

ORDINANCE NO. 2022-11

LEWISBURG, OHIO, ORDINANCE TO ACCEPT A DONATION AGREEMENT INVOLVING A PROPOSED GIFT OF REAL ESTATE FROM BETTY J. MCKINNEY

That Whereas, real estate with historical value is desired for Municipal purposes in the Village of Lewisburg, Ohio;

And Whereas, Betty J. McKinney, an unmarried woman, is willing to gift by deed Lewisburg Village Lot No. 189, to the Village of Lewisburg, Preble County, Ohio, an Ohio Municipal Corporation, pursuant to the terms of a Donation Agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF LEWISBURG, PREBLE COUNTY, OHIO, AS FOLLOWS:

Section 1. The Lewisburg, Ohio, Village Council herein authorizes the Municipal Manager to accept the attached Exhibit "A" Donation Agreement and offer of Betty J. McKinney, an unmarried woman, to gift Lewisburg Village Lot No. 189, to the Village of Lewisburg, Preble County, Ohio, an Ohio Municipal Corporation.

Section 2. All funding from this transaction shall come from the Village General Fund, and shall include the payment of all Village legal, closing, or other miscellaneous costs, fees, and expenses. Acquisition of the land is to be by Limited Warranty Deed or such other deed as may be useful or appropriate. The final acceptance of the delivery and recording of the Deed shall occur with the Village of Lewisburg obtaining title insurance.

Section 3. Authorization is given to Law Director Richard V. Faber, Jr., and any outside legal counsel and/or title insurance company assisting him, to handle all legal matters, and for the Municipal Manager and Clerk of Council to sign any documents needed to complete the transaction.

Section 4. The individuals and entities authorized under Section 3 of this Ordinance have broad authority to amend any legal description or document necessary to complete this transaction on behalf of the Village of Lewisburg, Ohio, and to record the same when appropriate.

Section 5. This Ordinance shall be effective from and after 30 days from its passage by the Village Council.

Dated: 07-21-2022

Maresh Jones
Mayor

Attest: Elizabeth A. Wagner
Clerk of Council

D1614

DONATION AGREEMENT

This Donation Agreement (this "**Agreement**") is made and entered into effective as of the last date executed by a party hereto (the "**Effective Date**"), by and between Betty J. McKinney ("**Donor**"), and the Village of Lewisburg, Preble County, Ohio, an Ohio Municipal Corporation (collectively, "**Donee**"). Donor and Donee are each sometimes referred to in this Agreement as a "**Party**," and collectively as the "**Parties**." The Parties agree as follows:

1. **Conveyance.** At the Closing, pursuant to and in accordance with the terms of this Agreement, Donor will convey the following to Donee, as a gift and without consideration (collectively, the "**Property**"): (i) the real property more-particularly described on Exhibit A attached hereto (the "**Land**"); and (ii) any and all structures, fixtures, or other improvements owned by Donor and located on the Land (the "**Improvements**", and, together with the Land, the "**Real Property**").

2. **Real Property; Closing Condition.** The Parties acknowledge that, as of the Effective Date, the Real Property is owned by the James D. McKinney Revocable Trust dated October 19, 1997 (the "**Trust**"). Immediately prior to Closing, and as a condition of Closing, Donor will cause the Trust to convey the Real Property to Donor, via a Trustee Deed in the form shown on Exhibit B attached hereto (the "**Trustee Deed**"), at the Closing immediately prior to the conveyance described in Section 1 of this Agreement.

3. **Closing.** This transaction will close (the "**Closing**") on or before the date that is 40 days following the Effective Date (the "**Closing Date**"), at such time as is mutually agreed upon by the Parties. Upon the Closing, Donor will deliver possession of the Real Property to Donee, in accordance with the terms of this Agreement. Should a citizen Referendum be filed with the Preble County, Ohio, Board of Elections to bring the Village of Lewisburg, Ohio, authorizing legislation for this Donation Agreement to a vote at a primary, general, or special election, then this Donation Agreement will be void.

4. **Closing Deliverables.** At the Closing, Donor will execute and deliver to Hometown Title Services, LLC (the "**Title Company**"): (i) a limited warranty deed in the form shown on Exhibit C attached hereto (the "**Deed**"); and (ii) all other documents and other deliverables reasonably necessary to complete the Closing, as reasonably required of Donor by the Title Company. At the Closing, Donee will deliver to the Title Company: (i) an IRS Form 8283 in a form reasonably requested by Donor at least 3 days prior to the Closing, executed by Donee; and (ii) all other documents and other deliverables reasonably necessary to complete the Closing, as required of Donee by the Title Company.

5. **Transaction Costs; Prorations.** Donee will pay for: (i) any escrow fees, Closing fees, and title insurance premiums charged by the Title Company, (ii) all costs to record the Deed and Trustee Deed; and (iii) the cost of Donee's diligence, including without limitation, reviewing any title commitment or report, and conducting an environmental, structural, or other assessment of the Real Property. Except as otherwise expressly set forth in this Agreement, each Party will pay its own costs and fees to perform its rights or obligations herein, including its own legal fees. As between Donor and Donee, all expenses and income arising from the Property will be prorated as of the Closing Date.

6. **Default.** If either party fails to timely perform its obligations under this Agreement at or prior to the Closing and fails to cure such breach within 5 days after written notice of the same from the other party, then the non-defaulting party may, as its sole remedy under this Agreement for such pre-Closing default, terminate this Agreement with an additional written notice to the defaulting party, in which case Donor and Donee will have no further rights or obligations under this Agreement (except those rights and obligations that expressly survive the termination of this Agreement).

7. **As-Is, Where-Is.** Donee understands, acknowledges, and agrees as follows: (i) except as otherwise expressly provided in this Agreement, Donee is acquiring the Property "AS IS, WHERE IS" AND "WITH ALL FAULTS, LIABILITIES, AND DEFECTS, LATENT OR OTHERWISE, KNOWN OR UNKNOWN," in its present state and condition as of the Closing Date, with no right of recourse against Donor for the same; (ii) Donee has been given a full and complete opportunity to conduct its own investigation as to any matter, fact, or issue which might influence Donee's decision to acquire the Property; (iii) except as otherwise expressly provided in this Agreement, neither Donor nor any of Donor's agents, contractors, consultants, attorneys, or representatives have made, do not make, and specifically negate and disclaim, and Donee is not relying on, any representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of, as to, concerning, or with respect to the Property. The provisions of this Section will survive the Closing or any termination of this Agreement.

8. **Casualty or Condemnation.** In the event that, after the Effective Date, but prior to the Closing, the Real Property suffers any damage, loss, or destruction through no fault of Donor, Donee is obligated to acquire the Property in accordance with this Agreement, but will retain the right to receive an assignment of any insurance proceeds received by Donor, less the amount of any insurance deductible paid by Donor.

9. **Merger.** Except as expressly provided in this Agreement, all rights of Donee will merge into the Deed delivered by Donor at the Closing, and will not survive the Closing.

10. **Notices.** All notices must be served by one of the following methods, and will be deemed given to and received by the recipient party as follows: (i) if by personal service, when personally delivered; (ii) if by e-mail, on the date sent, provided that an original is sent the same day by one of the other approved methods set forth in this Section, unless the sender receives an electronic mail response from the recipient indicating that the recipient received such transmission, in which case the original does not need to be sent by one of the other approved methods; (iii) if by Federal Express or other similar recognized public or private overnight delivery service, 1 day after depositing the notice with such service, provided all fees for overnight delivery service are paid, and the notice is properly addressed; and (iv) if by United States mail, postage prepaid, certified or registered mail, return receipt requested, and properly addressed, upon the earlier of either delivery, refusal to accept delivery, or a first but unsuccessful attempt to deliver when notice of such attempt is left for the recipient. Notice addresses and information for each Party is set forth below:

Donor Notice Address:

Betty McKinney
c/o Mark Meyer, Foundry Commercial
420 South Orange Avenue
Orlando, FL 32801
E-mail: mark.meyer@foundrycommercial.com

with a copy to:

Foulston Siefkin LLP
Attn: Wes Kimmel
1551 N. Waterfront Pkwy, Ste. 100
Wichita, KS 67206
E-mail: wkimmel@foulston.com

Donee Notice Address:

Jeffrey A. Sewert
Village of Lewisburg, Ohio, Municipal Manager
112 South Commerce Street
Lewisburg, Ohio 45338
E-mail: jeff.sewert@lewisburg.net

with a copy to:

Richard V. Faber, Jr.
Village of Lewisburg, Ohio, Law Director
200 North Commerce Street P.O. Box 517
Lewisburg, Ohio 45338
E-mail: None

11. **Deadlines; Business Days.** If any deadline under this Agreement falls on a Saturday, Sunday, or legal holiday (any other day, a "***Business Day***"), such deadline will be extended until the following Business Day. As used in this Agreement, the term "legal holiday" means any federal holiday for which financial institutions or post offices in the United States of America are generally closed for observance thereof. All references to specific times in this Agreement refer to the time in the time zone in which the Real Property is located.

12. **Successors and Assigns; Assignment.** This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns, provided that Donee may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of Donor, which consent Donor may withhold in its sole discretion.

13. **Intentionally Deleted.**

14. **Third Parties.** Nothing in this Agreement is intended or will be construed to confer upon or give to any person or entity, other than the Parties and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

15. **Entire Agreement; Amendment.** This Agreement (including any exhibits and attachments to this Agreement, which are incorporated herein by this reference): (i) constitutes the entire agreement between the Parties relating to the subject matter of this Agreement; (ii) supersedes all prior communications (whether expressed, implied, written, or oral), agreements, and understandings between the Parties relating to the subject matter of this Agreement; and (iii) may not be modified or amended except by a written instrument executed by all of the Parties.

16. **Time Is of the Essence; Further Assurances; No Memorandum.** Time is of the essence of this Agreement. Each Party agrees to execute and deliver such additional documents and take or refrain from taking such action as may be necessary or appropriate to carry out the purposes and intent of this Agreement, and to fulfill its obligations under this Agreement; provided that in no event may Donee record this Agreement or any memorandum, notice, or short form thereof without the written consent of Donor, which Donor may withhold in its sole discretion.

17. **Enforcement; Waiver.** No failure by any Party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement, or to exercise any

right or remedy consequent upon a breach of this Agreement will constitute waiver of any such breach or any other covenant, duty, agreement, or condition.

18. **Governing Law.** This Agreement is governed by, and is to be interpreted in accordance with, the substantive laws of the State of Ohio, without giving effect to any choice-of-law principles that might direct the application of the laws of any other jurisdiction. The provisions of this Section will survive the Closing or any termination of this Agreement.

19. **Counterparts; Electronic Signatures.** The Parties may execute this Agreement in counterparts, each of which will constitute an original, and all of which, when taken together, will constitute one and the same instrument. Signatures will be considered binding and original even if transmitted via e-mail or facsimile, and an Agreement containing signatures transmitted via e-mail, facsimile, or other copy that is not "wet ink," will be deemed an original and binding Agreement. Prior to closing, the Parties agree to additionally execute this Agreement in triplicate originals in blue ink (one for the Donor, one for the Donee, and one for the Title Company).

[Signatures and exhibits on the following pages]

The Parties have caused this Agreement to be executed as of the date(s) set forth below their respective signatures, to be effective as of the Effective Date.

“DONOR”:

By: _____
Betty J. McKinney

Date: _____

“DONEE”:

Village of Lewisburg, Preble County, Ohio,
an Ohio Municipal Corporation

By: _____

Printed Name: Jeffrey A. Sewert

Title: Lewisburg Municipal Manager

Date: _____

CONSENTED TO BY:

Betty J. McKinney, Trustee

JAMES D. MCKINNEY REVOCABLE TRUST
DATED OCTOBER 19, 1997

Date: _____

EXHIBIT A

Legal Description

Situate in the Village of Lewisburg, County of Preble and State of Ohio, and being Lot numbered ONE HUNDRED EIGHTY-NINE (189) on the recorded plat of Daniel Harper's Addition to said Village of Lewisburg, Ohio.

EXHIBIT B

Form of Trustee Deed

[Attached]

[Space Reserved For Recorder]

**DEED OF EXECUTOR, ADMINISTRATOR, TRUSTEE, GUARDIAN, RECEIVER OR
COMMISSIONER***

Betty J. McKinney, Trustee of the **JAMES D. McKINNEY REVOCABLE TRUST DATED OCTOBER 19, 1997**, having taken title as James D. McKinney, Trustee of the James D. McKinney Revocable Living Trust dated October 19, 1997 ("Grantor"), for One Dollar (\$1.00) and other valuable consideration paid, grants, by the power conferred by the Trust, with fiduciary covenants, subject to and excepting therefrom all non-delinquent real estate taxes and assessments, if any, and all zoning ordinances, legal highways, declarations, easements, reservations, limitations and restrictions of record, to **BETTY J. McKINNEY**, in her individual capacity as an unmarried widow (the "Grantee"), whose tax-mailing address is 7524 East Tenth Circle North, Wichita, Kansas 67206, the following **REAL PROPERTY**:

Situate in the Village of Lewisburg, County of Preble and State of Ohio, and being Lot numbered ONE HUNDRED EIGHTY-NINE (189) on the recorded plat of Daniel Harper's Addition to said Village of Lewisburg, Ohio.

Parcel ID No.: D13-0012-035-00-001-000

Property Address: Lot 189, Village of Lewisburg, County of Preble, State of Ohio

Prior Instrument Reference: Deed Book Vol. 259, Page 1854 of the Preble County, Ohio Records.

EXECUTED as of _____, 2022.

JAMES D. McKINNEY REVOCABLE TRUST
DATED OCTOBER 19, 1997

By: Betty J. McKinney, Trustee

*See Section 5302.09 Ohio Revised Code

STATE OF _____)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____ 2022, by Betty J. McKinney, Trustee of the James D. McKinney Revocable Trust dated October 19, 1997, on behalf of the Trust.

Notary Public

This instrument was prepared in its unexecuted form without benefit of title examination by: Christopher J Groeschen, Esq., Graydon Head & Ritchey LLP, 312 Walnut Street, Suite 1800, Cincinnati, Ohio 45202, (513) 621-6464

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EXHIBIT C

Form of Deed

[Attached]

[Space Reserved For Recorder]

LIMITED WARRANTY DEED

BETTY J. McKINNEY, an unmarried widow, whose tax-mailing address is 7524 East Tenth Circle North, Wichita, Kansas 67206, for One Dollar (\$1.00) and other valuable consideration paid, grants, with limited warranty covenants, subject to and excepting therefrom all non-delinquent real estate taxes and assessments, if any, and all zoning ordinances, legal highways, declarations, easements, reservations, limitations and restrictions of record, and any matters that would have been disclosed by an accurate survey of the property, to **VILLAGE OF LEWISBURG**, Preble County, Ohio, an Ohio Municipal Corporation ("Grantee"), whose tax-mailing address is 112 South Commerce Street, Lewisburg, Ohio 45338, the following **REAL PROPERTY**:

Situate in the Village of Lewisburg, County of Preble and State of Ohio, and being Lot numbered **ONE HUNDRED EIGHTY-NINE (189)** on the recorded plat of Daniel Harper's Addition to said Village of Lewisburg, Ohio.

Parcel ID No.: D13-0012-035-00-001-000

Property Address: Lot 189, Village of Lewisburg, County of Preble, State of Ohio

Prior Instrument Reference: Dced Book Vol. _____, Page _____ of the Preble County, Ohio Records.

EXECUTED as of _____, 2022.

GRANTOR:

Betty J. McKinney

STATE OF _____)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____ 2022, by Betty J. McKinney, in her individual capacity.

Notary Public

This instrument was prepared in its unexecuted form without benefit of title examination by: Christopher J Groeschen, Esq., Graydon Head & Ritchey LLP, 312 Walnut Street, Suite 1800, Cincinnati, Ohio 45202, (513) 621-6464

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