

**ORDINANCE 2021-31**

**AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND VILLAGE ADMINISTRATOR TO ENTER INTO A PRIVATE WATER LINE EASEMENT AGREEMENT WITH COI RICKENBACKER INDUSTRIAL LAND, LLC, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the Village of Commercial Point is authorized to grant easements pursuant to Ohio Revised Code Section 723.121, provided the Village Council determines that the grant of such easement or easements is not needed by the Village of Commercial Point for the purposes described in the grant of easement; and

**WHEREAS**, COI Rickenbacker Industrial Land, LLC has requested the Village of Commercial Point grant it an easement for the installation and maintenance, among other things, of a private water line to be installed under Exchange Way, which has been dedicated to public use pursuant to Ordinance 2021-02 enacted on January 18, 2021; and

**WHEREAS**, the Village of Commercial Point has no use for the private water line easement as more particularly described in the Private Water Line Easement Agreement, attached as Exhibit A hereto; and

**WHEREAS**, COI Rickenbacker Industrial Land, LLC and the Village of Commercial Point wish to enter into said Private Water Line Easement Agreement.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF COMMERCIAL POINT, PICKAWAY COUNTY OHIO THAT:**

**SECTION 1. Authorization and Direction to Enter into Private Water Line Easement Agreement.** The Mayor and Village Administrator are hereby authorized and directed to enter into the Private Water Line Easement Agreement in substantially the same form and on substantially the same terms as the Agreement attached as Exhibit A hereto and incorporated herein by reference.

**SECTION 2. Determination that Easement is Not Needed by the Village of Commercial Point.** The Village Council hereby determines that the easement described in the Private Water Line Easement Agreement (Exhibit A) is not needed by the Village of Commercial Point for any of the purposes described in said Agreement.

**SECTION 3. Execution and Recording of Private Water Line Easement Agreement.** The Mayor, Village Administrator, Village Solicitor, and Village Fiscal Officer, and all other necessary Village staff and officials are hereby authorized and directed to take all necessary actions to execute the Private Water Line Easement Agreement described in Section 1 of this Ordinance, including, but not limited to, all actions necessary to record the Agreement with the Pickaway County Recorder's Office.

**SECTION 4. Open Meetings Certification.** 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 other committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

**SECTION 5. Declaration of Emergency and Effective Date.** Because COI Rickenbacker Industrial Land, LLC requires the ability to construct a private water line that goes beneath Exchange Way to timely continue with its commercial development operations, this Ordinance is hereby declared to be an emergency measure necessary to the immediate preservation of the public peace, health, and safety in the Village of Commercial Point and shall, therefore, take immediate effect upon passage.

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Vote on Passage of the Ordinance:

Motion by: Tracy Joiner

2<sup>nd</sup>: Laura Wolfe

Roll Call:

Yes Jason Thompson

Yes Aaron Grassel

Yes Ryan Mitchem

Yes Nancy Geiger

Yes Tracy Joiner

Yes Laura Wolfe

Adopted this 4<sup>th</sup> day of October, 2021.



Allan D. Goldhardt, Mayor



Wendy Hastings, Fiscal Officer

Approved as to Form:



Joshua Cartee, Village Solicitor

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**Exhibit A**

**Private Water Line Easement Agreement**

This Private Water Line Easement Agreement (this “**Agreement**”) is made as of September \_\_\_\_, 2021 by and between **The Village of Commercial Point, Pickaway County, Ohio**, an Ohio municipal corporation, with an address of 10 West Scioto Street, Commercial Point, Ohio 43116 (“**Grantor**”) and **COI Rickenbacker Industrial Land, LLC**, an Ohio limited liability company (“**Grantee**”).

RECITALS:

A. Grantee is the owner of a certain parcel of real estate located in the Village of Commercial Point, Pickaway County, Ohio that is legally described on Exhibit A attached hereto and made a part hereof (“**Grantee Parcel**”).

B. Grantee has constructed on the Grantee Parcel an external water tank, an external fire pump, a structure housing that fire pump and certain other equipment to provide a common fire suppression system for the benefit of certain parcels near the Grantee Parcel (collectively, the “**Fire Pump System**”).

C. As part of the Fire Pump System, Grantee needs to extend a private water line and related improvements (the “**Water Line**”) from the Grantee Parcel across the Exchange Way public-right-of-way in the location legally described on Exhibit B-1 hereto and depicted on Exhibit B-2 hereto (“**Easement Parcel**”).

D. Subject to and in accordance with the terms and provisions of this Agreement, Grantor desires to convey to Grantee a permanent, irrevocable, non-exclusive easement on, in and under the Easement Parcel to permit Grantee to install, operate, maintain, repair and replace the Water Line under the Exchange Way right-of-way.

**NOW, THEREFORE**, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby acknowledge and agree as follows:

1. Grant of Easement. Subject to the terms, covenants, conditions and restrictions contained in this Agreement: Grantor hereby grants, for the benefit of Grantee, as an appurtenant easement to the Grantee Parcel, a non-exclusive, perpetual easement (“**Water Line Easement**”) on, in, under and across the Easement Parcel to construct, operate, maintain, repair, replace and remove, from time to time, the Water Line. All work by Grantee or its agents shall comply with all applicable governmental codes, rules, regulations, and ordinances. In addition, in exercising such rights and obligations hereunder, Grantee shall not unreasonably interfere with the free flow of traffic (pedestrian and/or vehicular) within any of the public right of ways located in or around the Easement Parcel or otherwise block or obstruct any public right of ways. Grantor shall have the right to relocate the Water Line Easement, or any portion thereof, to another location on the within the Exchange Way public-right-of-way or otherwise, so long as: (a) an amendment to this Agreement reasonably acceptable to Grantee shall be prepared, executed and recorded at the Grantor’s expense; (b) the relocated Water Line shall be installed at Grantor’s expense, pursuant to all customary and appropriate permits for such work and in accordance with all applicable governmental codes, rules, regulations, and ordinances; and (c) the relocation of the Water Line will not materially and adversely affect the functionality of the Water Line or the Fire Pump System as originally designed or materially increase the cost of maintenance, operation, repair or replacement of the Water Line. Provided that the Grantor satisfies these conditions, the Grantee shall approve and execute the amendment to this Agreement memorializing the same.

2. Grantee Activities on Easement Parcel; Restoration of Easement Parcel; Maintenance. The activities of Grantee and its contractors, subcontractors and representatives on the Grantee Parcel under this Agreement will comply with the requirements of applicable laws, statutes, ordinances, codes, rules and regulations and applicable permits or licenses issued by the Grantor in connection therewith. If the exercise by Grantee of its rights under this Agreement on the Grantee Parcel causes damage to or the destruction or removal of any landscaping, paving or other improvements permitted to be located on the Easement Parcel, then Grantee will restore the affected portion of the Easement Parcel to its prior condition, at Grantee’s sole cost and expense. Grantee, at its sole cost and expense, shall keep and maintain the Water Line in good

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### **Exhibit A**

condition and repair, and in full compliance with all applicable laws. If Grantee shall default in the performance of its obligations hereunder and such default continues for a period of thirty (30) days after written notice is given to Grantee from the Grantor, Grantor shall have the right, in addition to any other remedies under this Agreement and/or at law or in equity, to perform such obligation for the Grantee. In the event Grantor cures Grantee's failure as provided above, Grantee shall, within thirty (30) days after written demand from Grantor (which demand will include reasonable documentation of the costs for which Grantor is seeking reimbursement), reimburse Grantor for all reasonable out-of-pocket costs incurred by Grantor in effecting that cure. Amounts not paid by Grantee when due hereunder will accrue interest from the date due until the date paid at a rate equal to two percent (2%) in excess of the prime interest rate published in the money rates section of the Wall Street Journal (the "**Interest Rate**"). Notwithstanding the foregoing, in the event of an emergency (i.e., the imminent threat of material damage to property or of death or injury to persons), Grantor shall have the right without notice to make reasonable repairs and/or perform reasonable maintenance. In addition, to the extent that Grantor must enter upon the Grantee Parcel in order to exercise such right of "self-help", Grantee hereby grants Grantor a license to enter and perform such obligation.

3. Limitation of Improvements; Reservation of Rights. Grantor shall have the full use and benefit of the Easement Parcel to the extent the same is not inconsistent with this Agreement or Grantee's rights hereunder. Without limiting the generality of the foregoing, Grantor reserves the right to use the surface of the Grantee Parcel as a public right-of-way and to grant additional easements in, on, over or under the Easement Parcel, provided, however, any such grant of additional easements shall not unreasonably interfere with the rights granted hereunder to Grantee. Grantor shall not permit any permanent buildings or other permanent structures not set forth above to be constructed or placed on the Easement Parcel. Grantor may access the Easement Parcel to inspect the Water Line at any time. Furthermore, Grantee agrees to forever allow Grantor's engineering staff, employees, contractors, or other authorized personnel a reasonable right-of-entry to access and inspect the Water Line to ensure of the safety and integrity of such facilities, and Grantee's compliance with this Agreement.

4. Liens. If any mechanics lien or other involuntary lien is levied against the Exchange Way public-right-of-way due to the acts or omissions of Grantee, Grantee shall promptly pay off such obligation and cause the lien to be discharged and released of record, or shall bond off the lien according to statutory procedures, and shall hold Grantor harmless from any cost, judgement, fine, penalty, cost or other liability arising from the mechanics' lien or judgement lien.

5. Indemnification. Grantee agrees to indemnify, defend and hold Grantor, and its respective agents, employees, officers, members, shareholders, successors and assigns, harmless from any and all loss, cost, expense, damages or injuries to persons or property (including reasonable attorneys' fees), and any other liabilities of any kind or nature arising out of or in any way related to third party claims for death, personal injury or property damage caused by or arising out of (i) the negligent acts or omissions of Grantee (or its employees, invitees, agents, or contractors) in using and/or maintaining the Easement Parcel and/or the Water Line, or (ii) Grantee's breach of its obligations under this Agreement. The foregoing indemnity will exclude the gross negligence or willful misconduct of Grantor or its respective agents, employees, officers, members, shareholders, successors and assigns.

6. Notices. Any notice required to be given under the terms of this Agreement shall be made in writing and shall be deemed duly given when personally delivered or sent via first class U.S. mail, postage prepaid, return receipt requested, or by nationally recognized overnight courier service for next business day delivery to the address set forth in the preamble of this Agreement, as to Grantor, and, as to Grantee, the address of record of the then-current owner of the Grantee Parcel with the Auditor's office in the County in which the Grantee Parcel is located, or such other addresses as the parties may designate by notice from time to time. All notices will be deemed delivered upon delivery or, if refused, upon refusal.

7. Remedies. In addition to the remedies expressly set forth in this Agreement, Grantor and Grantee shall each be entitled to all remedies available in law or in equity and any court enforcing the rights and duties granted in this Agreement and shall have the power (insofar as that power may be granted by contract) to issue restraining orders or injunctions necessary to enforce the provisions of this Agreement. Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any covenant herein, either to restrain or prevent such violation or proposed violation by an injunction, either prohibitive or mandatory, or to obtain any other relief. In the event that Grantor or Grantee should bring suit to enforce its rights hereunder, the prevailing party will be entitled to recover its costs, including reasonable attorneys' fees (in all trial, appellate, bankruptcy and post-judgment proceedings) from the non-prevailing party.

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8. Covenants Running With the Land. The Water Line Easement, right of way, restrictions and covenants made in this Agreement shall be deemed to be covenants running with the land and shall be binding upon and benefit the Grantor and the owner or owners of the Grantee Parcel, from time to time, and their respective successors in title but will only be binding upon each such owner during and in respect to its period of ownership. Consequently, all references to Grantee shall be construed to refer to the then owner(s) of the Grantee Parcel. Further, in the event of any legal subdivision of the Grantee Property into smaller parcels, the easements, rights of way, restrictions and covenants made in this Agreement shall be deemed to continue in full force and effect.

9. Miscellaneous.

(a) Recitals. The foregoing Recitals are deemed to form a part of this Agreement as if restated herein.

(b) Governing Law. This Agreement will be interpreted and construed in accordance with the internal laws of the State of Ohio, without regard to conflict of law rules.

(c) Binding Effect and Priority of Grant. All of the covenants and rights declared and established hereunder will be considered as covenants and rights running with the land and not conditions, and the same will be binding upon and inure to the benefit of the parties hereto.

(d) Partial Invalidity. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term, covenant and condition of this Agreement will be valid and enforceable to the fullest extent permitted by law.

(e) No Dedication. The parties intend that this Agreement be strictly limited to the uses and purposes expressed and nothing contained herein shall, or be deemed to, constitute a gift or dedication of all or any portion of the Exchange Way public right-of-way or the Easement Area to the general public or for any public purpose whatsoever. Any dedication mentioned in this Agreement shall not be deemed to have occurred by virtue of this Agreement and either has occurred or will occur in the future by way of separate instrument or agreement.

(f) Relationship of Parties. Nothing in this Agreement shall be deemed or construed to create the relationship of principal and agent, partnership, or joint venture between the parties hereto.

(g) Counterparts. This Agreement or any amendment of this Agreement, or any change or written authorization pursuant to this Agreement, may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

(h) Limitation on Special Damages. Notwithstanding anything in this Agreement to the contrary, in no event will Grantor or Grantee be liable under this Agreement for any special, incidental, indirect, punitive, or consequential damages.

(i) Written Assurances. Upon a written request from Grantee, Grantor will execute and deliver a "Written Assurance" (defined below) to Grantee, an existing tenant or lender or a prospective owner, tenant, investor or mortgage lender regarding the Grantee Parcel within fifteen (15) business days after delivery of such request. A "**Written Assurance**" is a writing which states that, except as otherwise provided in that Written Assurance: (a) this Agreement has not been amended or modified in any manner not of record with the Pickaway County Recorder; (b) to the Grantor's knowledge there are no defaults presently existing under this Agreement by Grantee; and (c) there are no amounts presently due and owing to Grantor from Grantee.

(j) Village Council Approval. The Parties agree that this Agreement shall not take effect until the Council of the Village of Commercial Point provides its approval, or approves of the Parties entering into an Agreement in substantially the same form and on substantially the same terms as this Easement Agreement. Notwithstanding the foregoing, the execution of this Agreement on behalf of Grantor will be conclusive evidence that this Agreement has been approved by

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the Council of the Village of Commercial Point and the execution of this Agreement of behalf of both Grantor and Grantee will be conclusive evidence that this Agreement is in full force and effect.

(k) Recitals; Exhibits. The recitals form an integral part of this Agreement and are hereby incorporated and made a part hereof by reference. In addition, this Agreement includes and incorporates herein all of the following exhibits:

- Exhibit A:** Legal Description of Grantee Parcel
- Exhibit B-1:** Legal Description of Easement Parcel
- Exhibit B-2:** Depiction of Easement Parcel

[Signature Page Follows]

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**IN WITNESS WHEREOF**, Grantor and Grantee have each caused this instrument to be executed and delivered as of the day and year first above written.

**GRANTOR:**

**VILLAGE OF COMMERCIAL POINT**

ATTEST:

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**GRANTEE:**

**COI RICKENBACKER INDUSTRIAL LAND, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM: \_\_\_\_\_  
Joshua Cartee, Village Solicitor

Document Prepared by and  
After Recorded Return to:

O'Rourke, Hogan, Fowler & Dwyer, LLC  
10 South LaSalle Street, Suite 3700  
Chicago, Illinois 60603  
Attention: Howard I. Goldblatt, Esq.







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Exhibit A

Legal Description of Grantee Parcel

Situated in the State of Ohio, County of Pickaway, and in the Village of Commercial Point:

Being Lot Number 1-A RICKENBACKER EXCHANGE, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Cabinet 4, Page 63, Recorder's Office, Pickaway County, Ohio.

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**Exhibit A**

Exhibit B-1

Legal Description of Easement Parcel

**DESCRIPTION OF 0.014 ACRE FIRE WATER SERVICE EASEMENT**

Situated in the State of Ohio, County of Pickaway, Village of Commercial Point, being located in V.M.S. Survey No. 1194, and being located within the right-of-way for Exchange Way as dedicated in Rickenbacker Exchange, delineated on the record plat thereof, of record in Plat Cabinet 4, Slide 63, all records referenced herein are on file at the Office of the Recorder for Pickaway County, Ohio, and being further bounded and described as follows:

Commencing for reference at a southeast corner of Lot 1, being the southwest corner of Lot 1-A, both of said Rickenbacker Exchange plat, and being on the north right-of-way line for said Exchange Way (60-feet wide);

Thence **South 81 degrees 45 minutes 54 seconds West**, along the north right-of-way line for said Exchange Way, along the south line of said Lot 1, a distance of **471.06 feet** to the **TRUE POINT OF BEGINNING** for this description;

Thence **South 08 degrees 29 minutes 24 seconds East**, across said Exchange Way, a distance of **60.00 feet** to the south right-of-way line for said Exchange Way, being on the north line of Lot 2 of said Exchange Way;

Thence **South 81 degrees 45 minutes 54 seconds West**, along the south right-of-way line for said Exchange Way, along the north line of said Lot 2, a distance of **10.00 feet** to a point;

Thence **North 08 degrees 29 minutes 24 seconds West**, across said Exchange Way, a distance of **60.00 feet** to a point on the north right-of-way line for said Exchange Way, being on the south line of said Lot 1;

Thence **North 81 degrees 45 minutes 54 seconds East**, along the north right-of-way line for said Exchange Way, along the south line of said Lot 1, a distance of **10.00 feet** to the **TRUE POINT OF BEGINNING** for this description.

The above description contains a total area of **0.014 acres** within the dedicated right-of-way for Exchange Way.

Bearings described herein are based on Grid North, referenced to the Ohio State Plane Coordinate System (South Zone) and the North American Datum of 1983 (2011 Adjustment), as established utilizing a GPS survey and an NGS OPUS solution.

This description was prepared by Brian P. Bingham, Registered Professional Surveyor No. 8438 on March 23, 2021, is based on an actual field survey performed by American Structurepoint, Inc., and is true and correct to the best of my knowledge and belief.

American Structurepoint, Inc.

  
Brian P. Bingham  
Registered Professional Surveyor No. 8438



7/8/2021  
Date

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**Exhibit A**

**Exhibit B-2**

**Depiction of Easement Parcel**

