



ORDINANCE NO. 2021-011

ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A DEVELOPMENT AGREEMENT WITH THE LEBANON BREWING COMPANY, LLC

WHEREAS, the City of Lebanon, Ohio (the "City") owns real property at 20 West Silver Street, Lebanon, Warren County, Ohio (the "Property"); and

WHEREAS, the 2017 Downtown Lebanon Master Plan specifically recommends the redevelopment of City owned property as a Community goal to enhance the economic vitality of the Central Business District; and

WHEREAS, the City desires to sell and the Lebanon Brewing Company, LLC (the "Developer") desires to purchase the Property in order to renovate the building for a micro-brewery and restaurant operation (the "Project") upon the Property, which will provide jobs and economic development to the citizens and residents of Lebanon, Ohio and the surrounding area; and,

WHEREAS, the City and the Developer have mutually agreed upon terms and conditions for the sale and development of the Property, which specific terms and conditions have been documented in a development agreement attached hereto and incorporated herein as if fully set forth; and

WHEREAS, the Council of the City of Lebanon hereby finds that the terms and conditions set forth in the development agreement are acceptable and beneficial to the general health, safety and welfare of the citizens of the City of Lebanon, Ohio and that the Council wishes to sell and convey the Property to the Developer upon the terms and conditions set forth therein.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lebanon, Ohio:

SECTION 1. The City Manager is hereby directed and authorized to execute, on behalf of the City, the development agreement between the City and the Developer, in substantially the same form as that attached hereto as Exhibit A.

SECTION 2. This Ordinance is shall become effective at the earliest date allowed by law.

Handwritten signature of Mayor [Name] over the printed name Mayor

Passed: January 26, 2021

Attest: [Signature] Clerk of Council

Sponsor: Brewer, Mathews, Monroe; Shafer, Wyatt; Council Member

City Manager, City Auditor, City Attorney with signature boxes and handwritten initials

EXHIBIT A
THE DEVELOPMENT AGREEMENT



DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into effective as of the 8th day of March, 2021 (the "Effective Date") by and between THE CITY OF LEBANON, OHIO, an Ohio municipal corporation, having a mailing address at 50 South Broadway Lebanon, OH 45036 (the "City") and RIDGLEY HOLDINGS, LLC, an Ohio limited liability company, having a mailing address of 5051 Spice Ct., Lebanon OH 45036 ("Developer"), under the following circumstances:

RECITALS:

- A. The City currently owns property located at 20 West Silver Street, Lebanon, Ohio 45036 within the City of Lebanon, Warren County, Ohio, and legally described in Exhibit A, both attached hereto and incorporated herein by reference (the "City Property").
- B. The Developer currently owns property located at 535 N. Broadway Ave., Lebanon Ohio 45036 within the City of Lebanon, Warren County, Ohio and legally described in Exhibit B, both attached hereto and incorporated herein by reference (the "Developer Property").
- C. Subject to the terms and conditions contained in this Agreement, Developer is willing to acquire the City Property, and to develop, and construct and operate the City Property as a viable commercial business consisting of: (i) a casual restaurant, (ii) micro-brewery and/or micro-distillery, particularly described in Exhibit C (the "Project").
- C. The City believes that the Project and related improvements are consistent with the 2017 Downtown Lebanon Master Plan and are in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements, which purposes include, but are not limited to, furtherance of the City's goals to enhance the part of the City's downtown area in which the Property is located, to provide necessary amenities to facilitate viable commercial businesses within the City's downtown area, all of which are expected to enhance City tax revenues.
- C. The City Manager is authorized pursuant to Section 131.11(G) of the Lebanon, Ohio Codified Ordinances to dispose of the Property under terms and conditions which the City Manager determines to be in the best interest of the City.
- D. The parties desire to enter into this Agreement in order to reflect certain agreements between them with respect to the conveyance of the City Property to the Developer, The Developer Property to the City, to the Project generally, and to the improvements to be made by each of them, available City incentives relative to certain components of the Project, and other agreements and obligations, all pursuant and subject to the terms and conditions contained herein.

NOW, THEREFORE, for and in consideration of the mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both parties hereto, the City and Developer agree as follows:

Introduction; Recitals. Each of the parties hereby acknowledges and agrees that the statements made by it in the foregoing recitals are, to its actual knowledge and belief, true and accurate and the same are hereby included herein by this reference as if fully set forth in this Introduction section of the Agreement.

1. **Transfer of Property.** Subject to the terms of this Agreement, within ninety (90) days after the earlier to occur of (i) the satisfaction or waiver of the "Developer Contingencies" and the "City Contingencies" (each as hereinafter defined) or (ii) the "Contingency Deadline" (as hereinafter defined), but subject to the terms and conditions contained in this Agreement, the City shall transfer to Developer fee simple title to the City Property by Quit Claim Deed. Additionally, the Developer shall transfer to the City fee simple title to the Developer Property by Quit Claim Deed, both transfers being subject only to: real estate taxes and assessments not yet due and payable; easements, conditions, and restriction of record as of the date of this Agreement or as otherwise agreed upon by the parties prior to the Contingency Deadline; zoning and building laws and regulations; the Deed Restrictions (defined herein) and the other items to be created in accordance with the terms hereof (collectively, all such items hereinafter being referred to as the "Permitted Exceptions"). The following terms and conditions shall apply to such transfer of the City and Developer Property and the closing of such transfer (the "Closing"):

(a) The fee to be paid by Developer and accepted by the City for the property transfer shall be Thirty Five Thousand Dollars (\$35,000.00) to account for the difference in appraised value between the two properties.

(b) The City and the Developer shall deliver to each party exclusive possession of the Property upon completion of the Closing, which shall take place at the offices of the City's attorneys on a date and time (subject to the first paragraph of this Section 1) to be selected by Developer and the City with at least five (5) business days advance written notice to City.

(c) In addition to the Quit Claim Deed, the parties agree to execute and deliver at Closing the Deed Restriction and such assignments, affidavits, certified ordinances, certificates, and other instruments as are reasonably necessary to complete the Closing, and which are typical for commercial real estate transfers and as otherwise required by this Agreement, provided, however, that the City shall not be obligated to provide any affidavit or other instrument creating indemnification obligations on the part of the City.

(d) Real estate taxes, assessments, or other expenses will be prorated at Closing as is customary for commercial real estate transfers, with Developer and City receiving credit for real estate taxes and assessments charged for periods prior to Closing but that will be due and payable after Closing.

(e) Developer and City shall equally share all closing costs and expenses, including costs of title or escrow closing agent and costs of any title insurance desired by the Developer.

2. **Construction of Project.** Developer shall construct and install upon the City Property acquired by the Developer, the Project. The Project, including the engineering and design therefore, the plans and specifications, and the construction and installation, shall be completed: (a) in conformance with the Deed Restrictions and all applicable codes, ordinances, and laws; (b) in a good and workmanlike manner; and (c) to the extent required by applicable law, including the City zoning code, in conformance with the plans and specifications approved in advance by appropriate City officials. Subject to delay caused by Force Majeure events described below, Developer shall commence construction of the Project within three (3) months after the date of possession, and shall substantially complete such construction within twelve (12) months after commencing construction. The Project and related improvements will be constructed and installed in compliance with the final, approved plans and specifications as approved by the City. Developer shall prepare and submit to appropriate government agencies all applications for such approvals as are required to develop and construct the Project in accordance with applicable laws, rules, regulations, codes and ordinances and the following specifications for the Project:

- (a) Developer shall construct or cause to be constructed and delivered a fully operational commercial business, as approved by the City, consisting of the following uses:
 - (i) Casual restaurant establishment to include on-site window service.
 - (ii) Micro-brewery and/or micro-distillery establishment.

3. **Inspection of Property.**

(a) At any time after the Effective Date but prior to the Contingency Deadline, both the Developer and the City, at each expense, shall have the right to enter onto the property to conduct such inspections as they may deem appropriate to determine if the condition and suitability of the property are satisfactory.

(b) Developer and City will rely upon its own inspections to determine the condition and suitability of the Property. Developer and City acknowledges and agrees that neither any agent, attorney, employee, or representative has made any representation whatsoever regarding the Property, or any part thereof, including (without limiting the generality of the foregoing) representations as to the physical nature or condition of the Property. The Developer and the City agrees to take the Property "AS IS, WHERE IS," and subject to all physical defects as may afflict the Property at the time of Closing. The Developer and City further acknowledges that each party is under no obligation to repair any damage or defects to the Property that have accrued at the time of Closing.

(c) Developer and City will keep their respective property free from liens arising out of the inspection, pay all expenses incurred in connection with their own inspection, and shall restore any damage to the property caused by inspections. Each party shall provide at least one full business day's prior written notice of any inspection or test and, with respect to any intrusive inspection or test (*i.e.*, core sampling or drilling), must obtain prior written consent (which consent shall not be unreasonably withheld or delayed), failure to respond within twenty-four (24) hours shall be deemed to be an approval for the requested activity. Notwithstanding the foregoing, prior to performing any inspection or test, Developer and City must deliver a certificate of insurance to the City evidencing that it has in place reasonable amounts of comprehensive general liability insurance and workers compensation insurance for its activities (and the activities of and their respective contractors, agents and representatives) on the Property, and in terms and for amounts equal to at least \$1,000,000 per occurrence, \$2,000,000 aggregate any accident arising in connection with the presence of them, its contractors, agents, and representatives on the Property and, which insurance shall name the other party as an additionally insured thereunder.

4. **Indemnification and Insurance.**

(a) Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Developer shall defend, indemnify and hold the City, its officers, council members, employees, and agents (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorney's fees), demands, judgments, liability and damages (collectively, "Claims") suffered or incurred by or asserted against the Indemnified Parties, or any of them, as a result of or arising from injuries, deaths or loss or damage to property to the extent caused by the acts or omissions of Developer, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Developer in connection with the development and construction of the Project and on or around the Property; provided, however, that Developer's obligations under this paragraph shall only apply to Claims that accrue or arise due to events which occur or actions taken during the period from the commencement of inspection or construction related activities on or around the Property by Developer through its substantial completion and the issuance of certificates of occupancy for not less than eighty percent (80%) of the total planned commercial space to be included within the Project.

6. **Tax Abatement.** The City acknowledges that a critical component of the consideration for Developer entering into this Agreement and developing the Property as the Project and to perform all of its other obligations under this Agreement, is that all real estate taxes on the improved value to the property as a result of the Project be abated for twelve (12) years under Chapter 159 of the City of Lebanon Codified Ordinances (the "Tax Abatement"). The City shall reasonably cooperate with the Developer in its efforts to obtain and implement the Tax Abatement, including, without limitation, in connection with Developer's obtaining of all necessary State of Ohio and other governmental approvals and in connection with the Community Reinvestment Area Compensation Agreement (described below), as required under Chapter 3735 of the Ohio Revised Code. The provisions of this Section shall survive the expiration or earlier termination of this Agreement, provided the Property is transferred to Developer.

7. **Electric Rebate Incentive.** The City agrees to provide a 25% rebate applied to the standard billable electric consumption charges for a period of 36 months beginning on a mutually agreed upon date by the Developer and City. The incentive amount will be reflected as a rebate on the monthly invoice for electric service.

8. **General City Cooperation.** The City acknowledges that, in connection with the development and construction of the Project, from time to time, the Developer will be submitting to various City departments, development plans showing proposed building improvements, exterior plans for outdoor dining, signage, landscaping, general site improvements, utility lines, facilities and systems and applications for necessary approvals and City permits for the same. The City agrees, subject to all normal and applicable department rules, regulations and processes, and to applicable law, all of which apply to all persons who do business with the City, that it will cooperate with Developer and review and approve all applications and submissions for the Project, including, without limitation, any zoning related approvals or actions, in the normal course of business as the same is regularly brought before and handled by the City. In addition, the City shall cooperate with and assist the Developer in all of its efforts with respect to the development, construction, and operation of the Project and the efforts by the Developer to satisfy its conditions hereunder, including coordinating and assisting with efforts with the Warren County Port Authority, the Board of Education of the Lebanon City School District, and other third parties and agencies.

9. **Defaults.** Except as otherwise provided in this Agreement, in the event of any default or breach of any of the terms or agreements herein contained, by either party hereto, such party shall, upon written notice from the other, proceed to cure or remedy such default or breach within thirty (30) days after receipt of such notice, or in the event the default or breach does not involve the payment of money and cannot be cured within said thirty (30) days, then cure shall be made within such longer period of time as may be reasonable under the circumstances and the party will not be deemed in default of this Agreement provided the cure is promptly commenced (to the extent commercially practical to do so) within the original thirty (30) day period and diligently pursued to completion thereafter. In the event the default or breach is not remedied in the time periods and manner provided in this paragraph, then the aggrieved party may take such actions as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance or injunctive action. All remedies shall be nonexclusive to all other remedies allowed at law, in equity, or as otherwise provided in this Agreement.

10. **Approvals of the City.** Any provision of this Agreement requiring the approval of the City, the satisfaction or evidence of satisfaction from the City, certificate or certification by the City, or the opinion of the City, shall be interpreted as requiring such action by the City Council of the City of Lebanon (the "Council"), and Developer shall have the right to rely upon any of the same executed, delivered or provided by the City Council.

11. **Contingencies.**

(a) **Developer Contingencies.** Developer shall have no obligation to acquire the Property or to develop and construct the Project unless and until all of the following contingencies (collectively, the "Developer Contingencies") have been satisfied or waived by Developer in writing:

(i) The Developer and the City shall have reached agreement on and shall have approved all of the end specifications for the Project and all components thereof, including that Developer shall be satisfied that the Property, as developed, will be sufficient to comply with the Project as described.

(ii) All necessary building and construction permits and approvals required for the Project and all components thereof shall have been issued with only such conditions as are contemplated in this Agreement or as are otherwise acceptable to the Developer, in its sole discretion, and any applicable appeal or referendum periods for the same shall have expired without any such appeal or referendum having been initiated.

(iii) Developer shall be satisfied, in its sole discretion, with the results of Developer's due diligence efforts with respect to the Property and the Project, including, without limitation, title, survey, utility availability, environmental, and geotechnical studies.

(iv) City agrees to provide a Phase II ESA report for the Property.

(v) City agrees to amend the Designated Outdoor Refreshment Area (the "DORA") boundary to include the Property and have such amendment approved by the Ohio Department of Liquor Control prior to commencement of the Project.

(vi) City agrees to waive on-site parking as required under Chapter 1137 of the Lebanon Zoning Code.

(vii) City agrees to waive any "Tap-In" Fee associated with installing a new, larger water service line to accommodate a Fire Suppression system if deemed necessary for The Project

(b) **City Contingencies.** City shall have no obligation to sell the Property unless and until all of the following contingencies (collectively, the "City Contingencies") have been satisfied or waived by City in writing on or prior to the dates set forth below (in each case, as applicable "Contingency Deadline"):

(i) Developer agrees to identify individual businesses as defined in the Project and present such businesses to the City for consideration as prospective tenants. In accordance with the Project parameters, the City shall approve and consent to such businesses as prospective tenants within two weeks of submittal.

(ii) Developer agrees prior to closing and transfer of the Property, to provide evidence in a form satisfactory to the City that the prospective tenants as approved by the City intend to lease space in the Project.

(iii) Developer agrees all building/property/tenant improvements are the sole responsibility of the Developer or assignee.

(iv) Developer agrees that if at any time it decides to sell or transfer ownership of the Property it shall first allow the City to purchase the Property at the current appraised value for a period of 10 years after the execution of this agreement unless the future buyer intends to operate the business(es) in accordance with the Project as described.

(v) Developer agrees to not demolish the building prior to January 1, 2032, without City approval.

(vi) Developer agrees that Closing and access to the City property for construction of the Project shall not commence until the City has vacated the property and moved the fire operations into the new Fire Station. Developer shall be given access to the City property for purposes of planning and design.

(vii) All terms and conditions related to the Agreement require approval by the Council.

12. Right to Terminate.

(i) Termination by Developer. Unless all of the Developer's Contingencies set forth above in Sections 11.(a.) are satisfied or waived in writing by the Developer on or before (NOT APPLICABLE) (the "Contingency Deadline"), then the Developer shall have the right to terminate this Agreement by written notice to the City. In addition, if prior to the Contingency Deadline, the Developer determines that any or all of the Developer's Contingencies will not be satisfied by the above described deadline, the Developer may elect to terminate this Agreement by written notice to the City prior to such date. Any or all of the Developer Contingencies may be waived by the Developer, but only by a written instrument executed by the Developer; provided, however, that if the Developer does not terminate this Agreement, pursuant to its right above in this paragraph, by the Contingency Deadline, Developer shall be deemed to have satisfied or waived the Developer Contingencies.

(ii) Termination by City. Unless all of the City's Contingencies set forth above in Section 11.(b.) are satisfied or waived in writing by the Developer or City as applicable, on or before the date set out above for each such contingency, then the City shall have the right to terminate this Agreement by written notice to the Developer. In addition, if prior to the Contingency Deadline, the City determines that any or all of the City's Contingencies will not be satisfied by the above described deadline, the City may elect to terminate this Agreement by written notice to the Developer prior to such date. Any or all of the City Contingencies may be waived by the City, but only by a written instrument executed by the City; provided, however, that if the City does not terminate this Agreement, pursuant to

its right above in this paragraph, by the Contingency Deadline, the City shall be deemed to have satisfied or waived the City Contingencies.

(iii) Upon any termination of this Agreement pursuant to the Sections above, neither party hereto shall have any further obligations to the other hereunder except for those specifically stated to survive such termination.

13. **Estoppel Certificate.** Each party hereto agrees that, within fifteen (15) days after receipt of written request from the other party, it will issue to such requesting party, or its prospective mortgagee or successors, an estoppel certificate stating, to the best of such party's knowledge, as of such date:

(a) Whether it knows of any default under this Agreement by the requesting party, and if there are any known defaults, specifying the nature thereof;

(b) Whether this Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof;

(c) Whether this Agreement is in full force and effect; and

(d) Any other reasonable matters relating to the transactions described in this Agreement.

The City Manager of the City of Lebanon, Ohio is authorized by this Agreement to execute such estoppel certificates without further legislative approval.

14. **Termination of Agreement.** Upon substantial completion of the Project and the performance by both parties hereto of all other obligations of the City and the Developer hereunder, or in the event of termination of this Agreement as a matter of right pursuant to any of its terms, the parties agree to execute, in recordable form if requested by either party, a statement confirming termination of this Agreement.

15. **Easements, Covenants, and Restrictions.** Prior to the Contingency Deadline, City and the Developer shall reach agreement on the form and content of such easements, covenants, and restrictions as the parties determine to be necessary in order to effectuate their respective obligations described in this Agreement, including the Deed Restrictions (defined herein).

16. **Representations, Warranties, and Covenants of Developer.** Developer makes the following representations, warranties, and covenants, effective as of the date of this Agreement and also as of the date of the Closing, to induce the City to enter into this Agreement:

(a) Developer is a limited liability company duly organized and validly existing under the laws of the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement.

(b) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has, by proper action, been duly authorized, executed, and delivered by Developer and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid, and binding obligations of Developer.

(c) The execution, delivery, and performance by Developer of this Agreement and the consummation of the transactions contemplated hereby will not violate the organizational documents of Developer, or any mortgage, indenture, contract, agreement, or other undertaking to which Developer is a party or which purports to be binding upon Developer or upon any of its assets, nor is Developer in violation or default of any of the foregoing.

(d) There are no actions, suits, proceedings, or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting Developer, at law or in equity or before or by any governmental authority.

(e) Until the construction of the Project is substantially completed, Developer shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute or governmental proceeding or investigation affecting Developer that could reasonably be expected to interfere substantially with its normal operations or materially and adversely affect its financial condition and of any notice of default to Developer from any of its lenders.

19. **Miscellaneous.**

(a) **Severability.** If 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, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

(b) **Waiver.** The failure of either party to insist, in any one or more instances, upon strict performance of any of the terms and conditions of this Agreement, or to exercise or fail to exercise any option or right contained herein, shall not be construed as a waiver or a relinquishment for the future of such right or option, but the same shall continue and remain in full force and effect. The continued performance by either party of this Agreement with knowledge of the breach of any term or condition hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provision hereof, shall be deemed to have been made, or operate as estoppel, unless expressed in writing and signed by such party.

(c) **Notices.** All notices herein authorized or required to be given to the City shall be sent certified or registered mail, return receipt requested or by overnight courier service, postage prepaid, or by hand delivery as follows:

If to the City:

City of Lebanon
Attn: City Manager
50 South Broadway
Lebanon, OH 45036

With a copy to:

Mark Yurick, City Attorney
50 South Broadway
Lebanon, OH 45036

If to Developer:

RIDGLEY HOLDINGS, LLC
5051 Spice Ct.
Lebanon OH 45036

or to such other address as either party may from time to time designate in accordance with this Section.

(d) **Entire Agreement.** This Agreement sets forth the complete understanding and agreement of the parties with respect to the transaction that is the subject of this Agreement. No oral statements, representations, or agreements other than this Agreement shall have any force or effect and the City and the Developer agree that they will not rely on any representations or agreements other than those contained in this Agreement.

(e) **Further Assurances.** Either party, upon the request of the other party, shall execute and deliver such further documents or instruments as such other party may reasonably deem appropriate to carry out the terms and conditions of this Agreement, provided that such further documents and instruments are consistent with the terms and conditions of this Agreement.

(f) **Survival.** All agreements, representations, warranties, and indemnifications hereunder shall be considered to have been relied upon and shall survive the execution, delivery, completion of performance, expiration, and earlier termination of this Agreement.

(g) **Headings.** The headings in this Agreement are for the purposes of reference only and shall not affect or define the meanings hereof.

(h) **Exhibits.** The Exhibits attached hereto are a part of this Agreement.

(i) **Applicable Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio.

(j) **Counterparts.** This Agreement may be signed in multiple identical counterparts with the same effect as if the signatures thereof and hereto were upon the same instrument.

(k) **Mechanics Liens.** Neither party shall permit any mechanics' or other liens to be filed against the other party's property as a result of such party's construction activities. If a mechanics' lien shall at any time be so filed, the party performing such work shall, within sixty (60) days after notice of the filing thereof, cause the same to be discharged of record by posting a bond therefor or by such other action as causes the lien to be discharged.

(l) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(m) **Time.** Time is of the essence with respect to the performance by the parties of their respective obligations under this Agreement for which time is a stated factor.

(n) **No Third-Party Beneficiaries.** The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(o) **No Brokers.** The City and Developer represent to each other that they have not dealt with a real estate broker, salesperson, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(p) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(q) **Official Capacity.** All representations, warranties, covenants, agreements, and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements, or obligations shall be deemed to be a representation, warranty, covenant, agreement, or obligation of any present or future officer, agent, employee, or attorney of the City in other than his or her official capacity.

(r) **Construction of Agreement.** Each of the undersigned parties has cooperated in the drafting and preparation of this Agreement and each has been represented by separate legal counsel during such process. Therefore, in any construction to be made of this Agreement, the same will not be construed against any party hereto on the basis that the party was the drafter.

(s) **Survival of Separate Agreements.** Notwithstanding any other provision of this Agreement to the contrary, nothing contained herein shall supersede, terminate, or otherwise affect the respective rights and obligations of the City and Developer under that certain Agreement for Preliminary Site Work for the Project or any other agreement hereinafter entered into between the parties.

(t) **Force Majeure.** "Force Majeure" shall mean any act of God, fire, earthquake, flood, explosion, war, insurrection, riot, mob violence, sabotage, inability to procure labor, equipment, facilities, materials, or supplies, strikes, lockouts, action of labor unions, condemnation, laws, orders of governmental authorities, litigation involving a party hereto relating to zoning, subdivision or other governmental action or inaction pertaining to Project, or any portion thereof, inability to obtain government permits or approvals, and other similar matters not within the commercially-reasonable control of the party charged with the subject obligation affected by any of the above. Notwithstanding the foregoing to the contrary, lack of funds necessary to perform shall not qualify as a Force Majeure event excusing or delaying performance by either party hereunder, and failure to obtain permits or approvals required from the City shall not qualify as a Force Majeure event for any City obligations under this Agreement.

EXECUTED on the date first above written.

*****SIGNATURE PAGE FOLLOWS*****

THE CITY OF LEBANON, OHIO,
an Ohio municipal corporation

By: 

Name: Scott Branks

Title: City manager

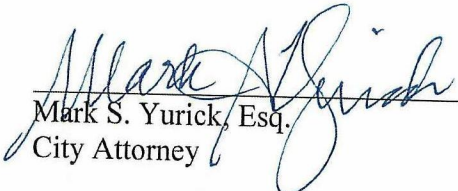
RIDGLEY HOLDINGS, LLC
an Ohio limited liability company

By: 

Name: Nathan Ridgley

Title: Owner

Agreement approved as to form:


Mark S. Yurick, Esq.
City Attorney

EXHIBITS

Exhibit A – Legal Description

Exhibit B – Legal Description

Exhibit C – The Project

EXHIBIT A

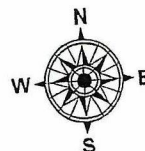
PARCEL #12-06-478-040

SITUATED IN THE CITY OF LEBANON, WARREN COUNTY, OHIO, SECTION 6, TOWN 4E, RANGE 3N BTM, AND BEING ALL OF LOT 8174 OF LEBANON CITIZENS NATIONAL BANK SUBDIVISION, AS RECORDED IN PLAT BOOK 92, PAGES 87 OF THE WARREN COUNTY, OHIO RECORDS.

SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD, IF ANY.



 20 West Silver Street
Fire Station No. 41



1 inch = 100 feet

EXHIBIT B

TRACT ONE: Situate in Turtlecreek Township, Warren County, Ohio, and being a part of Section 6, T. 4, R. 3, and bounded and described as follows:

Beginning at an iron pin at the northeasterly corner of a 0.570 acre tract designated as Parcel One in deed recorded in Volume 371, page 42, of the Deed Records of said County; thence S. 0° 48' W. 60 feet to a stake; thence S. 86° 12' E. a distance of 222.50 feet to a point in the westerly line of State Route #48 which point in N. 19° 58' E. a distance of 576.40 feet from an iron rod in the south line of property conveyed to Williams and Della Hufford by deed recorded in Volume 129, page 341 of the records of said county; thence with the westerly right of way line of State Route #48, N. 19° 48' E. 62.40 feet to a stake; thence N. 86° 12' W. a distance of 240.90 feet to the place of beginning, containing .315 acres.

Permanent Parcel Number: 12-06-277-006



TRACT TWO: Situate in the City of Lebanon, County of Warren and State of Ohio, and being a part of Section No. 6, Town 4, Range 3, and bounded and described as follows:

Beginning at an iron pin at the northeasterly corner of a 0.570 acre tract designated as Parcel One and recorded in Volume 371, page 42 of the Deed Records of said County, said iron pin also being the Northwesterly corner of a 0.315 acre tract, as recorded in Volume 171, page 429; thence from said beginning point, along the Easterly line of said 0.570 acre tract S. 3° 44' W. 60.00 feet to a point; thence by a new division line N. 86° 12' W. 59.02 feet to a point in the westerly line of said 0.570 acre tract; thence, with said westerly line, N. 3° 48' E. 60.00 feet to a concrete monument at the northwesterly corner of said 0.570 acre tract; thence, with the northerly line of the 0.570 acre tract, S. 86° 12' E. 58.95 feet to the place of beginning, containing eighty-one thousandths (0.081) of an acre.

Permanent Parcel Number: 12-06-277-006



TRACT THREE: Situated in the City of Lebanon, Warren County, Ohio and being a part of Section #6, Town 4, Range 3, and bounded and described as follows:

Beginning at an iron pin in the Northerly line of a 0.315 acre Tract recorded in Deed Book 413, page 137, of the Deed Records of said County at the Southwesterly corner of a 0.225 Acre Tract recorded in Deed Book 414, page 485, of the Deed Records of said County; thence, with the northerly line of said 0.315 Acre Tract and with said line extended Westwardly, N. 86° 12' W. 198.72 feet to a concrete monument, thence, by new division lines, on the following courses: (1) N. 3° 48' E. 65.00 feet to an iron pin; (2) S. 86° E. 198.72 feet to an iron pin in the Westerly line of said 0.225 Acre Tract; thence with the Westerly line of said 0.225 Acre Tract, S. 3° 48' W. 65.00 feet to the place of beginning, containing Two Hundred Ninety-seven Thousandths (0.297) of an Acre, subject to all easements of record.

Subject to all legal highways, easements, all restrictions, conditions, covenants of record, and all zoning restrictions.

Permanent Parcel Number: 12-06-277-003




PARCEL III: Situated in Section 6, Town 4, Range 3, City of Lebanon, Turtle Creek Township, Warren County, Ohio, and being more particularly described as follows:

Beginning at an iron pin found at the southeast corner of a tract of land owned by the Warren County Farm Bureau Co-Op Association as described in Deed Book 175, page 513 of the Warren County Recorder's Office; thence N. 86° 12' 00" W. a distance of 198.72 feet to an iron bar found and real point of beginning for this description; thence S. 03° 48' 00" W. a distance of 65.00 feet to a


concrete monument found; thence N. 86° 12' 00" W. a distance of 351.50 feet to a concrete monument found; thence N. 03° 48' 00" E. a distance of 65.00 feet to an iron pin set; thence in and along a new division line S. 86° 12' 00" E. a distance of 351.50 feet to the real point of beginning for this description.

Containing in all 0.525 acres more or less, subject to all highways and easements of record.

This description is the result of a survey prepared by King-Hasselbring & Associates, J. Timothy King, PE-PS, Ohio Registered surveyor No. 6549, dated February 18, 1999, the survey plat of which is filed in Vol. 107 Plat No. 12 of the Warren County Engineer's Record of Land Division. 12-06-277-008  7/18


Being the same premises described in Deed recorded in Deed Book 175, page 513 of the Deed Records of Warren County, Ohio.

TOGETHER WITH AN EASEMENT for the free and unobstructed use of the present roadway running east and west through the property of Warren County Farm Bureau Co-Op Association as follows:

Situated in Section 6, Town 4, Range 3, City of Lebanon, Turtle Creek Township, Warren County, Ohio, and being more particularly described as follows: Pt. 12-06-277-009  7/18

Beginning at the intersection of the north line of Gilmore-Christie Subdivision as recorded in Plat Book 2, page 187. of the Warren County Recorder's Office and the west line of Broadway (SR 48); thence in and along said west line of said Broadway (SR 48) a distance of 524.40 feet to a point; thence leaving said west line of said Broadway (SR 48), N. 86° 12' 00" W. a distance of 282.65 feet to an iron pin found; thence N. 03° 48' 00" E. a distance of 125.00 feet to an iron bar found and real point of beginning for this description, passing at 60.00 feet a concrete monument found; thence continuing N. 03° 48' 00" E. a distance of 20.00 feet to a point; thence S. 86° 12' 00" E. a distance of 128.72 feet to a point; thence N. 03° 48' 00" E. a distance of 91.51 feet to a point; thence S. 86° 12' 00" E. a distance of 70.00 feet to a point in the east line of a 2.589 acre parcel, said point being at the west terminus of the north line of an existing twenty (20) feet wide easement across Robert G. Michaels lands; thence in and along said east line of said 2.589 acre parcel and west terminus of said existing twenty (20) feet wide easement S. 03° 48' 00" W. a distance of 20.00 feet to a point; thence leaving said east line of said 2.589 acre parcel and said west terminus of said existing easement N. 86° 12' 00" W. a distance of 50.00 feet to a point; thence S. 03° 48' 00" W. a distance of 91.51 feet to a point in the south line of said 2.589 acre parcel; thence in and along said south line of said 2.589 acre parcel N. 86° 12' 00" W. a distance of 148.72 feet to the real point of beginning for this description.

This description is the result of a survey prepared by King-Hasselbring & Associates, J. Timothy King, PE-PS, Ohio Registered surveyor No. 6549, dated February 18, 1999, the survey plat of which is filed in Vol. 107 Plat No. 12 of the Warren County Engineer's Record of Land Division.

Permanent Parcel Number: ~~12-06-277-008~~  7/18