

DONATION AGREEMENT

Donor: McCordsville Volunteer Fire Department

Address of Donor: 7850 N. Form St., McCordsville, IN 46055

Recipient: Town of McCordsville, Indiana

Address of Recipient: 6280 W. 800 N., McCordsville, IN 46055

This Donation Agreement, made between Donor, as listed above, and Recipient, also listed above, is effective as of _____ (“Effective Date”). The parties may be referred to individually as “Party” and collectively as “Parties.”

RECITALS:

WHEREAS, Recipient is the following type of charitable entity, organized under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

WHEREAS, Donor would like to make a charitable donation to Recipient, as under the laws of the United States and the applicable portions of the Internal Revenue Code of 1986, as amended;

NOW, therefore, in consideration of the promises and covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

Article 1 – DONATION INFORMATION:

Donor is pledging a donation of the real estate and all improvements, furniture, fixtures, and contents therein located on Parcel No. 30-01-26-100-011.000-018, commonly known as 7580 N. Form St., Vernon Township, McCordsville, IN 46055, subject to the terms as set forth below.

Article 2 – PROPERTY:

The property (“Property”) is known as 7580 N. Form Street in Vernon Township, Hancock County, McCordsville, Indiana 46055, together with any existing permanent improvements and fixtures attached (unless leased or excluded), including, but not limited to, electrical and/or gas fixtures home heating fuel, heating and central air-conditioning equipment and all attachments thereto, built-in kitchen equipment, sump pumps, water softener, water purifier, gas grills, fireplace inserts, gas logs and grates, central vacuum equipment, window shades/blinds, curtain rods, drapery poles and fixtures, ceiling fans and light fixtures, towel racks and bars, storm doors, windows, awnings, TV antennas, satellite dishes and controls, storage barns, all landscaping, mailbox, and garage door opener with controls.

The terms of this Agreement will determine what items are included/excluded. All items sold shall be fully paid for by Donor at time of closing and transactions. Recipient should verify total square footage, land, room dimensions or community amenities if material.

Article 3 – CLOSING:

The closing of the sale (“the Closing Date”) shall be on or before December 31, 2023, or at such other time that is mutually agreed to by the parties in writing. Any closing date earlier than the latest date above must be by mutual written agreement of the parties. The settlement or closing fee incurred in conducting the settlement charged by the closing agent or company shall be shared equally. This Agreement is not contingent upon the closing of another transaction.

Notwithstanding terms to the contrary, the parties agree that as a condition to closing, all funds delivered to the closing agent’s escrow account be in such form that the closing agent shall be able to disburse in compliance with I.C. 27-07-3-7 et. seq. Therefore, all funds from a single source of \$10,000 or more shall be wired unconditionally to the closing agent’s escrow account and all funds under \$10,000 from a single source shall be good funds as so defined by statute.

Article 4 – POSSESSION:

- A. The possession of the Property shall be delivered to Recipient at closing. If Donor does not deliver possession by the date and time required in the first sentence of this paragraph, Donor shall pay Recipient \$100.00 per day as liquidated damages until possession is delivered to Recipient; and Recipient shall have all other legal and equitable remedies available against the Donor.
- B. **Maintenance of Property:** Donor shall maintain the Property in its present condition until its possession is delivered to Recipient, subject to repairs in response to any inspection. Recipient may inspect the Property prior to closing to determine whether Donor has complied with this paragraph. Donor shall remove all debris and personal property not included in the sale.
- C. **Casualty Loss:** Risk of loss by damage or destruction to the Property prior to the closing shall be borne by Donor, including any deductible(s). In the event any damage or destruction is not fully repaired prior to closing, Recipient, at Recipient’s option, may either (a) terminate this Agreement with prompt return of earnest money to Recipient or (b) elect to close the transaction, in which event Donor’s right to all real property insurance proceeds resulting from such damage or destruction shall be assigned in writing by Donor to Recipient.
- D. **Utilities/Municipal Services:** Donor shall pay for all municipal services and public utility charges through the day of possession.

Article 5 – SURVEY:

Recipient shall receive a BOUNDARY SURVEY, which is a survey where corner makers of the Property are set prior to closing at Recipient’s expense (included in allowance, if provided). The survey shall (1) be received prior to closing and certified as of a current date, (2) be reasonably satisfactory to Recipient, (3) show the location of all improvements and easements, and (4) show the flood zone designation of the Property. If Recipient waives the right to conduct a survey, the

Donor is released from any and all liability relating to any issues that could have been discovered by a survey. The release shall survive the closing.

Article 6 – INSPECTIONS:

Recipient has been made aware that independent inspections disclosing the condition of the property are available and has been afforded the opportunity to require such inspections as a condition of this Agreement.

RECIPIENT RESERVES THE RIGHT TO HAVE INDEPENDENT INSPECTIONS (including Lead-Based Paint)

Recipient reserves the right to have independent inspections in addition to any inspection required by FHA, VA, or Recipient's lender(s). All inspections are at Recipient's expense (unless noted otherwise or required by lender) by licensed independent inspectors or qualified independent contractors selected by Recipient within the following time periods. Donor shall have water, gas, electricity and all operable pilot lights on for Recipient's inspections. Donor must make all areas of the Property available and accessible for Recipient's inspection.

INSPECTION/RESPONSE PERIOD: Recipient shall order all independent inspections immediately after acceptance of the Purchase Agreement. Recipient shall have seven (7) days beginning the day following the date of acceptance of the Purchase Agreement to respond to the inspection report(s) in writing to Donor (see "Recipient's Inspection Response").

Inspections may include but are not limited to the condition of the following systems and components: heating, cooling, electrical, plumbing, roof, walls, ceilings, floors foundation, basement, crawl space, well/septic, water, wood destroying insects and organisms, lead-based paint (note: intact lead-based paint that is in good condition is not necessarily a hazard), radon, mold and other biological contaminants. If the initial inspection report reveals the presence of lead-based paint, radon, mold and other biological contaminants, or any other condition that requires further examination or testing then Recipient shall have seven (7) additional days to order, receive and respond in writing to any additional reports.

If the Recipient does not comply with any Inspection/Response Period or make a written objection to any problem revealed in a report within the applicable Inspection/Response Period, the Property shall be deemed to be acceptable. If one party fails to respond or request in writing an extension of time to respond to the party's Independent Inspection Response, then that inspection response is accepted. A timely request for extension is not an acceptance of the inspection response, whether or not granted. A REASONABLE TIME PERIOD TO RESPOND IS REQUIRED TO PREVENT MISUSE OF THIS ACCEPTANCE PROVISION. Factors considered in determining reasonable time periods include, but are not limited to, availability of responding party to respond, type and expense of repairs requested and need of responding party to obtain additional opinions to formulate a response.

If the Recipient reasonably believes that the Inspection Report reveals a DEFECT with the Property (under Indiana law, "Defect" means a condition that would have a significant adverse effect on the value of the Property, or that if not repaired, removed, or replaced would significantly

shorten or adversely affect the expected normal life of the premises), and the Donor is unable or unwilling to remedy the defect to the Recipient's reasonable satisfaction before closing (or at a time otherwise agreed to by the parties), then Recipient may terminate this Agreement or waive such defect and the transaction shall proceed toward closing. RECIPIENT AGREES THAT ANY PROPERTY DEFECT PREVIOUSLY DISCLOSED BY DONOR, OR ROUTINE MAINTENANCE AND MINOR REPAIR ITEMS MENTIONED IN ANY REPORT, SHALL NOT BE A BASIS FOR TERMINATION OF THIS AGREEMENT.

Article 7 – TITLE APPROVAL:

Prior to closing, Recipient shall be furnished with a title insurance commitment for the most current and comprehensive ALTA Owner's Title Insurance Policy available in the amount of the purchase price showing marketable title to Property in Donor's name, Donor must convey title free and clear of any encumbrances and title defects, with the exception of any mortgage assumed by Recipient and any restrictions or easements of record not materially interfering with Recipient's intended use of the Property. A title company, at Recipient's request, can provide information about availability of various additional title insurance coverages and endorsements and the associated costs.

OWNER'S TITLE INSURANCE PREMIUM and that portion of Title Service Fees incurred to prepare the Owner's Policy (including title search and examination and commitment preparation), to be paid by the Recipient.

The parties agree that Recipient will select a title insurance company to issue a title insurance policy and will order the commitment immediately. Pursuant to Federal and State law, Donor cannot make Donor's selection of a title insurance provider a condition of this Agreement.

Article 8 – PRORATIONS AND SPECIAL ASSESSMENTS:

Insurance, if assigned to Recipient, interest on any debt assumed or taken subject to, any rents, all other income and ordinary operating expenses of the Property, including but not limited to, public utility charges shall be prorated as of the day immediately prior to the Closing Date. Donor shall pay any special assessments applicable to the Property for municipal improvements previously made to benefit the Property. Donor warrants that Donor has no knowledge of any planned improvements which may result in assessments and that no governmental or private agency has served notice requiring repairs, alterations or corrections of any existing conditions. Public or municipal improvements which are not completed as of the date above, but which will result in a lien or charge shall be paid by Recipient. Recipient will assume and pay all special assessments for municipal improvements completed after the date of this Agreement.

Article 9 – TIME:

Time is of the essence. Time periods specified in this Agreement and any subsequent Addenda to the Purchase Agreement are calendar days and shall expire at 11:59 P.M. of the date stated unless the parties agree in writing to a different date and/or time.

Note: Donor and Recipient have the right to withdraw any offer/counteroffer prior to written acceptance and delivery of such offer/counteroffer.

Article 10 – ATTORNEY’S FEES:

Any party to this Agreement who is the prevailing party in any legal or equitable proceeding against any other party brought under or with relation to the Agreement or transaction shall be additionally entitled to recover court costs and reasonable attorney’s fees from the non-prevailing party.

Article 11 – ADDITIONAL PROVISIONS:

- A. Unless otherwise provided, any proration for rent, taxes, insurance, damage deposits, association dues/assessments, or any other items shall be computed as of the day immediately prior to the Closing Date.
- B. Underground mining has occurred in Indiana, and Recipient is advised of the availability of subsidence insurance.
- C. The Indiana Sheriff’s Sex Offender Registry (www.indianasheriffs.org) exists to inform the public about the identity, location and appearance of sex offenders residing within Indiana.
- D. Conveyance of this Property shall be by general Warranty Deed, subject to taxes, easements, restrictive covenants, and encumbrances of record, unless otherwise agreed.
- E. Donor represents and warrants that Donor is not a “foreign person” (individual entity) and, therefore, is not subject to the Foreign Investment in Real Property Tax Act.
- F. Any notice required or permitted to be delivered shall be deemed received when personally delivered, transmitted electronically or digital or sent by express courier or United States mail, postage prepaid, certified and return receipt requested, addressed to Donor or Recipient or the designated agent of either party.
- G. This Agreement shall be construed under and in accordance with the laws of the State of Indiana and is binding upon the parties’ respective heirs, executors, administrators, legal representatives, successors, and assigns.
- H. In case any provision contained in this Agreement is held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.
- I. This Agreement constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties’ respecting the transaction and cannot be changed except by their written consent.

- J. All rights, duties and obligations of the parties shall survive the passing of title to, or an interest in, the Property.
- K. Any amounts payable by one party to the other, or by one party on behalf of the other party, shall not be owed until this transaction is closed.
- L. Recipient agrees to hold the building in their possession for a minimum of fifteen (15) years and if they do not, the property shall revert to the ownership of Donor or Donor's legal successor in interest.
- M. Donor shall leave on loan within the subject premises certain antique firefighting equipment, including, but not limited to, helmets, badges, and miscellaneous equipment for the purposes of display within the structure by Recipient with the acknowledgement that said items are on loan from Donor and upon the condition that Recipient will secure and insure said items. Should Recipient sell the building in the future, said items shall be returned to Donor.
- N. Recipient will coordinate with Donor on appropriate signage for the southeast side of the structure commemorating the service of Donor as a volunteer firefighting organization to the Town of McCordsville, Indiana. All other signage will be at the Recipient's discretion.
- O. Recipient will allow Donor to utilize a meeting room at no cost, not to exceed twice per month. Donor will be allowed to utilize the meeting room subject to the then in place rules and regulations and rental agreement associated with such rentals adopted by Recipient. There will not be a rental fee or deposit required for use of the room. Donor will provide requested meeting dates to the Recipient prior to January 15 each year for priority reservations. After January 15th of each year, availability to the Donor will still be subject to the above conditions and at no cost but will be granted subject to availability. Additional requests to utilize the facility may be made directly to the Town Manager who has final determination.
- P. Recipient recognizes nine (9) legacy individual members of Donor's organization and agrees that each listed member may request use of the facilities with no rental fee two (2) times a year based on availability and subject to all conditions then being charged to the public. If a security deposit is then being charged by Recipient to other persons or entities wishing to rent the space, it shall be required and shall be returned to Eligible Legacy Member subject to the terms of the rental agreement. This provision is limited only to the listed legacy members below and may not be transferred. It does not include family, relatives, friends, or new members to the organization. Additional requests to utilize the facility may be made directly to the Town Manager who has final determination.

Eligible Legacy Members

- | | |
|-----------------|------------------|
| 1. Dan Vail | 5. Terry Ware |
| 2. Grant Adams | 6. Ray Hashley |
| 3. Dan Justus | 7. Paul Foltz |
| 4. Rachel Adams | 8. Noah Jaehnert |

9. Jack Combs

- Q. Recipient agrees to retain and maintain the fire extinguisher memorial located at the current site of the flagpole, subject to Recipient's right to change out or upgrade the flagpole portion of the edifice from time to time.
- R. Recipient agrees to use their best efforts to work out an arrangement whereby the United Methodist Church of McCordsville, Indiana may use the parking lot located on the subject real estate for overflow parking and placement of trash containers associated with the annual Lord's Acre Festival.
- S. Recipient agrees to not allow activities to be conducted within the subject property during the Friday and Saturday of the Lord's Acre Festival to avoid any conflicts therewith unless in conjunction with the Lord's Acre Festival.
- T. Recipient commits to the installation of curbs and sidewalks where appropriate adjoining the subject property as part of any renovation project associated therewith.
- U. Recipient will include one (1) representative of Donor's organization to participate in the review of renovation plans for the subject real estate.
- V. Recipient will, to the extent deemed appropriate by Recipient in their sole discretion, attempt to provide Donor with a small office/storage space for use of Donor for the storage of memorabilia when not on display.
- W. Recipient agrees to allow Donor Organization to hand out candy on Trick-or-Treat at the facility as it has done traditionally.
- X. Recipient agrees to honor the Agreement (to be provided) between the McCordsville Volunteer Fire Department and Dan Justus- JKL Properties, LLC which grants Access and hook-up capabilities to the storm water drain for future use at 6383 W. Broadway. Any easement and hook-up are pending Town approval, capacity of the storm sewer pipe, and agreed upon location. A separate easement agreement will be required between the Town and JKL Properties, LLC.

Article 12 – GENERAL PROVISIONS:

- A. **GOVERNING LAW:** this Agreement shall be governed in all respects by the laws of the state of Indiana and any applicable federal law. Both Parties consent to jurisdiction under the state and federal courts within the state of Indiana. The Parties agree that this choice of law, venue, and jurisdiction provision is not permissive, but rather mandatory in nature.
- B. **LANGUAGE:** All communications made, or notices given pursuant to this Agreement shall be in the English language.

- C. ASSIGNMENT: This Agreement, or the rights granted hereunder, may not be assigned, sold, leased or otherwise transferred in whole or party by either Party.
- D. AMENDMENTS: This Agreement may only be amended in writing and signed by both Parties.
- E. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous understandings, whether written or oral.
- F. HEADINGS: Headings to this Agreement are for convenience only and shall not be construed to limit or otherwise affect the terms of this Agreement.
- G. COUNTERPARTS: This Agreement may be executed in counterparts, all of which shall constitute a single agreement.

DONOR

RECIPIENT

Gregory Brewer, Town Council President

Date: _____

Date: _____

Gregg\MUNICIPAL\McCordsville\General\VFD Building Purchase\Donation Agreement – 11-10-23