

RESOLUTION NO. 72-23
CITY OF CENTERVILLE, OHIO

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

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A RIGHT OF ENTRY AGREEMENT WITH JAMES E. KAISER AND KAREN A. KAISER FOR THE PROPERTY AT 6300 MILLBANK DRIVE.

WHEREAS, James E. Kaiser and Karen A. Kaiser own a property located at 6300 Millbank Drive, Centerville, Ohio and further described in Exhibit "1", attached hereto (the "Property"); and

WHEREAS, the City of Centerville is proceeding with improvements to the storm sewer system at Millbank Drive (the "Project") which requires temporary access to and upon the Property; and

WHEREAS, James E. Kaiser and Karen A. Kaiser are willing to grant such entry to the Property to assist the City in completing the Project.

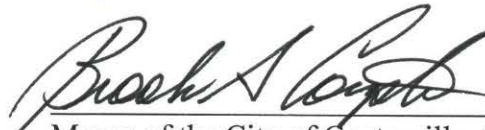
NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is hereby authorized to execute the Right of Entry Agreement with James E. Kaiser and Karen A. Kaiser. A Copy of the Agreement is attached and marked Exhibit "1" and incorporated herein.

Section 2. That the city Manager is hereby authorized and directed to do any and everything necessary to carry out the terms of said Agreement

Section 3. 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 72-23, 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

RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement (this "Agreement") is made this ____ day of _____, 2023, between James E. Kaiser and Karen A. Kaiser, Centerville Residents ("Kaiser"), whose address is 6300 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. Kaiser owns the property at 6300 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 south side of the Property, which improvements will be within the existing 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. Kaiser 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, Kaiser and the City agree as follows:

1. Consideration. Kaiser acknowledges and agrees that the City will make no payments to Kaiser pursuant to this Agreement. Kaiser 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. Kaiser 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. Kaiser will be responsible for watering and protecting the seeded area after completion of the Project.

(c) The City will provide Kaiser 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: _____

KAISER:

James Kaiser

By: James E. Kaiser
Its: Owner

Date: 7/14/2023

Karen Kaiser

By: Karen A.. Kaiser
Its: Owner

Date: 7/20/2023

APPROVED AS TO FORM:

Scott A. Liberman
Municipal Attorney

EXHIBIT A

Property Deed

147

FILE NO.: 97001399

JOY A. CLARK
RECORDED

0016114

SURVIVORSHIP DEED

97 AUG -5 PM 12: 57

JEROME P. DARLING and IVA J. DARLING , husband and wife
of Montgomery

MONTGOMERY County, Ohio
RECORDED

for valuable consideration paid, grants, with general warranty covenants, to
and KAREN A. KAISER , husband and wife

JAMES E. KAISER

for their joint lives, remainder to the survivor of them, whose tax-mailing addresses are
6200 MILLBANK DRIVE, CENTERVILLE, OHIO 45459

the following **Real Property**: Situated in the County of Montgomery in the State
of Ohio and in the City of Centerville

Situate in the City of Centerville , County of Montgomery ,
State of Ohio and being Lot Numbered TWO HUNDRED FORTY (240)
Village South, Section 14 as recorded in Plat Book "83",
page(s) 35 of the Plat Records of Montgomery County, Ohio.

Said premises are conveyed subject to all restrictions,
conditions and covenants and to all legal highways and
easements of record.

And, excepting taxes and assessments due and payable in
December, 1997 and thereafter.

TRANSFERRED
97 AUG -5 PM 12: 06
A. J. WAGNER
AUDITOR

Microfiche No. 93-380E06
Prior Instrument Reference: of the Deed Records of Montgomery
County, Ohio. Parcel No. 068-009-06-0003

of the Grantor, releases all rights of dower therein.

Witness their hand(s) this 30th day of July , 19 97 .

Signed and acknowledged in the presence of:

Jeffrey P. Bohlman
JEFFREY P. BOHLMAN

Jerome P. Darling
JEROME P. DARLING

Pamela S. Folino
PAMELA S. FOLINO

Iva J. Darling
IVA J. DARLING

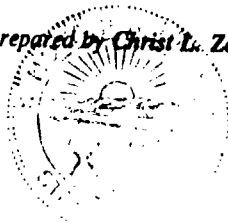
State of OHIO County of MONTGOMERY ss.

Be It Remembered, That on this 30th day of July 19 97 , before me,
the subscriber, a Notary Public in and for said state, personally came JEROME P. DARLING
and IVA J. DARLING , husband and wife
the Grantor(s) in the foregoing deed,
and acknowledged the signing thereof to be their voluntary act and deed.

In Testimony Thereof, I have hereunto subscribed my name and affixed my seal on this
day and year aforesaid.

Jeffrey P. Bohlman

This instrument was prepared by Christ L. Zavakos, Attorney at Law



JEFFREY P. BOHLMAN, Notary Public
Notary Public for the State of Ohio
Commission Expires 12/31/2000

EXHIBIT B

Work Area

