

RESOLUTION NO. 73-23
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 ADAM CHANIN AND AUDREY DENISE CHANIN FOR THE PROPERTY AT 175 GRACEWOOD DRIVE.

WHEREAS, Adam Chanin and Audrey Denise Chanin own a property located at 175 Gracewood 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 drainage ditch at Gracewood Drive (the "Project") which requires temporary access to and upon the Property; and

WHEREAS, Adam Chanin and Audrey Denise Chanin 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 Adam Chanin and Audrey Denise Chanin. 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

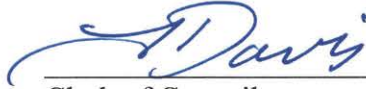
ATTEST:



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 73-23, 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 ADAM CHANIN and AUDREY DENISE CHANIN, husband and wife, Centerville Residents ("Chanin"), whose address is 175 Gracewood Drive, Centerville, Ohio 45458, 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. Chanin owns the property at 175 Gracewood 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 drainage ditch that is partially in the rear 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 through the east side yard in order to perform the Project, in the area more particularly depicted in Exhibit "B".

E. Chanin 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, Chanin and the City agree as follows:

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

2. Right of Entry. Chanin 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. Any fence that is removed as part of the Project will be replaced. Turf areas damaged by the project will be restored with a seed mix that meets the City's specification. Chanin will be responsible for watering and protecting the seeded area after completion of the Project.

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

(d) While the Project is under construction, the gate to the yard on the Property and the fence in the rear will be open, leaving a non-secure perimeter to the yard.

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.

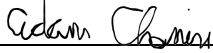
THE CITY:

CITY OF CENTERVILLE, OHIO,
an Ohio municipal corporation

By: Wayne S. Davis
Its: City Manager


Date: _____

CHANIN:



By: Adam Chanin
Its: Owner

Date: 8/8/2023



By: Audrey Denise Chanin
Its: Owner

Date: 8/8/2023

APPROVED AS TO FORM:

Scott A. Liberman
Municipal Attorney

EXHIBIT A

Property Deed

Kind: DEE
Recorded: 11/16/2021 at 10:36:12 AM
Fee Amt: \$34.00 Page 1 of 2
Montgomery County, OH
Brandon C. McClain Recorder
File# 2021-00087101

TRANSFER
10:35:04 11/08/2021
Reg DT06 Receipt 12313 Cashier KC
Montgomery County Auditor
Karl L. Keith
CONV # 023364 \$570.30

O68-00311-0003

2

File No. 2107458

GENERAL WARRANTY DEED

David J. Massey, Executor of the Estate of Lois B. Massey also known as Lois Bowman Massey also known as Lois Massey also known as Lois Gail Massey also known as Lois Gail Bowman, Deceased, Warren County Probate Case No. PE20211595, deceased of Montgomery County, Ohio for valuable consideration paid, grant(s), with general warranty covenants, to:

Adam Chanin and Audrey Denise Chanin, husband and wife, for their joint lives, remainder to the survivor of them

whose tax mailing address is: 175 Gracewood Dr., Dayton, Ohio 45458

the following **REAL PROPERTY:**

Situated in the City of Centerville, Montgomery County, Ohio, and being Lot SEVEN HUNDRED EIGHTY ONE (781) in Concept 3, Section 10, as recorded in Book 69, Page 25, Montgomery County, Ohio, Plat Records.

Auditor Parcel No: O68-00311-0003

LANDMARK TITLE AGENCY SOUTH, INC.
280 REGENCY RIDGE, SUITE 1500
DAYTON, OHIO 45459
BOX

More commonly known as: 175 Gracewood Dr., Dayton, OH 45458

Subject to all restrictions, easements, conditions and covenants of record, and all legal highways, and subject to real estate taxes and assessments becoming due and payable in the month of June or December, next following the execution of this deed, whichever month first occurs and thereafter.

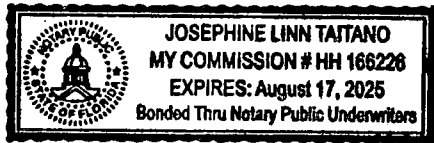
Prior Instrument Reference: Deed Instrument 2015-0068891 of the Deed Records of Montgomery County, Ohio.

This instrument shall be governed and controlled by the laws of the State of Ohio
Executed by David J. Massey, Executor of the Estate of Lois B. Massey, deceased, this 18th day
of October, 2021.

David J. Massey EXECUTOR
David J. Massey, Executor

State of Florida, County of Pinellas, SS: 292-62-1512

The foregoing instrument was acknowledged before me this 18th day of October, 2021 by
David J. Massey, Executor of the Estate of Lois B. Massey, deceased.



(Seal)

Josephine Linn Taitano

Notary Public

My Commission Expires:

This instrument was prepared by:
John M. Ruffolo, Attorney At Law
7501 Paragon Road
Dayton, Ohio 45459

EXHIBIT B

Access Area

