action is required as Patel has received an extension that will expire on or about June 2, 2017 to close on the property, 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 the attached Agreement, as approved as to form by the Village Solicitor, attached hereto and incorporated by reference.

Section 2. That the Council is acting in its administrative capacity in passing this Resolution.

Section 3. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

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.

Section 5. 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 1st day of June, 2017.

Attest: Nicole Armstrong
Nicole Armstrong, Fiscal Officer/Clerk

James D. Smith
James D. Smith, Mayor

Rules Suspended: <u>6/1/2017</u> (if applicable)	Effective Date - / / 2017
Vote - <u>6</u> Yeas ___ Nays	
First Reading - / / 2017	Effective Date - / / 2017
Second Reading - / / 2017	
Third Reading - / / 2017	
Vote - ___ Yeas ___ Nays	

Prepared by and approved as to form:

PAUL R. REVELSON
VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

By: [Signature]
Date: 6/1 /2017

CERTIFICATE OF POSTING
 I, Nicole Armstrong, Fiscal Officer of the Village 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 Village as authorized by Section 731.25 of the Ohio Revised Code, and Ordinance 98-08 of Village of South Lebanon, Ohio

6/2/17 [Signature]
 Date Nicole Armstrong
 Fiscal Officer
 Village of South Lebanon,
 Ohio

AGREEMENT

This AGREEMENT (hereinafter, this “Agreement”) is made as of May __, 2017, by and between the **VILLAGE OF SOUTH LEBANON, OHIO**, an Ohio incorporated municipality (the "Village") and **KANTA OIL, LLC**, an Ohio Limited Liability Company, **ASHOK PATEL**, an individual, and **VINAY PATEL**, an individual (**collectively “Patel”**), **their successors and assigns**. The Village and Patel agree as follows:

W I T N E S S E T H:

WHEREAS, the Village and Timothy E. Books and Mary Kay Books (“Books”) entered into an agreement in 2011 (“Pre-Annexation Agreement”), attached hereto as Exhibit A, regarding the annexation of Books’ parcel located at 720 Route 22&3 Maineville, OH 45039 (“the Property”) (23.204 acres) (a legal description of the aforementioned parcel is attached hereto as Exhibit B); and

WHEREAS, the Pre-Annexation Agreement provided that the Village would provide public sanitary sewer service to the Property, and that the cost for providing said service “will be determined by agreement of Books and South Lebanon”; and

WHEREAS, Books has entered into a contract with Patel to purchase the Property; and

WHEREAS, the Village and Patel now desire to enter into this Agreement to determine the parties responsible for the cost of providing public sanitary sewer service to the Property as provided in the Pre-Annexation Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants set forth herein, the Village and Patel hereby covenant, warrant, and agree, as follows:

TERMS

1. Patel shall pay to the Village the amount of ONE HUNDRED THOUSAND DOLLARS AND 00/100 (\$100,000.00) to offset the cost of providing public sanitary sewer service to the Property in a capacity sufficient for commercial use.
2. Said \$100,000.00 shall be paid in ten (10) annual installments of TEN THOUSAND DOLLARS AND 00/100 (\$10,000.00). Payments shall be made annually to the Village on the 1st day of the month beginning in the month after this Agreement is executed and Patel closes on the purchase of the Property.
3. The first installment payment shall be credited towards the Patel's required sewer tap fee as stated in Ordinance No. 2006-09 or any superseding ordinances or resolutions adopted by the Village.
4. Should the installation of public sanitary sewer service be delayed so that sanitary sewer service cannot not be provided to the Property within twelve months from the date of execution of this Agreement, then Patel shall have the option to terminate this Agreement. The Village has, upon execution of this Agreement, approved the legislation to appropriate funds to enter into the necessary contract to install the sewer service to the Property. The

Schedule for completing the sewer project with service to the Property is attached hereto as Exhibit C.

FUTURE THIRD PARTY TAP-INS AND CONNECTION CHARGES

1. The charges stated herein are established as an equitable means for recovery of a portion of the costs to be incurred by Patel in construction of the sewer line to the Property. The Village agrees that it will pay the "Connection Charge," as defined herein, as reimbursement for the payments made and to be made by Patel, as provided in the terms above, to Patel for parcels that are directly connected to the sewer line installed for the Property, assuming the sewer line extension, as installed, has the capacity for the development on said parcels.
2. The "Connection Charge" means:
 - a. The "Agreed Percentage" of any funds received by the Village from sewer tap fees, as set forth in Village of South Lebanon, Ohio Ordinance No. 2006-09 or any superseding ordinances or resolutions adopted by the Village.
 - b. The "Agreed Percentage" shall be equal to the percentage determined by dividing \$90,000 by the total cost the Village agrees to pay for the sewer project provided for in this Agreement. Such total cost shall include ROW easement acquisitions, engineering and survey fees, and the actual cost for construction and installation of the sanitary sewer. The Village will confirm the cost for the service project to Patel

once the Village enters into the necessary agreements for design, installation and construction of the sanitary sewer line.

3. Any amounts collected by the Village pursuant this section shall be paid to Patel within thirty (30) days. The Village shall provide an accounting of Connection Charges collected by the Village at the reasonable request of Patel from time-to-time. The obligation to collect the Connection Charge delineated in this Agreement shall expire upon receipt by Patel of Connection Charge payments totaling \$90,000. Even if the Connection Charges collected for sewer taps during the applicable periods as stated in this Agreement total less than \$90,000.00 the Village shall have no further payment obligations to Patel with respect to Connection Charges.
4. The Village's responsibility to pay the Connection Charge to Patel as stated herein shall expire ten (10) years from the date of this Agreement.
5. Should Patel sell or convey the Property to an unrelated third party purchaser, the provisions in this section shall terminate and the Village shall not be liable to Patel or any transferee of the Property for any Connection Charges.
6. Should the Village waive any sanitary sewer tap fees for direct connections into the sewer extension, Patel shall be entitled to receive a credit for a percentage of the Connection Charge on the next annual installment as if the Village had not waived any sewer tap fee.

MISCELLANEOUS PROVISIONS

1. Entire Agreement: This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement and except as expressly provided herein

any agreement hereafter made shall be ineffective to change, modify or discharge this Agreement unless such subsequent agreement is in writing and signed by the Parties. All previous contracts, warranties, communications, covenants, commitments, representations or agreements, whether written or oral, between and among the Parties and/or their attorneys, are superseded unless expressly incorporated and made a part of this Agreement. Except as expressly stated herein, the Parties bear no further responsibility whatsoever to each other.

2. Authority to Execute Agreement: Each Party and signatory to this Agreement represents and warrants that the signatory has authority from the Party to execute the Agreement.
3. Subsequent Litigation. If a dispute arises with regard to the interpretation, applicability, construction, meaning, purpose, enforcement, and/or definition of any term or provision in this Agreement, each Party shall bear its own attorney's fees and expenses in any litigation, proceeding, or negotiation related to such dispute. Each Party agrees that any litigation arising out of or related to this Agreement shall be tried to a court without a jury.
4. Significance of Recitals: The recitals at the beginning of this Agreement are intended to be covenants of the Parties, are a material part of this Agreement, and are binding on the Parties.
5. Headings: The headings of the Paragraphs of this Agreement are for convenience only and shall not affect the meaning or construction of the contents of this Agreement.
6. Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of

the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein unless the deletion of such provision or provisions would render the completion of the transactions contemplated hereby to be unreasonable.

7. Waiver. Neither any failure nor any delay by any party in exercising any right under this Agreement or any Ancillary Agreement will operate as a waiver of such right, and any waiver of a right must be in writing. Any waiver of a particular default, specific right or remedy, or any single or partial exercise of any right will preclude any other or further exercise of such right or any other right.

8. Governing Law and Venue. This Agreement shall be construed under the laws of the State of Ohio. The parties stipulate hereby to the venue for any and all claims, disputes, interpretations and litigation of any kind arising out of this Agreement and all other matters 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.

VILLAGE :

IN EXECUTION WHEREOF, the Council of the Village of South Lebanon, has caused this Agreement to be executed by, James D. Smith, Mayor, on the date stated below, pursuant to Ordinance/Resolution # 28, dated June 1st, a copy of which is attached hereto.

SIGNATURE: James D. Smith

PRINTED NAME: James D. Smith

TITLE: Mayor

DATE: 6/1/17

Approved as to form:

PAUL R. REVELSON

VILLAGE SOLICITOR

VILLAGE OF SOUTH LEBANON, OHIO

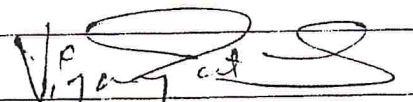
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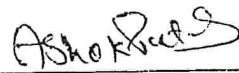
By: Paul R. Revelson, Village Solicitor

Date: 6/1/17

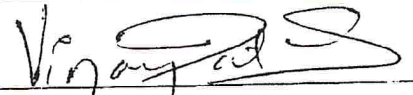
IN EXECUTION WHEREOF, Kanta Oil, LLC, an Ohio Limited Liability Company, Ashok Patel, and Vinay Patel, have caused this Agreement to be executed on the date stated below.

Kanta Oil, LLC, an Ohio Limited
Liability Company

By: 
Its: VINAY PATEL (MEMBER)
Date: 6/5/17



Ashok Patel
Date: 6/5/17



Vinay Patel
Date: 6/5/17

EXHIBIT A

[copy of 2001 Pre-Annexation Agreement]

AGREEMENT

This Agreement made on this 5th day of August, 2011, by and between the Village of South Lebanon, an Ohio municipal corporation ("South Lebanon") and Timothy E. Books and Mary Kay Books ("Books") for the purpose of providing South Lebanon services to real estate owned by Books (the "Books Property") which real estate is more particularly described in "Schedule 1" attached hereto.

WHEREAS, Books seeks to obtain certain municipal services for the Books Property on a site near South Lebanon's service area which is currently not within the South Lebanon corporate limits; and

WHEREAS, South Lebanon requires that new users of South Lebanon municipal services be located within its corporate limits; and

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

(1) **Commitments by Books**

(A) Books shall petition for annexation of all or part of the Books Property to South Lebanon at such time as South Lebanon may request annexation of all or part of the Books Property. Books 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 Commissioners requesting annexation to South Lebanon and will support such petition in any and all proceedings before the Warren County Commissioners and such other actions and/or proceedings as may be necessary to accomplish annexation of all or part of the Books Property to South Lebanon.

(B) Books may petition for annexation of all or part of the Books Property to South Lebanon at any time they deem annexation appropriate and South Lebanon will support the petition in any and all proceedings before the Warren County Commissioners and such other actions and/or proceedings as may be necessary to accomplish annexation of all or part of the Books Property to South Lebanon.

(C) Upon annexation and development of the Books Property, Books shall be responsible for any tap-in fees as may then be required.

(2) Commitments by South Lebanon

The Books property (now in Hamilton Township) is designated for rural residential uses on the Warren County Comprehensive Plan. South Lebanon agrees that upon annexation to South Lebanon and upon the request of Books, the recommendation for zoning for the Books property from South Lebanon Staff will be commercial zoning, which zoning is consistent with adjoining U.S. Route 22 & 3 properties at the Cochran Road intersection in the Warren County Comprehensive Plan. The need for and the cost of public sanitary service to the Books Property will be determined by agreement of Books and South Lebanon.

(3) Binding Effect

This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

(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 Books and no oral, verbal or implied agreement or understanding shall cancel, modify or vary the terms of this Agreement.

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

VILLAGE OF SOUTH LEBANON,
OHIO


By: Jim Smith, Mayor


Timothy E. Books

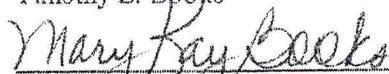
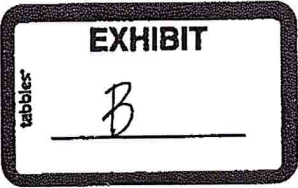

Mary Kay Books

EXHIBIT B

[legal description for 23.204 acre tract encompassing Property]



UNRECORDED

EXHIBIT 'A'

File No.: 50992051LA (tb)
Property: 720 E US 22 AND 3, Morrow, OH 45152

SITUATE IN HAMILTON TOWNSHIP, WARREN COUNTY, OHIO, AND BEING A PART OF MILITARY SURVEY #1546 AND BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTER OF THE 3C HIGHWAY SAID BEGINNING POINT BEARS SOUTH 70 DEGREES, 55' WEST, 714.2 FEET FROM THE SOUTHEAST CORNER OF GRANTOR ALMA BURKES LAND, SAID SOUTHEAST CORNER BEING IN THE CENTER OF THE 3C HIGHWAY; RUNNING THENCE WITH THE CENTER OF SAID HIGHWAY, SOUTH 70 DEGREES, 55' WEST, 250 FEET TO A POINT BY NEW DIVISION LINES; (1) NORTH 19 DEGREES, 05' WEST (PASSING RODS AT 33 FEET AND 300 FEET), 325 FEET TO AN IRON ROD; (2) NORTH 70 DEGREES 55' EAST, 250 FEET TO AN IRON ROD; (3) SOUTH 19 DEGREES 05' EAST (PASSING AN IRON ROD AT 292 FEET), 325 FEET TO THE PLACE OF BEGINNING, CONTAINING 1.865 ACRES.

A.P.N. 17364010118

DESCRIPTION NOT FOR TRANSFER

WHEN RECORDED, RETURN TO:
FIRST AMERICAN TITLE INSURANCE CO.
1100 SUPERIOR AVENUE, SUITE 200
CLEVELAND, OHIO 44114
NATIONAL RECORDING

BOOKS OH
50992051
FIRST AMERICAN-ELS
MORTGAGE

EXHIBIT C

[schedule for Sewer Project]

EXHIBIT "C"

ROUTE 22-3 SANITARY SEWER EXTENSION

PROJECT SCHEDULE

- **Topographic Survey/Bae Mapping** 6/5/17 – 7/3/17
- **Project Design** 7/4/17 – 8/18/17
- **Easement Preparation & Acquisition** 8/19/17 – 10/13/17
- **Permitting** 8/19/17 – 9/22/17
- **Bidding/Contract Award** 9/25/17 – 10/13/17
- **Construction** 10/16/17 – 1/5/18
- **Final Testing & connections** 12/15/17 – 1/5/18
- **Project closeout** 2/28/18