

RESOLUTION NO. 71-23
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER JoAnne Rau ON THE
14th DAY OF August, 2023.

A RESOLUTION ACCEPTING A PERMANENT STORM SEWER EASEMENT FOR PUBLIC PURPOSES FROM STEVEN HAYES AND SHERRI HAYES AND AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A RIGHT OF ENTRY AGREEMENT WITH STEVEN HAYES AND SHERRI HAYES.

WHEREAS, a parcel of land owned by Steven Hayes and Sherri Hayes, is necessary for the establishment, construction, reconstruction, widening, repair or maintenance of a storm sewer for the benefit of the public; and

WHEREAS, Steven Hayes and Sherri Hayes propose to grant to the City of Centerville a non-exclusive permanent easement for a portion of land more fully described in the Easement attached hereto as Exhibit "1", and referenced as Tax parcel No. O68 00906 0002 and in the legal description attached to Exhibit "1", and recorded in Deed 2000-00085831 of the records of Montgomery County, Ohio for said purpose (the "Property"); and

WHEREAS, the City is proceeding with improvements to the storm sewer system which requires temporary access to and upon the Property; and

WHEREAS, Steven Hayes and Sherri Hayes are willing to grant such entry to the Property to assist the City in completing the improvements to the storm sewer system.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City of Centerville hereby accepts a non-exclusive permanent sewer easement for a portion of the land owned by Steven Hayes and Sherri Hayes for the public to install, maintain, and repair the storm sewer on said Property, said land being and referenced as Tax Parcel No. O68 00906 0002 and recorded in Deed 2000-00085831 of Montgomery County, Ohio, and more particularly described in Exhibit "1" attached hereto and made a part hereof.

Section 2. That the City Manager is hereby authorized to execute the Right of Entry Agreement with Steven Hayes and Sherri Hayes. A copy of the Agreement is attached and marked Exhibit "2" and incorporated herein.

Section 3. That the City Manager is hereby authorized and directed to do anything necessary to carry out the terms of said Agreement

Section 4. This Resolution shall become effective at the earliest date allowed by law.

PASSED this 14th day of August, 2023.



Mayor of the City of Centerville, Ohio

ATTEST:



Clerk of Council, City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 71-23, passed by the Council of the City of Centerville, Ohio, on the 14th day of August, 2023.



Clerk of Council

Approved as to form, consistency
with the Charter and Constitutional Provisions.

Department of Law
Scott A. Liberman
Municipal Attorney

EXHIBIT "1"

PERMANENT SEWER EASEMENT

Steven Hayes and Sherri Hayes, husband and wife, the Grantor, in consideration of the sum of \$1 and other good consideration, paid by the **City of Centerville**, an Ohio Municipal corporation, the Grantee, does convey(s) to Grantee, its successors and assigns, an easement, which is more particularly described in Exhibit A and depicted on Exhibit B, attached, the following described real estate:

SEE EXHIBIT A ATTACHED

Montgomery County Current Tax Parcel No. O68 00906 0002


Prior Instrument References: Deed 2000-00085831, Montgomery County Recorder's Office.

The easement is being acquired by Grantee for a public purpose, namely the establishment, construction, reconstruction, widening, repair or maintenance of a storm sewer for the benefit of the public. Said easement shall be for the use of the Grantee and Grantee's contractors and assigns.

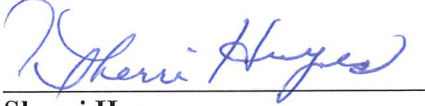
The above-described easement is to be used for locating, constructing, improving, grading, landscaping and other necessary work, including the operation of equipment, and the movement of a work force, over, upon and across the described easement, together with the right of ingress and egress.

This Agreement is binding upon the heirs, executors, administrators, successors, and assigns.

EXECUTED BY the said, **Steve Hayes and Sherri Hayes** on 7th day of August,
2023.



Steve Hayes



Sherri Hayes

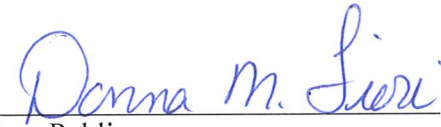
STATE OF OHIO

COUNTY OF MONTGOMERY SS:

This is an acknowledgement clause; no oath or affirmation was administered to the signer.

BE IT REMEMBERED, that on the 7th day of August, 2023, before me the subscriber, a Notary Public in and for said state and county, personally came the above named **Steve Hayes and Sherri Hayes, husband and wife**, and who acknowledged the foregoing instrument to be their voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.



Notary Public

My Commission expires: 11/29/2025

This document was prepared by:
Scott A. Liberman, Esq.
Buckley King LPA
110 N. Main St., Ste. 1200
Dayton, OH 45402



Exhibit "A"
Easement Description
Steven and Sherri Hayes, Tract
Section 20, Town 2, Range 6 East
City of Centerville
Montgomery County, Ohio

Situated in Section 20, Township 2, Range 6 East, Washington Township, Montgomery County, and in the City of Centerville, Ohio and being part of Lot 241 of the Village South Section 14 Plat as recorded in Montgomery County Recorders Plat Book 83, Page 35 as conveyed to Steven and Sherri Hayes, as described in I.R. Deed 00-085831 0001, (all references to deed books, official records, instrument numbers, survey records, and/or plats refer to the Montgomery County Recorders Office, Montgomery County, Ohio) and being more particularly described as follows:

Commencing at a 5/8 inch iron pin found at the northwest corner said Lot 241;

thence South 76° 46' 29" East 80.02 feet along the north line of said Lot 241 to a point, said point being the TRUE POINT OF BEGINNING for the tract described herein;

thence continuing South 76° 46' 29" East 90.09 feet to a point at the northeast corner of said Lot 241;

thence South 04° 55' 39" West 30.03 feet along the east line of said Lot 241 to a point;

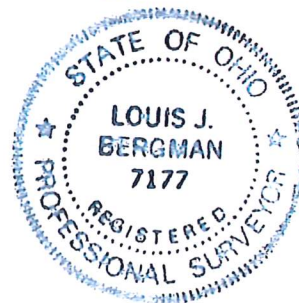
thence North 59° 18' 23" West 98.99 feet to the TRUE POINT OF BEGINNING, containing 0.031 acres (1,339 square feet), more or less, and being subject to all legal highways and easements of record.

Bearings are based on NAD83 (NSRS 2011) Ohio, State Plane Coordinates, South Zone.

This description was prepared under my direct supervision, Louis J. Bergman, Registered Surveyor #7177, May, 3, 2023.


Louis J. Bergman, Registered Surveyor #7177

Mote & Associates, Inc.
214 West Fourth Street
Greenville, Ohio 45331



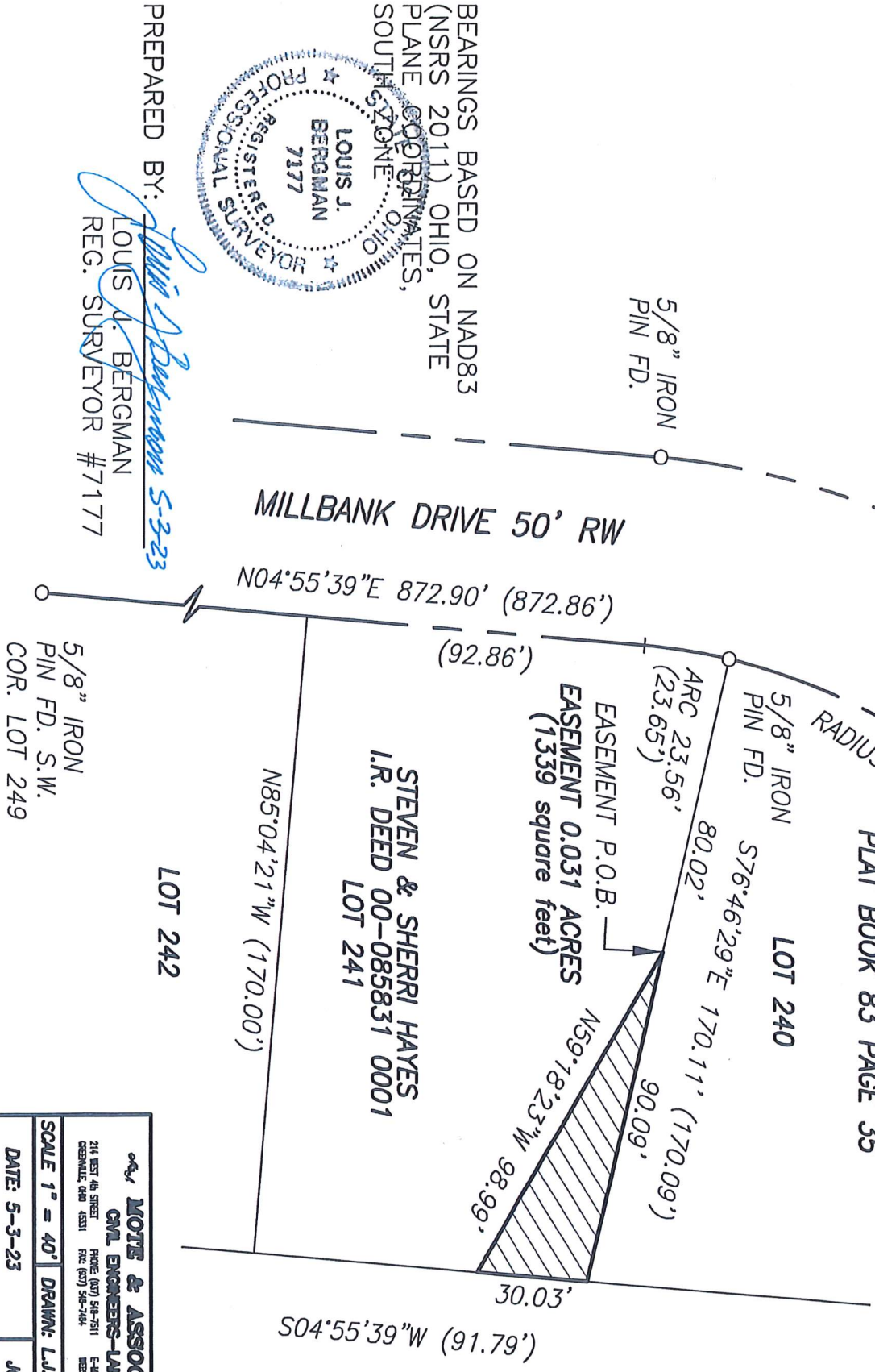
EASEMENT EXHIBIT "B"
 HAYES LOT 241
 SECTION 20, TOWN 2,
 RANGE 6 EAST
 CITY OF CENTERVILLE
 MONTGOMERY COUNTY, OHIO



SCALE 1"=40'



VILLAGE SOUTH
 SECTION 14
 PLAT BOOK 83 PAGE 35



BEARINGS BASED ON NAD83
 (NSRS 2011) OHIO, STATE
 PLANE COORDINATES,
 SOUTH ZONE

PREPARED BY: *Louis J. Bergman*
 LOUIS J. BERGMAN
 REG. SURVEYOR #71177

5/8" IRON
 PIN FD. S.W.
 COR. LOT 249

LOT 242

STEVEN & SHERRI HAYES
 I.R. DEED 00-085831 0001
 LOT 241

NOTE & ASSOCIATES, INC.
 CIVIL ENGINEERS-LAND SURVEYORS

244 WEST 4th STREET
 CLEVELAND, OHIO 43111
 PHONE (216) 546-7511
 FAX (216) 546-7154
 E-MAIL: info@noteandassociates.com
 WEBSITE: www.noteandassociates.com

SCALE 1" = 40' DRAWN: L.J.B. CHECKED: J.D.S.
 DATE: 5-3-23 JOB NO. CN17011722

EXHIBIT 2

RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement (this "Agreement") is made this ____ day of _____, 2023, between STEVEN S. HAYES and SHERRI A. HAYES, Centerville Residents ("Hayes"), whose address is 6310 Millbank Drive, Centerville, Ohio 45459, and CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation (the "City"), whose address is 100 W. Spring Valley Road, Centerville, Ohio 45458, under the following circumstances:

A. Hayes owns the property at 6310 Millbank Drive in Centerville, Ohio and further described in Exhibit "A", attached hereto (hereinafter referred to as the "Property").

B. The City is performing a project to make improvements to the storm sewer that is partially located on the north side of the Property, which improvements will be within the existing easement and within a new easement (hereinafter referred to as the "Project").

C. The City will be under contract with a construction contractor and subcontractors to complete the Project.

D. It is necessary for the contractor and subcontractors to access the Property in order to perform the Project, in the area more particularly depicted in Exhibit "B".

E. Hayes shall grant to the City a right of entry onto the Property for the purpose of access for construction of the Project and other activities, as set forth below.

NOW, THEREFORE, Hayes and the City agree as follows:

1. Consideration. Hayes acknowledges and agrees that the City will make no other payments other than those set forth below to Hayes pursuant to this Agreement. Hayes acknowledges and agrees that the grant of the right of the entry by Kaiser to the City which will allow the City to construct the Project is complete and sufficient consideration for the covenants and agreements of Kaiser in this Agreement, subject to other terms set forth herein.

2. Right of Entry. Hayes hereby grants to the City and its contractors and subcontractors the right to enter onto the Property for all purposes related generally to construction of the Project.

3. Construction Requirements. During construction of the Project, the following terms and conditions shall apply:

(a) Unless otherwise mutually agreed, construction of the Project will only occur between the hours of 7:00 AM and 7:00 PM, Monday through Saturday.

(b) Any damage to the Property caused by construction work directly related to the Project will be restored to a condition that reasonably meets or exceeds the condition of the Property at the beginning of the Project. Turf areas damaged by the project will be restored with a seed mix that meets the City's specification. Hayes will be responsible for watering and protecting the seeded area after completion of the Project.

(c) If it is necessary for trees to be removed on the Property as part of the project, the City shall reimburse Hayes in the amount of Two Hundred Fifty Dollars (\$250.00) per tree that is removed. Hayes will be responsible for purchasing, planting and maintaining all replacement trees.

(d) The City will provide Hayes notice of the Project start date at least two-weeks before work commences.

4. Compliance with Laws. The City will adhere and will require by contract that all contactors and subcontractors on the Property adhere to all applicable federal, state and local laws and regulations at all times during the construction.

5. Term. The term of this Agreement shall commence upon execution of this Agreement and will expire on the date of completion of the Project as determined by the City.

6. Miscellaneous

(a) Governing Law. This Agreement shall be governed and enforced in accordance with the law of the State of Ohio.

(b) Execution of Instruments. The parties to this Agreement shall execute (and, if necessary, acknowledge) and deliver any and all documents and papers and take all such further action as may be necessary or desirable to carry out and effectuate the full purpose and intent of this Agreement.

(c) Severability. In case any of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the remaining provisions shall remain in effect and the Agreement be performed in a fair and equitable manner as to any uncertainties arising from the unenforceable provisions.

(d) Exhibits. All exhibits, schedules and any other documents attached to this Agreement are incorporated into this Agreement by this reference and shall be deemed a part of this Agreement as set forth in full in this Agreement. References to "this Agreement" and words of similar import refer to this Agreement (including all Exhibits and schedules to this Agreement) as an entirety.

(e) Waiver. The terms, covenants, representations, warranties and conditions of this Agreement may be waived only by a written instrument executed by the party waiving compliance. The failure of any party at any time to require performance of any of the provisions of this Agreement shall, in no manner, affect the right at a later date to enforce such provisions. No waiver by any party of any condition, or breach of any provision, term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

(f) Nontransferability of Agreement. The rights, obligations, benefits and burdens of this Agreement may not be transferred, assigned or conveyed in any manner by any party without the prior, written consent of all other parties to this Agreement.

(g) Benefit. Subject to the restrictions contained in this Agreement with respect to transfer, assignment and conveyance, this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement, and the heirs, legal representatives, successors and assigns of the parties to this Agreement.

(h) Entire Agreement. This Agreement (including the exhibits attached to this Agreement), and the other documents referred to in this Agreement or delivered pursuant to this Agreement contain the entire understanding of the parties with respect to the subject matter of this Agreement. This

Agreement supersedes all prior and contemporaneous written and oral agreements and understandings between the parties with respect to the subject matter of this Agreement.

(i) Amendment. This Agreement may be amended at any time by the joint act of the parties to this Agreement; provided, however, that no amendment shall be valid unless the amendment is in writing and signed by all parties to this Agreement.

(j) Headings. The headings used in this Agreement are for convenience only and this Agreement shall be interpreted as if such headings were omitted.

(k) Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute one agreement. No new counterparts shall be valid unless the counterpart has been approved in writing and signed by all parties to this Agreement.

7. Signatures. This Agreement is effective as of the Effective Date which reflects the date last signed by the parties. This Agreement may be signed in several counterparts and, together, shall constitute one document. Facsimile copies of signatures or digitally scanned signatures are acceptable to evidence complete agreement.


THE CITY:

CITY OF CENTERVILLE, OHIO,
an Ohio municipal corporation

By: Wayne S. Davis
Its: City Manager

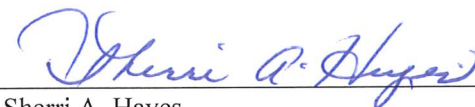
Date: _____

HAYES:



By: Steven S. Hayes
Its: Owner

Date: 8/7/23



By: Sherri A. Hayes
Its: Owner

Date: 8/7/23

APPROVED AS TO FORM:

Scott A. Liberman
Municipal Attorney

EXHIBIT A

Property Deed

EXHIBIT B

Work Area

