

ORDINANCE 2021-45

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

WHEREAS, the Village of Commercial Point may acquire by purchase easements or interests in real estate pursuant to Ohio Revised Code Chapter 717.01; and

WHEREAS, COI Rickenbacker Industrial Land, LLC has offered to provide the Village of Commercial Point an electrical line easement in the Rickenbacker Exchange Development in exchange for one dollar (\$1.00); and

WHEREAS, COI Rickenbacker Industrial Land, LLC and the Village of Commercial Point have negotiated an Electrical Easement Agreement, which is attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, COI Rickenbacker Industrial Land, LLC and the Village of Commercial Point wish to enter into said Electrical 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 Electrical Easement Agreement. The Mayor and Village Administrator are hereby authorized and directed to enter into the Electrical 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. Execution and Recording of Electrical 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 Electrical 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 3. 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 4. Declaration of Emergency and Effective Date. Because the Village requires the benefits described in the Electrical Easement Agreement at the earliest possible date, 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.

Vote on Suspension of the Readings:

Motion by: Tracy Joiner 2<sup>nd</sup>: Jason Thompson

Roll Call:

Yes Jason Thompson                      Yes Aaron Grassel                      Yes Ryan Mitchem  
Yes Nancy Geiger                          Yes Tracy Joiner                          Yes Laura Wolfe

Vote on Passage of the Ordinance:

Motion by: Tracy Joiner 2<sup>nd</sup>: Jason Thompson

Roll Call:

Yes Jason Thompson                      Yes Aaron Grassel                      Yes Ryan Mitchem  
Yes Nancy Geiger                          Yes Tracy Joiner                          Yes Laura Wolfe

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Adopted this 15<sup>th</sup> day of November, 2021.

  
Allan D. Goldhardt, Mayor

  
Wendy Hastings, Fiscal Officer

Approved as to Form:

  
Joshua Cartee, Village Solicitor

Exhibit A

Electrical Easement Agreement

This Electrical Easement Agreement (this "Agreement") is made as of \_\_\_\_\_, 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 ("Grantee") and **COI Rickenbacker Industrial Land, LLC**, an Ohio limited liability company ("Grantor").

RECITALS:

A. Grantor 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 ("Grantor Parcel").

B. Grantee requires a perpetual and non-exclusive easement on, in, over, and under a portion of the Grantor Parcel to permit Grantee to install, operate, maintain, repair and replace the electrical service line buried thereunder which serves, among other things, the public street lighting located in the public rights-of-way adjacent to the Grantor Parcel (presently known as Exchange Way), the location of which easement is legally described on Exhibit B-1 hereto and depicted on Exhibit B-2 hereto ("Easement Area").

C. Subject to and in accordance with the terms and provisions of this Agreement, Grantor desires to convey to Grantee the above described easement over the Easement Area.

**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 (its successors and assigns), a non-exclusive, perpetual easement in gross ("**Electrical Easement**") on, in, under and across the Easement Area to construct, operate, maintain, repair, replace and remove, from time to time, the electrical service line buried thereunder and all related facilities and serving the public street lighting and related electrical facilities. 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 Grantor's rights to the Grantor Parcel. Grantor shall have the right to relocate the Electrical Easement, or any portion thereof, to another location on the Grantor Parcel, so long as: (a) an amendment to this Agreement reasonably acceptable to Grantor and Grantee shall be prepared, executed and recorded at the Grantee's expense; and (b) the relocated electrical facilities shall be installed at Grantee's expense, pursuant to all customary and appropriate permits for such work and in accordance with all applicable governmental codes, rules, regulations, and ordinances. Provided that the Grantee satisfies these conditions, the Grantor shall approve and execute the amendment to this Agreement memorializing the same.

2. Grantee Activities on Easement Area. The activities of Grantee and its contractors, subcontractors and representatives on the Grantor Parcel under this Agreement will comply with the requirements of applicable laws, statutes, ordinances, codes, rules and regulations and applicable permits

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Exhibit A (continued)

or licenses issued by the Grantor in connection therewith. If the exercise by Grantee of its rights under this Agreement on the Grantor Parcel causes material damage to or the destruction or removal of any landscaping, paving or other improvements permitted to be located on the Easement Area, then Grantee will restore the affected portion of the Easement Area to its prior condition, at Grantee's sole cost and expense.

3. Limitation of Improvements; Reservation of Rights. Grantor shall have the full use and benefit of the Easement Area 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 grant additional easements in, on, over or under the Easement Area, 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 Area.

4. 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 Grantor Parcel with the Auditor's office in the County in which the Grantor 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.

5. 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.

6. Covenants Running With the Land. The Electrical 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 the Grantor and the owner or owners of the Grantor 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 Grantor shall be construed to refer to the then owner(s) of the Grantor Parcel. Further, in the event of any legal subdivision of the Grantor Parcel 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.

7. 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.

Exhibit A (continued)

(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) 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 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.

(j) 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 Grantor Parcel
- Exhibit B-1: Legal Description of Easement Area
- Exhibit B-2: Depiction of Easement Area

[Signature Page Follows]

**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.

**GRANTEE:**

**VILLAGE OF COMMERCIAL POINT**

**ATTEST:**

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

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

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

**ATTEST:**

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

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

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

**GRANTOR:**

**COI RICKENBACKER INDUSTRIAL LAND,  
LLC**

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

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

**FISCAL OFFICER CERTIFICATION:**

\_\_\_\_\_  
Wendy L. Hastings, Fiscal Officer

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.

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )

)SS

COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a notary public in and for said County, in the State of aforesaid, DO HEREBY CERTIFY THAT David Harrison is personally known to me to be the Manager of COI Rickenbacker Industrial Land, LLC, an Ohio limited liability company; that the aforementioned person is personally known to me to be the same person whose name is subscribed to the foregoing instrument and appeared before me this day in person and severally acknowledged that he/she signed and delivered this Agreement on behalf of that company, as his/her free and voluntary act, and as the authorized and free and voluntary act and deed of said company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal as of this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public

My Commission expires:

\_\_\_\_\_



**ACKNOWLEDGMENT**

STATE OF OHIO )

) ss.

COUNTY OF PICKAWAY )

On \_\_\_\_\_, 2021, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the within instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission expires:

\_\_\_\_\_

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**Exhibit A (continued)**

**Legal Description of Grantor 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 (continued)**

**Exhibit B-1**

**Legal Description of Easement Area**

**DESCRIPTION OF 0.023 ACRES**

Situated in the State of Ohio, County of Pickaway, Village of Commercial Point, being located in Virginia Military Survey Numbers 557 and 1194, and being part of Lot 1-A of Rickenbacker Exchange, recorded in Plat Cabinet 4, Slide 63, said Lot 1-A described in a deed to **COI Rickenbacker Industrial Land, LLC**, of record in Official Record 779, Page 2485, 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 the southeast corner of said Lot 1-A, being a southwest corner of Lot 1 of said Rickenbacker Exchange, and being on the existing north right-of-way line for Exchange Way (60 feet wide - public);

Thence **South 81 degrees 45 minutes 54 seconds West**, along the existing north right of way line for Exchange Way and along the south line of said Lot 1-A, a distance of **38.76 feet** to a point, said point being the **TRUE POINT OF BEGINNING** for this description;

Thence **South 81 degrees 45 minutes 54 seconds West**, continuing along the existing north right-of-way line for Exchange Way and continuing along the south line of said Lot 1-A, a distance of **10.00 feet** to a point;

Thence across said Lot 1-A along the following five (5) described courses:

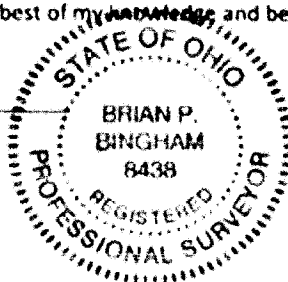
1. **North 08 degrees 14 minutes 10 seconds West**, a distance of **70.88 feet** to a point,
2. **South 81 degrees 45 minutes 54 seconds West**, a distance of **8.38 feet** to a southeast corner of an existing electrical easement, of record in Official Record 786, Page 5494,
3. **North 08 degrees 14 minutes 06 seconds West**, along an east line of said existing electrical easement, a distance of **14.79 feet** to a northeast corner of said existing electrical easement,
4. **North 81 degrees 45 minutes 54 seconds East**, a distance of **18.38 feet** to a point,
5. **South 08 degrees 14 minutes 10 seconds East**, a distance of **85.67 feet** to the **TRUE POINT OF BEGINNING** for this description.

The above description contains a total area of **0.023 acres**, all of which is located within Pickaway County Auditor's parcel number L40-0-001-00-006-04.

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 under the direct supervision of Brian P. Bingham, Registered Professional Surveyor No. 8438 on September 22, 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



9/27/2021  
Date

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Exhibit A (continued)

Exhibit B-2

Depiction of Easement Area

