

ORDINANCE NO. 21-3667

**AN ORDINANCE ESTABLISHING THE HOMEOWNER HELPER PROGRAM
TO ASSIST OWNER-OCCUPIED PROPERTY OWNERS
TO COMPLY WITH SILVERTON CODE ENFORCEMENT ORDERS,
AND DECLARING AN EMERGENCY**

WHEREAS, the Silverton Village Council has established property maintenance as one of its top six goals in order to protect Silverton's property values and to preserve its housing stock; and

WHEREAS, from time to time, Silverton staff takes enforcement actions against property owners lacking the financial and physical ability to undertake property maintenance actions ordered by the Village under the Village's Code of Ordinances; and

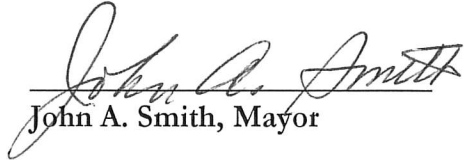
WHEREAS, Village Council has appropriated \$100,000 via Ordinance No. 21 - 3665 to create a funding mechanism to assist owner-occupied homeowners with financial assistance in the event the homeowner demonstrates they lack the ability to comply on their own; and

WHEREAS, the Village has a public interest in helping property owners keep up their property so as to preserve community property values, enhance the Village's tax base, preserve the community's housing stock, and assist residents who are unable to comply with property maintenance orders.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Silverton, that:

- SECTION I.** The Council of the Village of Silverton hereby establishes the Homeowner Helper Program under the terms of the program guidelines, property owner agreements, and affidavit attached hereto as "Exhibit A".
- SECTION II.** The Village Manager is hereby authorized to enter into agreements with Silverton owner-occupied property owners needing assistance under the terms of the Homeowner Helper Program, provided that any work undertaken by the Village in excess of \$15,000 shall require approval by resolution of Council.
- SECTION III.** This Ordinance is declared to be an emergency measure necessary to preserve the public peace, health, safety and welfare of the citizens of the Village of Silverton; the reason for the emergency being the immediate need to provide assistance to several property owners occupying their home who are unable to take steps on their own to comply with orders. Summer is the optimal time for property maintenance projects and thus time is of the essence to establish this program to benefit property owners at the soonest possible time. Accordingly, this Ordinance shall take effect and be in force from and after its passage and approval.
-

PASSED this 3rd day of June, 2021.


John A. Smith, Mayor

ATTEST:

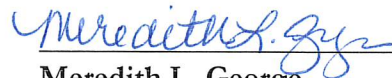

Thomas M. Carroll, Village Manager

Approved as to form:


Bryan E. Pacheco, Village Solicitor

CERTIFICATION:

I, Meredith L. George, Clerk of Council of the Village of Silverton, County of Hamilton, State of Ohio; do hereby certify that there is no newspaper published in said municipality and that publication of the foregoing Ordinance No. 21-3667 has been duly made by posting true copies in two (2) places that are accessible by the public in said municipality, as determined by Council as follows: 1) Silverton Town Hall lobby area and Council Chambers foyer; and 2) Silverton's official website. Said posting was for a period of fifteen days commencing June 4, 2021.


Meredith L. George
Clerk of Council of Silverton, Ohio

HOME IMPROVEMENT AGREEMENT

THIS HOME IMPROVEMENT AGREEMENT (this "**Agreement**"), dated as of this _____ day of _____, 2021 (the "**Effective Date**"), is by and between the Village of Silverton, an Ohio municipal corporation, with offices located at 6943 Montgomery Road, Silverton, OH 45236 (the "**Village**") and _____ (the "**Homeowner**") (together, the "**Parties**" and each, a "**Party**"), residing at, _____, as more particularly described as Hamilton County Auditor's Parcel ID No. _____ (the "**Property**").

RECITALS

WHEREAS, the Property is currently in violation of certain provisions of applicable property maintenance and/or nuisance code orders (collectively, the "**Code**") and Homeowner lacks the financial means remediate such violations and/or nuisances to bring the Property into compliance with the applicable Code provisions;

WHEREAS, the Village desires to provide assistance to Homeowner to comply with the Code in accordance with the Village's resident exterior improvement assistance program, known as the *Homeowner Helper Program*;

WHEREAS, the Village agrees, in accordance with the terms of this Agreement, to perform certain services to bring the Property into compliance with the Code;

WHEREAS, in consideration for such services, Homeowner agrees to permit the Village to file a lien against the Property for the repayment of such services upon the subsequent sale, conveyance or transfer of the Property; and

WHEREAS, following the filing of the lien for such services, the Property's violations of the Code shall be deemed to be remedied.

NOW THEREFORE, in exchange of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. **Services**. The Village shall provide to Homeowner the materials, maintenance and repair services for exterior-only improvements to the Property as more particularly described on **Exhibit A** attached hereto and incorporated herein (collectively, the "**Services**"). The Village shall provide the Services in accordance with the terms and subject to the conditions set forth in this Agreement, and in its sole and absolute discretion, select, hire, fire, manage, appoint and use personnel of required skill, experience, licenses, and qualifications to perform the Services (referred to herein as the "**Contractor**"). Neither the Village nor the Contractor shall be obligated to complete any work or services or provide any other materials except for those specifically set forth in Exhibit A.

2. **Homeowner Affidavit**. As a condition precedent to the Village providing the Services, Homeowner shall certify, in a form of the affidavit attached hereto and incorporated herein as

Exhibit B, that Homeowner has in place as of the date hereof, and will maintain at all times until the expiration of the Term, a valid instrument directing the manner of disposition of the Property upon Homeowner's death (a "**Testamentary Instrument**"). For all purposes hereof, a Testamentary Instrument shall be deemed to include, without limitation, a will, trust, deed, transfer on death designation affidavit, or other like instrument, in each case valid under the laws of the State of Ohio and sufficient to dispose of the Property upon the death of Homeowner other than by the laws of intestacy of the State of Ohio or any other jurisdiction.

3. Homeowner's Obligations. During the Term (as hereinafter defined), Homeowner shall: (a) provide the Village and the Contractor with safe access to the Property to perform the Services; (b) respond promptly to any requests by the Village or the Contractor for information or approval, as may be required from time to time, to perform the Services; and (c) cause the Lien to be discharged in accordance with the terms of this Agreement (which obligation shall survive after the expiration or earlier termination of this Agreement).

4. Term and Termination.

4.1 Term. This Agreement shall commence as of the Effective Date and shall continue terminate upon the earlier to occur of (a) the completion of the Services, or (b) one hundred and eighty (180) days after the Effective Date, unless sooner terminated pursuant to this Section 4 (the "**Term**").

4.2 Termination. The Village may, in its sole and absolute discretion, automatically terminate this Agreement by delivering written notice to Homeowner in accordance with the provisions of Section 8.2. In the event of such termination prior to the completion of the Services, the Village may file a Lien against the Property for the amount of such Services performed by the Village and the Contractor in accordance with this Agreement.

4.3 Effects of Termination or Expiration. Upon expiration or termination of this Agreement for any reason, the Village shall: (a) return to Homeowner all of Homeowner-owned property, equipment, or materials in its possession or control; and (b) cause to be removed any property, equipment, or materials located at the Property that is owned by the Village or the Contractor.

5. Contractor's Lien. In consideration of the provision of the Services by the Village, and the rights granted to Homeowner under this Agreement, upon a mechanic's lien on the Property, to be filed with the Hamilton County Recorder's Office (the "**Recorder's Office**") in accordance with Ohio Revised Code Section 1311.06, following the completion of the Services, for the full cost of the Services (the "**Lien**"). Homeowner shall cause the Lien to be discharged in accordance with the terms and conditions set out in Section 6.2 of this Agreement.

6. Representations and Warranties.

6.1 Authority. Each Party represents and warrants to the other Party that: (a) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder; and (b) when executed

and delivered by such Party, this Agreement shall constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

6.2 Payment of Lien. Prior the sale, conveyance, disposition, conveyance or transfer (be it voluntary or involuntary), Homeowner, or Homeowners' heirs, successors, or assigns, shall pay the Village in the amount of the Lien placed on the Property in order to cause the Lien to be released of record with the Recorder's Office. Upon Homeowner's payment of the Lien, the Village shall, within a reasonable time thereafter, cause the Lien to be discharged and released of record with the Recorder's Office.

6.3 Ownership. Homeowner represents and warrants that: (a) Homeowner holds title to the Property in fee simple absolute and does not lease the Property; (b) the Property is the Homeowner's primary residence where the Homeowner resides; and (c) Homeowner has the right and authority to enter into and bind the Property as described in this Agreement.

6.4 THE VILLAGE HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND TITLE.

7. Indemnification. Homeowner shall indemnify, defend, and hold harmless the Village and its officers, officials, directors, employees, contractors, subcontractors, agents, affiliates, successors, and assigns against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and costs (collectively, "**Losses**"), relating to or arising out of or resulting from any claim of a third party arising out of or occurring in connection with (a) bodily injury, death of any person or damage to real or tangible, personal property resulting from the Contractor's willful, fraudulent or negligent acts or omissions, or (b) the Contractor's negligence, willful misconduct, or breach of this Agreement, including but not limited to breach of any representation or warranty made by the Village in this Agreement.

8. Miscellaneous.

8.1 No Partnership or Joint Venture. The Village and Homeowner are independent parties, and nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between them. Neither Party shall be authorized to contract for or bind the other Party in any manner whatsoever, except as provided for in this Agreement.

8.2 Notice. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the receiving Party from time to time in accordance with this Section). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as

otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section.

8.3 Entire Agreement; Order of Precedence. This Agreement, together with all Schedules and Exhibits and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any Schedule or Exhibit, then the terms of this Agreement shall control unless expressly set forth otherwise in the applicable Schedule or Exhibit.

8.4 Amendment and Modification; Waiver. This Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each Party hereto. No failure to exercise any rights, remedy, power or privilege ("**Right(s)**") arising from this Agreement shall operate or be construed as a waiver thereof. No single or partial exercise of any Right hereunder precludes any other or further exercise thereof or the exercise of any other Right.

8.5 Severability. No invalidity, illegality, or unenforceability of any provision herein in any jurisdiction, shall affect any other term or provision of this Agreement or invalidate or render such provision unenforceable in any other jurisdiction. If any provision is determined to be invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible.

8.6 Governing Law: Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule that would cause the application of laws of any other jurisdiction. Any legal suit, action, or proceeding arising out of or related to this Agreement or the Services provided hereunder shall be instituted exclusively in the state or federal courts in Hamilton County, Ohio, and each Party irrevocably: (a) submits to the exclusive jurisdiction of such courts; and (b) waives any objection to such courts based on venue or inconvenience; and (c) waives any right to trial by jury. Service of process, summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

8.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

8.8 Incorporation of Recitals and Exhibits. The foregoing recitals are hereby incorporated by reference.

8.9 Survival. The rights and obligations of the Parties set forth in Sections 3(c), 4.3, 5, 6.2 and Section 7 shall survive the termination or expiration of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

VILLAGE:

Village of Silverton,
an Ohio municipal corporation

By: _____
Name: _____
Date: _____

HOMEOWNER:

By: _____
Name: _____
Date: _____

EXHIBIT A

Services

Exhibit B

HOMEOWNER AFFIDAVIT

The undersigned, being first duly cautioned and sworn, says as follows:

1. That this Affidavit relates to _____, a unmarried/married man/woman (“Affiant”), who is the owner of the property located at _____, Village of Silverton, Cincinnati, Ohio and as recorded in that certain deed filed with the office of Hamilton County, Ohio Recorder in Official Record Volume _____, Page _____ (the “Real Estate”).
2. That Affiant has entered into that certain Home Improvement Agreement dated _____, _____, (the “Agreement”) with the Village of Silverton, an Ohio municipal corporation (the “Village”).
3. That in consideration of the “Services” therein described, Affiant certifies that (i) he/she has in place a valid Testamentary Instrument (as defined in the Agreement), which complies with Ohio law, and directs the disposal of his/her property, including the Real Estate, upon Affiant’s death, (ii) the Village may place a lien on the Real Estate in consideration for the services provided for under the Agreement, and (iii) the Affiant agrees to maintain in force, a valid Testamentary Instrument for the duration of the Term of the Agreement.
4. That the purpose of this Affidavit is to evidence to the Village that Homeowner has, in his/her possession, a valid Testamentary Instrument, which complies with the laws of the State of Ohio, that identifies who shall take title to the Real Estate upon Affiant’s death.

Further Affiant sayeth naught.

Intentionally left blank

Signature page to follow

[Homeowner Affiant]

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

Sworn to, acknowledged and subscribed to me in my presence this ____ day of _____, 2021 by [_____], a _____.

Notary Public

TRANSFER ON DEATH DESIGNATION AFFIDAVIT

[R.C. 5302.22]

STATE of _____)
COUNTY of _____)

[TRANSFEROR NAME] ("Affiant"), being first duly sworn according to law, states as follows:

1. That Affiant, [unmarried/married], is the owner of record of the following real property:

See Exhibit "A" attached and incorporated hereto.

Parcel No.: [INSERT PARCEL ID]
Property Address: [INSERT PROPERTY ADDRESS]
Prior Inst. Ref.: Book [INSERT #], Page [INSERT #], Recorder's Office, Hamilton County, Ohio

2. That title of record to the above property is held by Affiant as specified in the aforementioned prior recorded instrument.

3. That [Affiant hereby designates/Affiants hereby designate] the entire undivided interest in the property held by [Affiant/Affiants] for transfer on death to [BENEFICIARY NAME] as transfer on death beneficiary, to receive the title of [Affiant/Affiants] upon [his/her/their] death.

[4. That [AFFIANT SPOUSE NAME] spouse of the Affiant, states that [his/her] dower rights are subordinate to the vesting of title to the real property in the transfer on death beneficiary or beneficiaries designated herein.]

5. This Affidavit, and the beneficiary designations set forth herein, hereby revokes, replaces and supersedes any prior beneficiary designation by Affiant, whether by deed or affidavit, related to the above-designated real property.

[SIGNATURE PAGE FOLLOWS]

EXHIBIT A

[INSERT LEGAL DESCRIPTION]

For informational purposes only:

Parcel No.: [INSERT PARCEL ID]

Property Address: [INSERT PROPERTY ADDRESS]