

**EMERGENCY RESOLUTION NO. 26-2017**

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A DONATION AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND JERRY A. COUCH FOR THE ACCEPTANCE OF REAL PROPERTY AS FURTHER DESCRIBED HEREIN AND DECLARING AN EMERGENCY.

WHEREAS, Jerry A. Couch desires to donate and the City of Monroe deems it in the best interest of the City to accept certain real property as further described herein.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: The City Manager is hereby authorized to enter into a Donation Agreement by and between the City of Monroe and Jerry A. Couch the terms and conditions of which shall be substantially similar as set forth on Exhibit "1" attached hereto and made a part hereof.

SECTION 2: This measure is hereby declared to be an emergency necessary for the immediate preservation of the public peace, health, safety and welfare and further for the reason that Council deems it in the best interest of the community to proceed with the acceptance of the donation at the earliest possible date. Therefore, this measure shall take effect and be in full force from and after its passage.

PASSED: March 28, 2017

ATTEST:

  
\_\_\_\_\_  
Clerk of Council

APPROVED:

  
\_\_\_\_\_  
Mayor

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.

  
\_\_\_\_\_  
Clerk of Council  
City of Monroe, Ohio

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Sunshine Law, Section 121.22 of the Ohio Revised Code.

**DONATION AGREEMENT**

THIS DONATION AGREEMENT ("Agreement") is made this \_\_\_ day of \_\_\_\_\_, 2017 (the "Effective Date"), by and between Jerry A. Couch, unmarried ("Couch"), and the City of Monroe, Ohio, an Ohio municipal corporation (the "City").

**Recitals:**

WHEREAS, Couch owns certain land situated in the City of Monroe and Lemon Township in Butler County, Ohio, which Couch desires to donate to the City on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, the City desires to accept the gift of the property from Couch on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual agreements and in furtherance of the purposes above recited, it is hereby agreed as follows:

**ARTICLE I – CONVEYANCE**

- 1.1 Conveyance. Subject to the terms and conditions hereinafter set forth, Couch agrees to donate and convey to the City, and the City agrees to accept from Couch, the property owned by Couch located in the City of Monroe and Lemon Township, Butler County, Ohio, together with all improvements and fixtures located thereon and all easements and rights, if any, appurtenant thereto (collectively, the "Property"). The Property is fully described on Exhibit A attached hereto.
- 1.2 Jerry Couch Boulevard. Couch owned approximately 1.229 acres of land (the "Adjacent Property") that is adjacent to the Property. The Adjacent Property was improved as a roadway and was dedicated to the City as a public street known as "Jerry Couch Boulevard". The Dedication Plat for the Adjacent Property is recorded in Book 8990 at Page 482 of the Official Records of Butler County, Ohio, and a copy is attached hereto as Exhibit B.
- 1.3 Appraisal. The City obtained an appraisal ("Appraisal") of the fair market value of the Property and the Adjacent Property from CBRE - Valuation & Advisory Service (the "Appraiser"). A copy of the Appraisal is attached hereto as Exhibit C. The City and Couch agree that the combined fair market value of the Property and the Adjacent Property is \$360,000 (the "Fair Market Value").

## ARTICLE II - CONDITIONS TO THE OBLIGATIONS OF THE CITY

2.1 Conditions. The obligations of the City to consummate the transactions contemplated by this Agreement are subject to the following conditions precedent (collectively, hereinafter referred to as the "Conditions" and individually as a "Condition") which shall be satisfied or waived on or before the dates set forth in each of the following subsections:

- (a) Title Commitment. The City, at its sole cost and expense, shall obtain a title commitment ("Title Commitment") for an Owner's Policy of Title Insurance (the "Title Policy") for the Property in a form acceptable to the City issued by a title insurance company (the "Title Company") acceptable to the City. The City will deliver a copy of the Title Commitment to Couch promptly after the City receives the Title Commitment from the Title Company. If the City desires an A.L.T.A. survey (the "Survey") of the Property, the City may, at its sole cost and expense, obtain a Survey. If the Title Commitment or the Survey, if any, shows that the Property is unmarketable or subject to a defect, lien, encumbrance, easement or restriction which is unacceptable to the City (each, a "Title Objection"), the City shall deliver written notice of such Title Objection ("Title Objection Notice") to Couch on or before the twenty-first (21<sup>st</sup>) day following the Effective Date. If Couch has not received a Title Objection Notice on or before the twenty-first (21<sup>st</sup>) day following the Effective Date, the City shall be deemed to have approved of title to the Property.

If Couch is unable or unwilling to cure a Title Objection, Couch shall send the City written notice ("Couch's Notice") of that fact on or before the fifth (5<sup>th</sup>) day following Couch's receipt of the Title Objection Notice. Within three (3) days after the date the City receives Couch's Notice, the City shall elect to either: (i) waive such Title Objection(s) which Couch is unable or unwilling to cure and accept such title to the Property as Couch is able to convey without any reduction in the Fair Market Value and without any liability on the part of Couch (such waiver of liability by the City being deemed to survive the Closing or termination of this Agreement); or (ii) terminate this Agreement by delivering written notice of termination to Couch. After termination, neither the City nor Couch shall have any further rights or obligations under this Agreement or liability to the other, except for those obligations which survive the termination of this Agreement. Each party shall bear its own costs incurred under this Agreement. If Couch has not received a timely notice of termination from the City, the City shall be deemed to have: (i) waived those Title Objection(s) which Couch is unable and/or unwilling to cure; and (ii) elected to accept the title to the Property that Couch is willing and/or able to deliver as provided for in this Section.

All matters: (i) of record, (ii) contained in the Title Commitment, or (iii) disclosed in the Survey, if any, which are not objected to by the City shall be deemed to have been approved by the City. The following are collectively hereinafter referred to as "Permitted Encumbrances": (i) installments of real estate taxes and assessments (general and special) constituting a lien on the Property, but not yet due and payable; (ii) building setback lines and other requirements provided for in the applicable zoning ordinances; (iii) all matters which an accurate survey of the Property would disclose; and (iv) all Title Objections subsequently waived, deemed waived, or deemed approved by the City.

(b) Due Diligence Inspection. Commencing on the Effective Date and continuing through the thirtieth (30<sup>th</sup>) day following the Effective Date (such 30-day period of time being hereinafter referred to as the "Due Diligence Period"), the City, at its sole cost and expense, shall have the right, subject to the terms and conditions of this Agreement, to enter upon the Property to examine, inspect and investigate the Property and determine whether the Property is suitable to the City for its intended use.

If, as a result of its due diligence, the City determines that the Property is unsuitable, the City shall have the right to terminate this Agreement by delivering written notice of termination to Couch prior to the expiration of the Due Diligence Period. If the City delivers a timely written notice of termination to Couch prior to the expiration of the Due Diligence Period, this Agreement shall terminate. If this Agreement were terminated pursuant to the foregoing provisions, then neither party shall have any liability to the other or any further rights or obligations under this Agreement (except for those obligations which survive the termination of this Agreement). Each party shall bear its own costs incurred hereunder.

(c) Waiver. If the City fails to terminate this Agreement because of the failure of a Condition, then each unmet Condition shall be deemed to have been waived by the City. If any Condition is waived by the City or is deemed to have been waived by the City as provided for in the preceding sentence or otherwise provided for in this Agreement, the parties shall proceed to the Closing without any reduction in the Fair Market Value, and Couch shall have no liability to the City arising out of or related to any Condition that has been waived or deemed to have been waived by the City. The provisions of this Subsection shall survive the Closing or any termination of this Agreement.

### ARTICLE III - CLOSING

3.1 Closing. The closing ("Closing") for the delivery of the Deed (defined below) for the Property and the delivery of the other instruments provided for in this Agreement shall be held at 10:00 A.M. on the thirty-fifth (35<sup>th</sup>) day following the Effective Date. The Closing shall take place at the offices of Millikin & Fitton Law Firm, 9032 Union Centre Boulevard, Suite 200, West Chester, Ohio 45069, or such other place as is agreeable to the parties. Time is of the essence.

The Closing shall not occur unless and until all of the actions set forth in Sections 3.2 and 3.3 of this Agreement shall have been taken and none of such actions shall be deemed to have been taken unless and until all of them have been taken.

3.2 Couch's Obligations. At Closing, Couch shall:

- (a) Deliver a Limited Warranty Deed ("Deed"), executed and acknowledged by Couch, conveying fee simple title to the Property to the City using the legal description of the Property set forth on Exhibit A attached hereto, subject only to Permitted Encumbrances;

- (b) Deliver an Affidavit of Title and Non-Foreign Certificate, in the form of Exhibit D attached to this Agreement, executed and acknowledged by Couch;
- (c) Deliver an Access Agreement with the City in the form of Exhibit E attached to this Agreement (the "Access Agreement"), executed by Couch;
- (d) Execute a Closing Statement acceptable to Couch; and
- (e) Deliver possession of the Property to the City, subject to Permitted Encumbrances and Couch's rights under the Access Easement.

3.3 The City's Obligations. At Closing, the City shall:

- (a) Deliver a copy of an Ordinance passed by City Council authorizing the execution and delivery of this Agreement and the other documents to be delivered by the City at the Closing and the acceptance of the donation of the Property by Couch;
- (b) Sign and cause its Appraiser to sign IRS Form 8283 to be filed by Couch with his 2017 income tax return;
- (c) Execute the Access Agreement; and
- (d) Execute the Closing Statement.

3.4 Closing Costs; Adjustments and Prorations. Real estate taxes and assessments (general and special) on the Property shall be prorated between Couch and the City to the date of Closing based upon the most recent tax bill for the Property that is available from Butler County prior to the Closing. All prorations shall be final. Couch shall pay the fee to prepare the Deed. The City shall pay the cost of the title examination, Title Commitment, Survey (if any), the premium for the Title Policy, the cost of its due diligence and the cost to record the Deed. Each party shall be responsible for its own attorneys' fees. The obligations of Couch and the City provided for in this Section shall survive the Closing and (as applicable) the termination of this Agreement.

3.5 Failure to Close. If Closing has not been completed by the forty-fifth (45<sup>th</sup>) day following the Effective Date for any reason other than a default by Couch, then Couch may terminate this Agreement without liability to Couch on the date and time set forth in a written notice of termination sent to the City.

#### **ARTICLE IV – REPRESENTATIONS AND WARRANTIES**

4.1 Representations and Warranties. As a material inducement for Couch to make this charitable gift to the City, the City makes the following representations and warranties to Couch. All such warranties and representations are true, correct and complete as of the Effective Date and as of the Closing and shall survive the Closing:

- (a) The City has the power and authority to enter into and perform this Agreement in accordance with its terms. The execution and delivery of this Agreement by the City and the consummation of the transactions contemplated by this Agreement by the City have been duly authorized by all appropriate actions and proceedings.
- (b) No consent from any third party is needed in order for the City to execute or deliver this Agreement or to make this Agreement the enforceable obligation of the City.
- (c) This Agreement, together with all other documents executed on behalf of the City, are the legal, valid, binding and enforceable obligations of the City. The execution and delivery of this Agreement and the performance of the duties and obligations provided for in this Agreement by the City do not violate any provisions of the City's Charter or any law, ordinance, regulation, contract or agreement to which the City is a party or by which the City is bound.
- (d) The City has received no notice of any pending or threatened claim, litigation or other administrative action or other legal proceeding involving or affecting the transactions contemplated by this Agreement.
- (e) The City shall use the Property for public purposes and in compliance with all applicable laws, rules and regulations.
- (f) The gift of the Property to the City qualifies for a charitable deduction for Couch as a charitable contribution to qualified recipient under Section 170 of the Internal Revenue Code.

#### **ARTICLE V - RIGHT OF ENTRY**

5.1 Right of Entry. Following the Effective Date, the City, its employees, agents and contractors, shall have the right to enter upon the Property to conduct the Survey (if any) and to complete such due diligence investigations of the Property as the City deems appropriate. All such activities by the City shall be conducted at the sole cost and expense of the City. This right of entry shall terminate on the earlier of: (a) the date this Agreement is terminated; or (b) the Closing.

The City understands and agrees that all activities on the Property performed by or on behalf of the City shall be done in compliance with this Agreement and all applicable laws, rules and regulations and shall occur after reasonable prior notice to Couch. All such activities shall be conducted in such a manner that will not harm or damage the Property. The City agrees to restore the Property to its condition prior to any such activities immediately after conducting the same. Couch reserves the right to have a representative present while the City or its employees, agents or contractors are present at the Property. If the City desires to do any invasive testing on the Property, the City shall do so only after notifying Couch and obtaining Couch's prior written consent thereto, which consent may be withheld or be subject to such terms and conditions imposed

by Couch in its sole discretion. The City, if requested by Couch, will furnish to Couch, at no cost or expense to Couch, copies of any report received by the City relating to any inspection of the Property.

Prior to entering upon the Property, the City covenants and agrees that the City shall have in effect the following insurance coverages:

- (a) Workers' Compensation insurance as required by the Ohio Workers' Compensation Act; and
- (b) Commercial General Liability coverage with limits of at least One Million and 00/100 (\$1,000,000.00) Dollars per occurrence and Two Million and 00/100 (\$2,000,000.00) Dollars in the aggregate. The policy shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, however, occasioned, occurring on or about the Property. Such policy shall also contain an endorsement insuring the City's obligation to Couch hereinafter set forth in Section 5.2 hereof. Claims-made policies are not acceptable.

As a condition to any entry on the Property by the City, its contractors, subcontractors or materialmen, the City shall provide Couch with acceptable evidence that the required insurance coverage is in place for the City. Couch shall be named as an additional insured on the Commercial General Liability policy specified above. Each policy shall provide that it may not be modified, cancelled or allowed to expire without thirty (30) days prior written notice to Couch.

5.2 Full Responsibility. The City shall have full responsibility for and shall pay any and all claims, liabilities, losses, costs, expenses (including but not limited to reasonable attorneys' fees), damages, injuries or death arising out of or resulting from: (a) any activity of the City, its employees, agents or contractors on or about the Property; (b) any damage to the Property caused by the City, its employees, agents or contractors; and/or (c) any mechanic's lien being filed against the Property as a result of the action or alleged action of the City, its employees, agents or contractors.

5.3 Survival. The provisions of this Article V shall survive the Closing or any termination of this Agreement.

## ARTICLE VI - DISCLAIMERS AND WAIVERS

6.1 Deliveries. The City acknowledges and agrees that all documents, materials, data and information delivered by or on behalf of Couch to the City in connection with the transaction contemplated by this Agreement are provided to the City as a convenience only and that any reliance on or use of such documents, materials, data or information by the City shall be at the sole risk of the City. Couch does not represent or warrant the accuracy of and Couch shall have no liability to the City for any inaccuracy in or omission from any such documents, materials, data or information.

**6.2 AS-IS Sale; Disclaimers.** It is understood and agreed that Couch is not making and has not at any time made any warranties or representations of any kind or character, express or implied, with respect to the Property, including, but not limited to, any warranties or representations as to habitability, merchantability or fitness for a particular purpose.

The City acknowledges and agrees that upon the Closing, Couch shall sell and convey to the City and the City shall accept the Property "AS IS, WHERE IS, WITH ALL FAULTS". The City has not relied and will not rely on, and Couch is not liable for or bound by, any express or implied warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by Couch, or any agent representing or purporting to represent Couch, to whomever made or given, directly or indirectly, orally or in writing.

The City represents to Couch that the City has conducted, or will conduct prior to the Closing, such investigations of the Property, including but not limited to its environmental condition, as the City deems necessary or desirable to satisfy itself as to the condition of the Property and the existence or nonexistence or curative action to be taken with respect to the Property or any hazardous or toxic substance on or discharged from the Property. The City will rely solely upon its investigations and not upon any information provided by or on behalf of Couch or any agent or employee of Couch with respect thereto. Upon the Closing, the City shall assume the risk that adverse matters arising or existing on or before the Closing, including but not limited to defects and adverse environmental conditions, may not have been revealed by the City's investigations.

**6.3 Release.** The City hereby releases Couch, his heirs, successors and assigns, now and forever, from any and all causes of action, claims, demands or liabilities, whether directly or indirectly, known or unknown, relating to or arising from the existence or discharge of any hazardous or toxic substance of any kind on the Property.

**6.4 Survival.** The provisions of this Article VI shall survive the Closing or any termination of this Agreement.

## **ARTICLE VII – BROKER**

**7.1 Brokerage Commission.** The parties hereto represent to each other that they have not contacted, contracted with or entered into any agreement with any real estate broker, finder or agent in connection with the sale of the Property, and that they have not taken any action which might result in any real estate broker's, finder's or other fee or commission being due or payable in connection with the transactions contemplated by this Agreement. Each party shall remain fully responsible for and shall pay all costs, claims, expenses or damages (including but not limited to reasonable attorneys' fees) resulting from or related to any brokerage commission, finder's fee or other commission due or alleged to be due arising from the acts or contacts of such indemnifying party. The provisions of this Section shall survive the Closing or any termination of this Agreement.

**ARTICLE VIII - MISCELLANEOUS**

8.1 Notice. All notices and other communications under this Agreement shall be in writing and shall be deemed duly given if (a) personally delivered, with signed receipt; (b) sent by reputable commercial overnight delivery service; and (c) mailed by certified mail, return receipt requested, first class, postage prepaid. Notices shall be addressed as follows (unless a party provides written notice of a change of address to the other party):

If to Couch: 5757 Hamilton Middletown Road  
Middletown, OH 45044

If to the City: William J. Brock, P.E.  
City Manager  
233 S. Main St.  
Monroe, OH 45050

Such notice, if delivered personally or by overnight courier service, shall be deemed given at the time of delivery or refusal of delivery; or, if sent by certified mail, shall be deemed given two (2) business days after the time of mailing with appropriate postage attached thereto. A person receiving a notice which does not comply with the technical requirements for notice under this Section may elect to waive any deficiencies and treat the notice as having been properly given.

8.2 Amendments. This Agreement may be amended or supplemented only by a written instrument signed by the City and Couch.

8.3 Additional Documentation. Couch and the City shall execute such additional documentation as reasonably may be required to effectuate this Agreement.

8.4 Governing Law. This Agreement shall be governed by and all disputes related thereto shall be determined in accordance with the laws of the State of Ohio.

8.5 Successors. This Agreement shall be binding upon the parties hereto, and on their respective heirs, successors and assigns. The City may not assign its rights or obligations under this Agreement.

8.6 No Third-Party Beneficiary. The provisions of this Agreement and of the documents to be executed and delivered at the Closing are and will be for the benefit of Couch and the City only and are not for the benefit of any third party, except as otherwise specifically provided in this Agreement, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at the Closing.

8.7 Performance Dates. Time is hereby extended for the performance of any action required by this Agreement if the last day for performance falls on a Saturday, Sunday or national holiday. The performance so extended shall occur on the next succeeding day that is not a Saturday, Sunday or national holiday.

8.8 No Offer Until Executed. The submission of this Agreement to the City for examination or consideration does not constitute an offer to donate the Property to the City and this Agreement shall become effective, if at all, only upon the full execution and delivery thereof by the City and Couch.

8.9 Survival. All agreements and covenants herein which must, by implication or necessity, survive the Closing, shall be deemed to so survive as the sense of this Agreement requires.

8.10 Severability. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force, if the essential provisions of this Agreement for each party remains valid, binding and enforceable.

8.11 Effective Date. For purposes of this Agreement, the term "Effective Date" shall be the date that Couch accepts this Agreement, which date shall be set forth on the first paragraph of this Agreement.

8.12 Maintenance. Following the Closing, the City shall, at its sole cost and expense: (a) complete any upgrades or improvements to Jerry Couch Boulevard so that it complies with all applicable City and Butler County codes, rules and regulations; and (b) maintain the Property and Jerry Couch Boulevard in accordance with all applicable laws, rules and regulations.

8.13 "Day"; "Business Day"; Computation of Time. All references to "days" in this Agreement shall be construed to mean calendar days unless otherwise expressly provided and all references to "business days" shall be construed to mean days other than a Saturday, Sunday or legal holiday in Butler County, Ohio. In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is not a business day, in which event the period runs until the end of the next business day.

8.14 No Partnership. Neither anything contained in this Agreement nor any act of the parties hereto shall be deemed or construed by the parties hereto, or either of them, or by any third persons, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association between either of the parties to this Agreement.

8.15 Negotiated Provisions. This Agreement shall not be construed more strictly against either party by virtue of the fact that a contract may be more strictly construed against the party preparing the contract, it being understood and agreed that both Couch and the City have equally negotiated the provisions of this Agreement and contributed substantially and materially to the preparation of this Agreement.

8.16 Time. Time is of the essence.

8.17 Entire Agreement. This Agreement and the Exhibits attached to it set forth all the covenants, promises, assurances, agreements, representations, conditions, warranties, statements and understandings (collectively, the "Representations") between the City and Couch concerning

the donation of the Property, and there are no Representations, either oral or written, between them other than those in this Agreement. This Agreement supersedes and revokes all previous negotiations and other information conveyed, whether oral or in writing, between the parties or their respective representatives, agents, brokers, salespersons or any other person purporting to represent the City or Couch. The City acknowledges that it has not been induced to enter this Agreement by any Representations not set forth in this Agreement and that the City has not relied on any Representations which are not set forth in this Agreement in making its decision to sign this Agreement. No Representations not set forth in this Agreement shall be used in the interpretation or construction of this Agreement, and Couch shall have no liability for any consequences arising as a result of any Representations which are not set forth in this Agreement.

**(SIGNATURE PAGE TO FOLLOW)**

Executed the year and date set forth in the first paragraph hereof.

\_\_\_\_\_  
Jerry Couch

City of Monroe, Ohio

Approved as to Form:

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

William J. Brock P.E.  
City Manager

\_\_\_\_\_  
City Law Director

**EXHIBIT C**

**Appraisal**

**EXHIBIT D**

**Affidavit of Title and Non-Foreign Certificate**

STATE OF OHIO, COUNTY OF BUTLER, SS:

Jerry A. Couch ("Affiant"), being first duly cautioned and sworn deposes and says:

1. That the Affiant is the owner of the real property ("Property") as described on Exhibit A attached hereto and made a part hereof.
2. That there are no outstanding deeds, mortgage, leases, easements or agreements of sale affecting title to the Property to which the Affiant is a party which are not fully disclosed of record and there are no parties in possession or entitled to possession of the Property other than the Affiant.
3. That no work, labor or material has been furnished or performed on or to the Property pursuant to an Agreement with the Affiant which has not been or which will not timely be fully and completely paid for by the Affiant; nor has any repair, alteration or improvement been performed on or about the Property pursuant to an Agreement with the Affiant within the last ninety (90) days for which the right to file a mechanic's or materialman's lien exists; nor has any unsatisfied claim for lien or claim for payment been made upon the Affiant for labor or material furnished to the Property.
4. That the Affiant is involved in no court proceedings or disputes with any parties concerning the boundary lines of the Property. Affiant has no knowledge of: (a) any encroachments upon the Property from adjacent properties; or (b) any encroachments of any improvements located on the Property upon adjoining land.
5. That except as revealed in the public records of Butler County, Ohio, Affiant has no other knowledge of any unsatisfied or unreleased judgments or liens against the Affiant of record or bankruptcy or court proceedings of any kind against the Affiant which affect the title to the Property.
6. That there are no unpaid real estate taxes or assessments against the Property (except as shown on the current tax duplicate).
7. That the foregoing statements are made for the benefit and purpose of inducing the \_\_\_\_\_ Title Insurance Company to issue its title insurance policy or policies upon the Property.
8. Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code"), provides that a transferee (buyer) of a United States real property interest must withhold tax if the transferor (seller) is a foreign person. In order to inform the

transferee (buyer) that withholding of tax is not required upon the disposition of a United States real property interest, the Affiant certifies the following:

(a) the Affiant is not a foreign corporation, a foreign partnership, a foreign trust, a foreign estate or a non-resident alien for purposes of United States income taxation or otherwise a foreign person (as those terms are defined in the Code and the regulations with respect thereto);

(b) the Affiant's Social Security Number is \_\_\_\_\_; and

(c) the Affiant's Post Office address is 5757 Hamilton Middletown Road, Middletown, Ohio 45044.

9. The Affiant understands that this certification may be disclosed to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment or both.

10. Under penalties of perjury, the Affiant declares that the Affiant has examined this certification and to the best of his/her knowledge and belief it is true, correct and complete.

\_\_\_\_\_  
Jerry A. Couch

Sworn to before me and subscribed in my presence this \_\_\_\_ day of February, 2017, by Jerry A. Couch.

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

## **EXHIBIT E**

### **Access Agreement**

This Access Agreement ("Agreement") is made and entered into the \_\_\_\_ day of \_\_\_\_\_, 2017 (the "Effective Date"), by and between the City of Monroe ("Owner") and Jerry A. Couch ("Occupant").

### **Recitals**

Owner and Occupant entered into that certain Donation Agreement dated \_\_\_\_\_, 2017, pursuant to which Occupant agreed to donate and Owner agreed to accept the Occupant's property located in the City of Monroe and Lemon Township, Butler County, Ohio ("Real Estate").

As of the date hereof, Occupant has conveyed the Real Estate to Owner.

Owner has agreed to allow Occupant to have access to the Real Estate, subject to the terms and conditions set forth herein.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Occupant and Owner agree as follows:

1. Owner hereby grants Occupant the exclusive right to access the Real Estate for a period (the "Occupancy Period") beginning on the Effective Date and ending thirty (30) calendar days thereafter; provided, however, that Occupant shall have the right to terminate this Agreement at any time during the Occupancy Period by sending five (5) calendar days' prior written notice of termination to Owner.
2. Occupant shall not be obligated to pay Owner any rent during the term of this Agreement.
3. Owner agrees to pay for all taxes and assessments (general and special) on the Real Estate during the term of this Agreement.
4. While this Agreement remains in effect, Occupant shall keep in full force and effect, at Occupant's sole cost and expense, commercial general liability insurance on the Real Estate in the minimum amount of \$500,000.00 per occurrence and \$1,000,000.00 in the aggregate. Owner shall be named as an additional insured on Occupant's liability policy.
5. Occupant shall have the right to remove his personal property from the Real Estate. Any personal property located on the Real Estate after the expiration of the Occupancy Period shall be deemed to be owned by Owner with the right to do whatever it wants with such property in its sole discretion. Occupant shall repair

any physical damage caused to the Real Estate by Occupant during the term of this Agreement.

6. Occupant shall indemnify and hold Owner harmless from and against any and all liabilities, claims, damages or costs arising out of Occupant's use of the Real Estate during the term of this Agreement.
7. This Agreement represents the entire agreement between the parties and no other promises have been made, express or implied, with respect to the subject matter of this Agreement. This Agreement may be executed in one or more separate counterparts, which, when read together, shall be as fully effective as a single, executed counterpart.

Owner and Occupant have caused this Agreement to be executed the day and year first above written.

Approved as to Form:

City of Monroe, Ohio

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

William J. Brock, P.E.  
City Manager

\_\_\_\_\_  
City Law Director

\_\_\_\_\_  
Jerry A. Couch

