

ORDINANCE NO.: 2023- 28

FIRST READING APRIL 24, 2023

INTRODUCED BY: GERALD CANTON

SECOND READING WAIVED

THIRD READING WAIVED

ORDINANCE APPROVING THE SETTLEMENT AGREEMENT AND MUTUAL RELEASE AMONG DR. GARY AND CAROLE HOLTZ, MC ART STUDIO, LLC, CARLENE AND PATRICK HOLTZ, AND THE VILLAGE OF SOUTH RUSSELL, APPROVING AS CONSIDERATION FOR THE SETTLEMENT AGREEMENT AND MUTUAL RELEASE THE PURCHASE OF PROPERTY LOCATED AT 1208 BELL ROAD FOR THE PURCHASE PRICE OF \$450,000, AUTHORIZING THE MAYOR TO EXECUTE THE SETTLEMENT AGREEMENT AND MUTUAL RELEASE AND PURCHASE AGREEMENT ON BEHALF OF THE VILLAGE, AUTHORIZING THE MAYOR AND/OR FISCAL OFFICER TO PERFORM SUCH OTHER ACTS AS NECESSARY OR APPROPRIATE IN ORDER TO EFFECTUATE THE PURCHASE OF THE PROPERTY, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to a mediation of claims, a Settlement Agreement and Mutual Release among Dr. Gary and Carole Holtz, MC Art Studio, LLC, and Carlene and Patrick Holtz ("Settlement Agreement") was reached whereby the Village of South Russell, in consideration for the settlement and mutual release of all claims, agrees to purchase the property located at 1208 Bell Road, South Russell, Ohio 44022 (the "Property") for the purchase price of \$450,000 pursuant to the terms of the Agreement of Purchase and Sale and Joint Escrow Instructions ("Purchase Agreement").

NOW THEREFORE, BE IT ORDAINED by the Council of the Village of South Russell, Geauga County, and State of Ohio, that:

SECTION 1. That the Village of South Russell hereby approves the Settlement Agreement and Purchase Agreement. A copy of the Settlement Agreement is hereby attached as **Attachment A, which includes the Purchase Agreement as Exhibit 1 to the Settlement Agreement.**

SECTION 2. That the Mayor is hereby authorized to execute the Settlement Agreement and Purchase Agreement on behalf of the Village.

SECTION 3. That the Mayor and/or the Fiscal Officer are hereby authorized to perform such other acts as necessary or appropriate in order to effectuate the purchase of the Property.

SECTION 4. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees on or after December 2, 1975, that resulted in formal actions, were in meetings open to the public in compliance with all legal requirements, including Section 121.22, Ohio Revised Code.

SECTION 5. That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health and safety of the inhabitants of the Village and for the further reason that this Ordinance needs to take immediate effect in order to meet the agreed-upon closing date for the purchase of the Property; wherefore, provided it receives the affirmative vote of at least two-thirds (2/3) of all members elected to Council, this Ordinance shall be in full force and effect from and immediately upon its passage by this Council and approval by the Mayor; otherwise, it shall take effect and be in force after the earliest period allowed by law.



Mayor - President of Council

ATTEST:



Fiscal Officer

I certify that Ordinance No. 2023 - 28 was duly enacted on the 24TH day of APRIL, 2023, by the Council of the Village of South Russell, and published in accordance with the Codified Ordinances of the Village.



Fiscal Officer

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

Dr. Gary L. Holtz and Carole A. Holtz ("Owners"), MC Art Studio, LLC ("Tenant"), and Patrick Holtz and Carlene Holtz (the "Holtzes") (collectively the "Complainants") and the Village of South Russell, an Ohio municipality (the "Village") (collectively, the Complainants and the Village are referred to as the "Parties" or separately as a "Party") hereby enter into the following Settlement Agreement and Mutual Release ("Agreement") with respect to certain claims raised by the Complainants against the Village regarding and/or relating to the Property, defined below.

WHEREAS, the Owners are the titled owners of the real property located at 1208 Bell Road, South Russell, Ohio 44022, in Geauga County, known as Permanent Parcel No. 29-029100, upon which two (2) buildings are located (the "Property");

WHEREAS, Tenant has been a tenant of the Property since 2019 and operates, or operated at one time, an art gallery and daycare on the Property in the two (2) buildings on the Property;

WHEREAS, in late 2021 and/or early 2022, the Complainants took exception to certain Village action, which Complainants later alleged constituted an impermissible taking of the Property, causing damages to the Owners by way of loss of rental income and causing damages to the Tenant by way of loss of business profits and goodwill and, in addition, the Complainants also alleged federal claims against the Village asserting, among other claims, that the Village acted under the color of state law which deprived the Complainants of their rights (collectively referred to as the "Claims"); and

WHEREAS, pursuant to a mediation between the Parties, the Parties hereby agree to resolve and settle the Claims.

NOW THEREFORE, in consideration of the promises, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

- A. Agreement of Purchase and Sale and Joint Escrow Instructions:** As part of the Parties' settlement of the Claims, the Village agrees to purchase, and Owners agree to sell, the Property, pursuant to the terms and conditions set forth in the Agreement of Purchase and Sale and Joint Escrow Instructions ("PSA"), in the form attached hereto as Exhibit 1. At Closing, as defined in the PSA, the Owners shall convey fee simple title of the Property to the Village by way of a General Warranty Deed, in the form attached hereto as Exhibit 2.
- B. Consideration:** The Parties hereby agree that the Purchase Price paid by the Village for the Property serves as the consideration for the conveyance of the Property as well as the Mutual Release and other covenants set forth in this Agreement.

- C. **Mutual Release:** On the condition that the Parties comply with their obligations set forth in this Agreement and the PSA, and in exchange for the Parties' settlement of the Claims, each of the Parties, including their heirs, executors, administrators, personal representatives, agents, successors, assigns, predecessors, present and former parents, subsidiaries, divisions, affiliates, insurers, joint venturers, trustees, current and former employees, officers, members, shareholders, directors, officials, attorneys, associates, and any other party which may claim under or through them, hereby knowingly and voluntarily releases, forgives, absolves and discharges one another, including their heirs, executors, administrators, personal representatives, agents, successors, assigns, predecessors, present and former parents, subsidiaries, divisions, affiliates, insurers, joint ventures, trustees, current and former employees, officers, members, shareholders, directors, officials, attorneys, associates, from all rights, claims, demands, damages, actions and causes of action which they now possess, whether known or unknown, foreseen or unforeseen in any way related to the Claims; provided however, that this Mutual Release shall not apply to any claims related to the obligations contained in this Agreement and/or the PSA to be performed by any Party.
- D. **Vacation of Property:** Tenant and Owners shall have until 11:59 p.m. on May 30, 2023 to remove all of Tenant and Owners' belongings, personal items, and/or business items, including furniture and equipment, from the Property; provided however, all fixtures, doors, and windows of the Improvements on the Property shall not be removed by the Tenant, the Owners, and/or the Holtzes.
- E. **Condition of Property:** Owners, Tenant, and the Holtzes agree that, at the Closing of the Property, the Property and any and all buildings located thereon shall be in substantially the same condition as of the effective date of this Agreement.
- F. The Parties hereby agree that nothing contained in this Agreement constitutes an admission of liability or wrongdoing of any kind by any Party, which is expressly denied.
- G. This Agreement, and the rights and obligations contained herein, shall inure to the benefit of and be binding upon the Parties hereto, the Parties' heirs, agents, successors and assigns, and officers and employees. Each of the Parties to this Agreement represent that they have not assigned any claims released herein to any third-party and that the claims released are not encumbered in any manner and that each Party has the full right and title to pursue and release the claim which is being released.
- H. This Agreement sets forth the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior negotiations, agreements and/or representations among the Parties. No amendment of this Agreement shall be binding unless made in writing, and executed by the Parties, and the terms of this Agreement may not be waived, unless made in writing, and executed by the Party against whom enforcement of the waiver is sought.

- I. This Agreement may be executed in one or more counterparts, including multiple signature pages, and each shall be deemed to be one instrument. True and correct copies (including facsimile and PDF copies) of the Agreement may be used in lieu of the original.
- J. Each signatory to this Agreement represents and warrants that: (a) his or her signature has been authorized by the Party upon whose behalf the signature is made; and (b) such Party has not transferred, assigned, or disposed of all or any part of the claims or actions released or otherwise affected by this Agreement.
- K. Each Party represents that he and/or it has had the opportunity to consult with an attorney and has carefully read and understands the scope of this Agreement. No Party has relied upon any representations or statements made by any Party hereto which are not specifically set forth in this Agreement.
- L. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio without giving effect to Ohio's conflicts of law rules. The spirit and intent of this Agreement is to terminate with finality any and all claims and disputes as between the Parties, and this Agreement shall be interpreted with such spirit and intent. The Parties further agree that any action for breach of this Agreement must be brought in the Geauga County Court of Common Pleas, Ohio and said Court expressly retains jurisdiction over any breach of this Agreement.
- M. In the event that any Party hereto breaches any of the terms of this Agreement, and regardless of whether any injury can be proven, the prevailing Party in any legal proceeding to enforce any rights under this Agreement shall be entitled to recover its reasonable attorneys' fees, expenses and costs related to enforcement of this Agreement.

(Signature Page to Follow)

This Agreement is hereby executed by the Parties and shall be effective on the last date signed below by the Parties.

Owners – Dr. Gary L. Holtz and Carole A. Holtz

Dr. Gary L. Holtz
Dr. Gary L. Holtz
Date: 4/21/2023

And
Carole A. Holtz
Carole A. Holtz
Date: 4/21/2023

Tenant – MC Art Studio, LLC

MC Art Studio LLC
By: *Carlene L. Holtz* owner
Its: *CLA*
Date: 4/20/23

Holtzes – Patrick Holtz and Carlene Holtz

Patrick J. Holtz
Patrick Holtz
Date: 4/20/23

And
Carlene Holtz
Carlene Holtz
Date: 4/20/23

Village – Village of South Russell

By: _____
Its: _____
Date: _____

This Agreement is hereby executed by the Parties and shall be effective on the last date signed below by the Parties.

Owners – Dr. Gary L. Holtz and Carole A. Holtz

Dr. Gary L. Holtz

Date: _____

And

Carole A. Holtz

Date: _____

Tenant – MC Art Studio, LLC

By: _____

Its: _____

Date: _____

Holtzes – Patrick Holtz and Carlene Holtz

Patrick Holtz

Date: _____

And

Carlene Holtz

Date: _____

Village – Village of South Russell

William G. Keons

By: *William G. Keons*

Its: *Mayor*

Date: *4-24-2023*

Exhibit I

AGREEMENT OF PURCHASE AND SALE
AND
JOINT ESCROW INSTRUCTIONS

This Agreement of Purchase and Sale and Joint Escrow Instructions (the "Agreement") is made and entered between the Sellers and Buyer identified below, dated for identification purposes as of 4.24.2023, and effective as of the Effective Date established pursuant to Section 3(a) below.

Basic Terms

Sellers: Gary L. Holtz and Carole A. Holtz

Buyer: The Village of South Russell

Property Address: 1208 Bell Road, South Russell, Ohio 44022, bearing permanent parcel number 29-029100

Purchase Price: Four Hundred Fifty Thousand Dollars (\$450,000.00)

Closing Date: May 31, 2023

Notice Addresses:

If to Buyer:

The Village of South Russell
Attn: Mayor
5205 Chillicothe Road
South Russell, Ohio 44022
Ph: (440) 338-6700
Email: mayor@southrussell.com

With a copy to:

Bridey Matheney, Esq.
Thrasher Dinsmore & Dolan, LPA
100 7th Avenue, Suite 150
Chardon, OH 44024
Ph: (440) 285-2242
Email: bmatheney@tddl.com

If to Sellers:

Gary L. Holtz and Carole A. Holtz
2459 The Bent Twig
Seabrook Island, SC29455
Ph: 703-2110 Carole 703-9064
Email: gary.garcia14@gmail.com
carole.garcia14@gmail.com

With a copy to:

Peter Pattakos, Esq.
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, Ohio 44333
Ph: (330) 836-8533
Email: peter@pattakoslawfirm.com

Agreement

A. Sellers are the owners of that certain real property ("Real Property") identified above and more particularly described in the attached Exhibit A. The Real Property, together with Sellers' right, title, and interest, if any, in and to any improvements thereon and appurtenances thereto (collectively, "Improvements"), are collectively referred to in this Agreement as the "Property."

B. Buyer desires to purchase the Property from Sellers, and Sellers desire to sell the Property to Buyer, upon and subject to the terms and conditions of this Agreement.

C. The Basic Terms set forth above are a part of this Agreement and are incorporated herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. **Purchase and Sale.** Upon and subject to the terms and conditions of this Agreement, Sellers agree to sell the Property to Buyer and Buyer agrees to purchase the Property from Sellers.

2. **Payment of Purchase Price.** The purchase price for the Property ("Purchase Price") shall be the amount set forth above in the Basic Terms and shall be payable by Buyer to Seller in cash or cash equivalent through Escrow on the Closing Date as provided in this Agreement.

3. **Escrow.**

(a) An escrow (the "Escrow") shall be opened to consummate the sale of the Property pursuant to this Agreement at the office of Acacia Title Agency, LLC, at 41 East Erie Street, Painesville, Ohio 44077-3947 ("Title Company"), Attn: Benjamin L. Aveni ("Escrow Agent") within two (2) business days after full execution and delivery of this Agreement by Buyer and Seller. The date of delivery by Escrow Agent to Buyer and Seller of written notice of receipt of executed counterparts of this Agreement is referred to herein as the "Effective Date" and/or the "Opening of Escrow."

(b) Unless the Sellers and Buyer otherwise mutually agree in writing to an extension, the purchase and sale transaction contemplated hereby shall close on or before the Closing Date as set forth above in the Basic Terms. "Close of Escrow" shall mean the date upon which the General Warranty Deed from Sellers to Buyer is recorded in the Geauga County Recorder's Office.

(c) This Agreement shall constitute the primary instructions to Escrow Agent. The Seller and Buyer shall promptly deliver such supplemental escrow instructions, consistent with this Agreement, as Escrow Agent may reasonably require; provided, however, that any such supplemental instructions shall not modify or amend this Agreement.

4. **Conditions of Escrow.** The Close of Escrow and Buyer's obligation to purchase the Property pursuant to this Agreement are conditioned on the following:

(a) Within five (5) business days after the Opening of Escrow, Buyer shall obtain a current preliminary report of the Property issued by Title Company, together with copies of all documents referred to in the report as exceptions to title (collectively, the "Preliminary Report"). Buyer shall have fourteen (14) days from the receipt of the Preliminary Report to notify Sellers in writing of any objections to title. If Buyer so objects to any title exceptions, Sellers shall have five (5) business days in which to notify Buyer of Sellers' undertaking to use commercially reasonable efforts to cure each such objection as of the Closing Date.

(b) The conveyance of title to the Property to Buyer, as evidenced by an ALTA Extended Owner's title insurance policy, with liability in the full amount of the Purchase Price showing title to the Property vested in Buyer, issued by Title Company, subject only to the exceptions approved by Buyer pursuant to Section 4(a), and any additional exceptions created or suffered by Buyer, and also subject to those exceptions approved by Buyer within three (3) business days after Buyer's receipt of any ALTA Supplemental title report.

(c) Within five (5) business days after the Opening of Escrow, Sellers shall deliver to Buyer copies of (i) any surveys, engineering reports, and other reports, studies and investigations in Sellers' possession, (ii) all leases, subleases and all assignments, extensions, renewals or modifications thereof affecting the Property, and all options to lease or purchase the Property and other occupancy agreements affecting the Property (the "Leases" or separately a "Lease"), and (iii) all notes and deeds of trust to remain of record, and any documents affecting such notes and deeds of trust. Buyer shall have fourteen (14) days from receipt to review such materials, and to conduct such inspections and investigations and to obtain such additional reports and studies as Buyer deems necessary or advisable, in its sole and absolute discretion, to satisfy itself as to the desirability/feasibility of proceeding with the acquisition of the Property, including, without limitation, zoning, soil conditions, geology, engineering requirements, governmental requirements, and other matters affecting Buyer's proposed use of the Property.

(d) Sellers' representations and warranties set forth in Section 7 shall be true and correct as of the Close of Escrow.

(e) The termination of any Lease shall be no later than the Closing Date.

(f) All conditions to the Close of Escrow or to Buyer's obligations hereunder, are for Buyer's benefit only and Buyer may waive all or any part of such rights by written notice to Sellers and Escrow Agent.

5. Closing Documents.

(a) At the Closing, Sellers shall deliver or cause to be delivered to Buyer through Escrow, the following instruments, and documents, duly executed and acknowledged by Sellers, in form satisfactory to Buyer's counsel, as appropriate:

- (i) A General Warranty Deed, subject to all matters of record (the "Deed").
- (ii) A FIRPTA Affidavit certifying that Sellers are not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code.
- (iii) All contracts affecting the Property, if any.
- (iv) Such other customary documents and instruments as may be required by any other provision of this Agreement or as may reasonably be required to carry out the terms and intent of this Agreement.
- (v) An executed Settlement Statement.

(b) At the Closing, Buyer shall deliver or cause to be delivered to Sellers through Escrow, each of the following instruments and documents, duly executed and acknowledged by Buyer, as appropriate:

- (i) An insured closing letter from the Title Company issuing the title policy to Buyer.
- (ii) The Purchase Price.
- (iii) Such other documents and instruments as may be required by any other provision of this Agreement or as may reasonably be required to carry out the terms and intent of this Agreement; provided that Buyer shall not be obligated to cause the delivery of any such instrument or document that would increase or expand Buyer's obligations or liability under this Agreement.
- (iv) An executed Settlement Statement.

(c) At the Closing, Escrow Agent shall cause the Deed to be recorded in the Geauga County Recorder's Office and shall cause an ALTA Extended Owners coverage policy of title insurance complying with Section 4(b) to be delivered to Buyer.

(d) Possession shall be given to Buyer at Close of Escrow.

6. Prorations; Expenses. At the Closing, Buyer shall be credited and Sellers charged with security deposits or advance rentals made by tenants under any Lease. At the Closing, Escrow

Agent shall prorate the following between the Sellers and Buyer as of the Close of Escrow: (a) current real and personal property taxes and assessments for the year, based upon the most currently available information; and (b) any income and operating expenses of the Property shall be prorated, based upon income and operating expense information provided by Sellers. All prorations shall be based on a thirty (30) day month. Escrow Agent is to assume that all rents have been collected unless otherwise advised by Sellers. The expenses of the Escrow and costs of Closing shall be paid in the following manner:

(a) Sellers shall pay Sellers' attorney's fees, satisfaction of any mortgages or deeds of trust on the Property, and all costs related thereto, and the cost for recording any curative title documents which Sellers elect to cure and other costs typically paid by a seller.

(b) Buyer shall pay for a Survey (if done), the owner's Title Policy and Title Commitment, all other recording taxes and fees on the Deed, Buyer's attorney's fees, recordation fees and costs, and any other financing and other costs typically paid by a Buyer.

(c) Any escrow fee charged by the Escrow Agent in addition to the cost of the title insurance policy required by this Agreement shall be paid by Buyer.

7. **Representations and Warranties by Seller.** Sellers represent, warrant, and covenant the following, each of which shall be true in all respects as of the date of this Agreement and as of the date of Close of Escrow and shall survive the Close of Escrow for a period of six (6) months:

(a) Sellers have the requisite authority to (i) execute this Agreement and to convey the Property to Buyer as provided herein, (ii) execute and deliver such other documents, instruments, agreements, including, without limitation, affidavits and certificates necessary to effectuate the transaction contemplated herein, and (iii) take all such additional action necessary or appropriate to effect and facilitate the consummation of the sale and purchase transaction contemplated herein.

(b) Neither the entry into this Agreement nor the consummation of the transaction contemplated hereby shall constitute or result in a violation or breach by Sellers of any agreement to which Sellers are a party or by which Sellers are otherwise bound or any judgment, order, writ, injunction or decree issued against or imposed upon it, or shall result in a violation of any applicable law, order, rule or regulation of any governmental authority. Sellers are not involved in any bankruptcy, reorganization or insolvency proceedings.

(c) As of the Closing Date, there are no Leases or service contracts in force against the Property or binding upon Sellers in any manner affecting the Property, which will survive the Close of Escrow. As of the Close of Escrow, Sellers shall: (1) deliver possession of the Property to Buyer, free and clear of all tenancies and other possessory interests; and (2) deliver possession of the Property and any and all buildings to Buyer in substantially the same or similar condition as of the Effective Date of this Agreement.

(d) There are no rights of first refusal or right of first offer of any tenant in the Property or, if there are such rights, Sellers shall obtain from tenant and provide to Buyer the

waiver by the tenant of the Property holding a right of first refusal or right of first offer of their right to purchase the Property.

(e) No fixtures were removed from the Property.

(f) To the best of Sellers' actual knowledge, there are no violations of applicable law or ordinances affecting the Property, and there is no hazardous waste on, under or near the Property. To the best of Sellers' actual knowledge, there are not now or ever have been underground storage tanks located on the Property, no hazardous waste has been released on the Property and there is no asbestos or PCB present anywhere on the Property.

(g) Sellers have delivered true, accurate and complete copies of any contracts affecting the Property to Buyer. To the best of Sellers' actual knowledge, no document supplied to Buyer by Sellers contains any untrue statement of material fact. Sellers are not aware of any fact, document or information which has not been supplied to Buyer which would have a material effect on Buyer's decision whether or not to purchase the Property.

(h) At the Close of Escrow, there will be no outstanding expenses not fully paid, except those expenses previously approved by the Buyer in writing.

(i) Sellers have received no written notice of any pending or threatened claim or litigation against the Property and Sellers have not received any written notice from any governmental authority of defects in the Property or noncompliance with any applicable law, code or regulation.

(j) During the Escrow period, Sellers shall not enter into any new lease, or option to lease, or extension of an existing lease or any other contract or agreement pertaining to the Property unless Sellers first send to Buyer for approval a copy of the document it proposes to sign. Buyer shall have three (3) business days after receipt of the document to object in writing to Sellers' signing of the document. Any such objection shall, in the case of any lease, lease option or lease extension, not be unreasonable. Buyer's failure to respond shall be deemed approval.

(k) Any and all Leases shall terminate on or before the Closing Date and there are no offsets or concessions due to any tenant and no tenant is presently in bankruptcy.

(l) During the term of the Escrow, Sellers shall not do any act which would result in any of the warranties or representations contained in this Section not being materially true or correct as of Close of Escrow and, further, upon learning of any fact or condition which would cause any such warranties and representations not to be true as of Close of Escrow, Sellers shall immediately give Buyer written notice of such fact or condition.

8. No Further Warranties; "AS IS". Except as specifically set forth in this Agreement, Buyer agrees that Buyer is not relying on any representations, warranties, inducements, promises, agreements, assurances or statements, oral or written, made by Sellers or made by any other party on Sellers' behalf, as to the condition of the Property, any restrictions related to the Property, the suitability of the Property for any purpose whatsoever (including without limitation, the ability to obtain discretionary approvals), compliance with applicable laws, including without limitation, Environmental Laws (as

defined below), or any other matter or thing affecting or relating to the Property or this Agreement, including without limitation any and all environmental matters. Buyer is aware of and experienced in all aspects and complexities associated with real estate ownership. Buyer represents and warrants to Sellers that, on or before the date for the Close of Escrow, Buyer (a) will make its own investigation of all elements of the Property, including without limitation environmental matters, or will have knowingly waived its rights to do so, (b) shall thereby assume the accompanying risk in its entering into this Agreement and carrying out the transactions contemplated herein and (c) shall rely solely on its own independent investigation of the Property.

As a material inducement to Sellers to enter into this Agreement and convey the Property to Buyer, Buyer agrees and acknowledges that the Property is sold in its existing condition, "AS IS, WHERE-IS, WITH ALL FAULTS." Buyer will accept the Property in such condition, and hereby acknowledges, agrees, and understands, that except as set forth in this Section and Section 7, Sellers are making no warranties, expressed or implied, regarding the Property, including without limitation environmental matters.

This Section shall survive the Close of Escrow.

By initialing below, Buyer acknowledges that this Section has been read and fully understood and that Buyer has sought advice, or had the opportunity to seek advice, from his or her counsel about its meaning and significance.


Buyer's Initials

9. **Casualty; Condemnation.** If, prior to the Close of Escrow, any portion of the Property is damaged or destroyed by fire or other casualty or is taken by eminent domain or is the subject of a pending taking which has not been consummated, Sellers shall promptly notify Buyer thereof. Buyer shall then have the right to terminate this Agreement by written notice to Sellers delivered within ten (10) business days after Buyer's receipt of such notice. If Buyer elects not to exercise the right to terminate pursuant to this Section 9, Sellers shall assign and deliver to Buyer, and Buyer shall accept and be entitled to receive, all insurance proceeds for such damage or destruction, or all awards for the taking by eminent domain, otherwise payable to Sellers. The parties shall proceed to the Close of Escrow pursuant to the terms of this Agreement, without modification of this Agreement, except as may be necessitated by such damage or destruction or by such eminent domain action, and with the Purchase Price reduced by the amount that the cost of repair exceeds the insurance proceeds. If Buyer terminates this Agreement pursuant to this Section, then neither party shall have any rights or responsibilities to the other.

10. **Notices.** Any and all notices or other communications required or permitted to be given hereunder shall be in writing and personally delivered (including courier delivery), transmitted by electronic mail or sent by United States certified mail (return receipt requested), postage prepaid, and addressed to the applicable addressee at the address set forth above in the Basic Terms, provided that a copy of any notice transmitted by electronic mail shall be sent by one of the other permitted methods. A party may from time to time change the address to which such

notices or communications may be delivered or sent by giving the other parties written notice of such change. All notices or other communications shall be deemed given and effective upon the date of delivery, unless delivery is refused or cannot be made, in which event the date of attempted delivery shall be deemed the effective date of such notice or other communication.

11. Attorneys' Fees. Should any party retain counsel for the purpose of enforcing, preventing the breach, or because of a breach of any provision of this Agreement, then, if said matter is settled by judicial determination (which term includes arbitration if the parties utilize arbitration), the prevailing party (whether at trial or on appeal) shall be entitled, in addition to such other relief as may be granted, to all costs and expenses rendered to such prevailing party, including, without limitation, actual professional fees and costs such as appraisers', accountants', experts' and reasonable attorneys' fees and costs, incurred by the party which prevails in such action. Attorneys' fees and costs shall include, without limitation, attorneys' fees, costs, and expenses incurred in connection with any: (i) post judgment motions; (ii) contempt proceedings; (iii) appeals; (iv) garnishment, levy, and debtor and third party examinations; (v) discovery; and (vi) any bankruptcy proceeding. The prevailing party also shall be entitled to its reasonable attorneys' fees and costs incurred in any post-judgment proceedings to collect or enforce any judgment. This provision is separate and shall survive the merger of this provision into any judgment on this Agreement. "Prevailing party" within the meaning of this Section shall include, without limitation, a party who successfully brings an action against the other party for sums allegedly due or performance of covenants allegedly breached or that party that obtains substantially the relief sought in the action.

12. Assignment. Buyer may not assign its rights under this Agreement to any other person, firm or entity without Sellers' prior written consent.

13. No Back Up Offers. Sellers shall not enter into any other agreements to sell the Property as long as this Agreement is in force.

14. Time of Essence. Time is of the essence for each condition, term, and provision in this Agreement.

15. Severability. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, provided the parties receive the material benefits of this Agreement.

16. Waivers. A waiver or breach of a covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall be in writing and shall not be deemed an extension of the time for performance of any other obligation or act.

17. Construction. Headings at the beginning of each section and subsection are solely for the convenience of the parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared

it. Unless otherwise indicated, all references to sections are to this Agreement. All exhibits referred to in this Agreement are attached to it and incorporated to it by this reference.

18. **Governing Law.** This Agreement shall be governed by and construed in accordance with laws of the State of Ohio.

19. **Venue.** The parties agree that any action for breach of this Agreement must be brought in the Geauga County Court of Common Pleas, Ohio.

20. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of the respective parties.

21. **Further Acts.** Each party agrees to take such further action and to execute and deliver such further documents as may be necessary to carry out the purposes of this Agreement.

22. **Default by Sellers.** If Sellers default in any of their obligations hereunder to sell the Property to Buyer, Buyer shall be entitled as its sole and exclusive remedy to seek specific performance under this Agreement. Any such action for specific performance must be commenced within forty-five (45) days following the default.

23. **Entire Agreement.** This Agreement, together with any Exhibits or Addenda attached hereto, contains the entire agreement of the parties, and may only be amended or modified by a written instrument signed by the parties and expressly stating their intention to so modify this Agreement. Any previous offers or understandings of the parties regarding the subject matter of this Agreement are expressly declared void and are superseded by this Agreement.

24. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all taken together shall constitute one and the same instrument. The execution of this Agreement is deemed to have occurred, and this Agreement shall be enforceable and effective, only on the complete execution of this Agreement by the parties.

25. **Review by Counsel.** Each party (the "Represented Party") acknowledges that he or she has been represented (or has had the opportunity to be represented) in the review and signing of this agreement by independent legal counsel selected of the Represented Party's free will; and the Represented Party has had the opportunity to discuss this agreement with such counsel. The Represented Party further acknowledges that he or she has read and fully understands the meaning and ramifications of this Agreement and by signing below indicates his or her full agreement to the foregoing terms.

*[THIS PORTION OF PAGE INTENTIONALLY
LEFT BLANK – SIGNATURE PAGE FOLLOWING]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date set forth below.

BUYER:

The Village of South Russell

By: _____

Printed Name: _____

Title: _____

Date: _____

SELLERS:

[Signature]
Gary L. Holtz

Date: 4/21/2023

[Signature]
Carole A. Holtz

Date: 4/21/2023

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date set forth below.

BUYER:

The Village of South Russell

By: William G. Koons

Printed Name: WILLIAM G. KOONS

Title: MAYOR

Date: 4-24-2023

SELLERS:

Gary L. Holtz

Date: _____

Carole A. Holtz

Date: _____

EXHIBIT A

LEGAL DESCRIPTION

Situated in the Village of South Russell, County of Geauga and State of Ohio: and known as being part of Original Russell Township Lot No.9, Tract Three, and bounded and described as follows: Beginning at an iron pipe in the centerline of Chillicothe Road, a.k.a. S.R.306 (60 feet wide) at it's intersection with the centerline of Bell Street (60 feet wide); Thence South 85 degrees 02' 22" East, along the centerline of Bell Street, a distance of 145.20 feet to the Northwesterly corner of land described in deed to the Village of South Russell and recorded in Volume 373, Page 168 of Geauga County Records; Thence South 7 degrees 35' 00" West, along the Westerly line of land so described in deed to the Village of South Russell, passing through an iron pin set in the Southerly line of Bell Street, a total distance of 145.20 feet to an iron pin set in the Northeasterly corner of land described in deed to the Village of South Russell and recorded in Volume 192, Page 23 of Geauga County Records; Thence North 85 degrees 02' 22" West along the Northerly line of land so described in the deed to the Village of South Russell, as aforementioned, passing through an iron pin set in the Easterly line of Chillicothe Road, a total distance of 145.20 feet to the centerline of Chillicothe Road; Thence North 7 degrees 35' 00" East, along the centerline of Chillicothe Road, a distance of 145.20 feet to the place of beginning and containing 0.304 acres of land exclusive of 0.179 acres of land within the right-of-way limits of Chillicothe Road and Bell Street, according to survey of September 1985 by Braun-Prenosil Associates, Inc., be the same more or less, but subject to all legal highways.

Prior Instrument No. 200400691418
Permanent Parcel No. 29-029100

Exhibit 2

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS

GARY L. HOLTZ AND CAROLE A. HOLTZ, MARRIED, the Grantors, for Ten Dollars (\$10.00) and other valuable consideration paid, grant with general warranty covenants, to The Village of South Russell, an Ohio municipality, the Grantee, whose tax mailing address is 5205 Chillicothe Road, South Russell, Ohio 44022, all of their right, title and interest in and to the following real property:

Situated in the Village of South Russell, County of Geauga and State of Ohio: and known as being part of Original Russell Township Lot No.9, Tract Three, and bounded and described as follows: Beginning at an iron pipe in the centerline of Chillicothe Road, a.k.a. S.R.306 (60 feet wide) at it's intersection with the centerline of Bell Street (60 feet wide); Thence South 85 degrees 02' 22" East, along the centerline of Bell Street, a distance of 145.20 feet to the Northwestern corner of land described in deed to the Village of South Russell and recorded in Volume 373, Page 168 of Geauga County Records; Thence South 7 degrees 35' 00" West, along the Westerly line of land so described in deed to the Village of South Russell, passing through an iron pin set in the Southerly line of Bell Street, a total distance of 145.20 feet to an iron pin set in the Northeasterly corner of land described in deed to the Village of South Russell and recorded in Volume 192, Page 23 of Geauga County Records; Thence North 85 degrees 02' 22" West along the Northerly line of land so described in the deed to the Village of South Russell, as aforementioned, passing through an iron pin set in the Easterly line of Chillicothe Road, a total distance of 145.20 feet to the centerline of Chillicothe Road; Thence North 7 degrees 35' 00" East, along the centerline of Chillicothe Road, a distance of 145.20 feet to the place of beginning and containing 0.304 acres of land exclusive of 0.179 acres of land within the right-of-way limits of Chillicothe Road and Bell Street, according to survey of September 1985 by Braun-Prenosil Associates, Inc., be the same more or less, but subject to all legal highways.

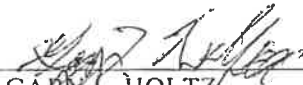
Prior Instrument No. 200400691418
Permanent Parcel No. 29-029100

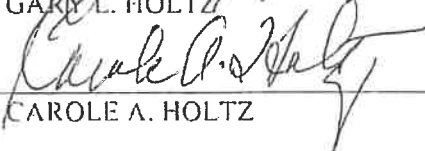
SAVE AND EXCEPT easements and restrictions of record, zoning ordinances, real estate taxes and assessments, if any prorated to the date of this deed.

GRANTORS do hereby covenant and warrant unto said GRANTEE and the GRANTEE'S assigns and successors, that at the time of the delivery of this deed, the GRANTORS were lawfully seized in fee simple of the granted premises, that the premises are free from all encumbrances, that the GRANTORS have good right to sell and convey the same to the GRANTEE and the GRANTEE'S assigns or successors, and that the GRANTORS do warrant and do hereby agree to defend the same to the GRANTEE and the GRANTEE'S assigns or successors, forever, against the lawful claims and demands of all persons.

Carole A. Holtz, wife of the Grantor Gary L. Holtz, releases all rights of dower, if any, in the above-described premises.

Executed on this 4/20/2023.



GARY L. HOLTZ


CAROLE A. HOLTZ

State of South Carolina
} ss:
Charleston County

Before me, a Notary Public, in and for said County and State, personally appeared GARY L. HOLTZ and CAROLE A. HOLTZ who acknowledged that they did sign the foregoing instrument and the same is their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Charleston County, South Carolina, this 20 day of April, 2023.



NOTARY PUBLIC

This instrument prepared by:
Bridey Matheney
Thrasher, Dinsmore & Dolan
100 7th Avenue, Suite 150
Chardon, Ohio 44024
Telephone: 440/285-2242