

RESOLUTION NO. 15-72
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMAN J. V. Stone ON THE 19th
DAY OF JUNE, 1972.

A RESOLUTION RATIFYING AN AGREEMENT EXECUTED
ON MAY 24, 1972 BY AND BETWEEN THE CITY OF
CENTERVILLE, OHIO, EPIPHANY LUTHERAN CHURCH,
THE J. S. DAVIS COMPANY AND THE VILLAGER, PHASE II.

WHEREAS, property leased to Chrysler Realty Corp. will, upon the
completion of proposed construction on land owned by the J. S. Davis Company,
drain across land owned by Ephiphany Lutheran Church and The Villager, Phase
II; and

WHEREAS, the Uniform Building Code, as adopted by the City of Cen-
terville, requires that in the event a new and different burden of accepting
water by an adjoining property owner is created as a result of excavation and
construction on adjoining land, an easement across the adjoining land must be
secured; and

WHEREAS, the parties involved in the drainage problem referred to in
the Agreement attached hereto, marked Exhibit "A" and incorporated herein by
reference have agreed to settle the potential drainage problem and cause
compliance with the Uniform Building Code; and

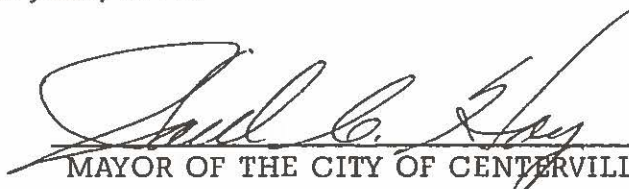
WHEREAS, pursuant to said Agreement the parties executed said
attached Agreement on May 24, 1972 with the City Manager of the City of
Centerville executing same on behalf of the City of Centerville;

NOW, THEREFORE,

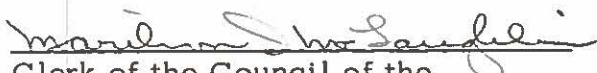
The Municipality of Centerville hereby resolves,

1. That the actions of the City Manager in executing the Agreement
attached hereto as Exhibit "A" are hereby ratified and the said Agreement and
execution by the City Manager are the authorized acts of the City of Centerville.

Passed this 19th day of June, 1972.


MAYOR OF THE CITY OF CENTERVILLE, OHIO

ATTEST:


Clerk of the Council of the
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio,
hereby certifies the foregoing to be a true and correct copy of Resolution No.
15-72, passed by the Council of the City of Centerville, Ohio, on the
19th day of June, 1972.


Clerk of the Council

AGREEMENT

THIS AGREEMENT is made as of May 24, 1972 by and between the City of Centerville, Ohio (Centerville), Epiphany Lutheran Church (Church), The J. S. Davis Co. (Davis), and The Villager, Phase II, a Limited Partnership in which Towne Management, Inc., is the General Partner (Villager);

WHEREAS, Centerville is the owner of certain real property consisting of and being adjacent to Loop Road in Centerville, Montgomery County, Ohio (Centerville Property), and

WHEREAS, Davis is the owner of certain real property adjacent to Loop Road (Davis Property), and

WHEREAS, the Church is the owner of certain real property directly to the north of the Davis Property (Church Property), and

WHEREAS, the Villager has certain apartments on land directly to the north of the Church Property (Villager Apartments), and

WHEREAS, there has been some disagreement concerning the methods of handling drainage of surface water from the Davis Property, including, but not limited to, the portion of the Davis Property which is being used for Voss Chevrolet and the portion of the Davis Property which is leased to Chrysler Realty Corp., and the parties recognize that the Centerville Property also drains in part in the same direction, and

WHEREAS, the parties desire to resolve the problems relating to drainage,

NOW, THEREFORE, the undersigned agree as follows:

1. The Church shall grant to Davis and Centerville, the right to lay a twenty-four inch (24") sewer tile through the Church Property to connect with the twenty-four inch (24") sewer tile now in the Villager Apartments and shall grant to Davis and Centerville, an Easement to accomplish this over land the precise description of which shall be agreed upon by Davis, Centerville, the Church and the Villager, all parties acting reasonably. Davis agrees to buy all materials necessary and pay for all labor and other costs of installation. The Church requires that the tile shall be maintained and repaired after it is installed by Davis and/or Centerville. Davis agrees to so maintain and repair the tile, but Centerville does not specifically agree to do so, although Centerville shall retain the privilege of maintaining and repairing the tile. The installation and all maintenance and repair shall be accomplished in such a way that the Church Property is returned to the same condition in which it was prior to such. By way of illustration, but not limitation, the portion of the surface parking lot which will need to be removed for the installation, shall be backfilled with granular bulk to eliminate settling when the area excavated has been resurfaced by Davis.
2. The Villager grants permission for the tile to be connected to the twenty-four inch (24") tile in the Villager Apartments and for surface water drainage to flow through that tile. The Villager agrees to procure the engineering services necessary to prescribe the exact course for the tile across the Church Property, provided that such engineering services do not cost more than Six Hundred Dollars (\$600).
3. The installation of the tile shall be completed by June 30, 1972, provided, however, that if Davis is delayed by strikes, lockouts, fire, or other causes beyond the control of Davis, the time of completion shall be extended by the amount of delay.
4. Any permits or licenses necessary for the work involved shall be secured and paid for by Davis. Any and all of the parties or their representatives shall have the right to inspect the work at any time. Davis agrees that the installation of the tile shall be in accordance with the directions provided by the Ralph L. Woolpert, Co. Davis shall at all times comply with all requirements of the Workman's Compensation Act of Ohio and shall deliver to the Church, prior to the commencement of the installation, evidence of such compliance and shall maintain insurance to protect Davis, Villager and the Church from claims for damages because of bodily injury, including death, which may arise from and during the work contemplated under this Agreement, such insurance to have the following limits: bodily injury and death for one (1) person, Three Hundred Thousand Dollars (\$300,000.00); bodily and death per occurrence, Five Hundred Thousand Dollars (\$500,000.00); and property damage, One Hundred Thousand Dollars (\$100,000.00). A certificate of such insurance shall be provided to the Church and to the Villager.

5. The parties agree to sign such legal documents in recordable form, if necessary, as are appropriate to effectuate this Agreement.

6. The reason for entering into this Agreement is to solve the drainage problem mentioned above and to satisfy the ordinance of Centerville, requiring agreement by the Church for drainage from the Davis Property to the Church Property and agreement from the Villager for drainage from the Church Property to the Villager Apartments. The parties are not entirely sure that the above work will solve the problem. Therefore, the parties agree that this Agreement and subsequent papers signed pursuant to this Agreement shall satisfy the Centerville ordinance, but the parties also reserve any and all rights under law or in equity which they may have against one another or against others before the signing of this Agreement, if any of the parties become of the opinion that this arrangement does not satisfy the drainage problem. In no event, however, shall the Villager be allowed to recover the engineering expenses from any other person or organization and in no event shall Davis be able to recover the expenses of installing, maintaining and repairing the tile from any other person or organization.

IN WITNESS WHEREOF, the undersigned parties have signed this AGREEMENT on the respective dates set forth to the left of the signatures.

CITY OF CENTERVILLE, OHIO

By: James R. Smit
Title: City Manager

Dated: May 24, 19 72

EPIPHANY LUTHERAN CHURCH

By: R. J. Gullough
Title: President of Council

Dated: May 24, 19 72

THE J. S. DAVIS CO.

By: David M. Davis
Title: President

Dated: May 24, 19 72

THE VILLAGER, PHASE II

By: Towne Management Inc
by Ralph C. Johnson
Title: vica President

Dated: June 1, 19 72