

RESOLUTION NO. 117-24
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Jo Anne Rau ON THE
4th DAY OF November, 2024.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A RIGHT OF ENTRY AGREEMENT WITH MICHAEL K CASTOR AND JULIA L CASTOR FOR THE PROPERTY AT 111 HAMPTON ROAD.

WHEREAS, Michael K Castor and Julia L Castor own a property located at 111 Hampton Road, Centerville, Ohio and further described in Exhibit "1", attached hereto (the "Property"); and

WHEREAS, the City of Centerville is proceeding with improvements to Hampton Road (the "Project") which requires temporary access to and upon the Property; and

WHEREAS, Michael K Castor and Julia L Castor 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 Michael K Castor and Julia L Castor. 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 4th day of November, 2024.



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 117-24, passed by the Council of the City of Centerville, Ohio, on the 4th day of November, 2024.



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 _____, 2024, between MICHAEL K AND JULIA L CASTOR, Centerville Residents ("Castor"), whose address is 111 Hampton Road, Centerville, Ohio 45459, and CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation (the "City"), whose address is 100 W. Spring Valley Road, Centerville, Ohio 45459, under the following circumstances:

A. Castor owns the property at 111 Hampton Road 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 Hampton Road which is adjacent to the Property, which improvements will be partially within the existing right of way and partially outside the existing right of way (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. Castor 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, Castor and the City agree as follows:

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

2. Right of Entry. Castor 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. Castor will be responsible for watering and protecting the seeded area after completion of the Project.

(c) It is necessary for one tree to be removed on the Property as part of the Project, the City shall reimburse Castor two hundred dollars and fifty dollars (\$250.00) for the removal of the tree. Castor will be responsible for purchasing, planting, and maintaining the replacement tree.

(d) The City will provide Castor 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 contractors 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 if 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

CASTOR:

By: Wayne S. Davis
Its: City Manager

Date: _____

By: Michael K Castor
Its: Owner

Date: _____

By: Julia L Castor
Its: Owner

Date: _____

APPROVED AS TO FORM:

Scott A. Liberman
Municipal Attorney

EXHIBIT A
Property Deed

Type: Deeds
Kind: DEED
Recorded: 8/25/2015 1:30:43 PM
Fee Amt: \$28.00 Page 1 of 2
Montgomery County, OH
Willis E. Blackshear Recorder

TRANSFER
09:51am AUGUST 25, 2015
KARL L. KEITH, COUNTY AUDITOR
Conv/Tran #: 13165 \$480.00

File# 2015-00046868

GENERAL WARRANTY DEED

James J. Mitchell and Lolita V. Mitchell, husband and wife, of **Montgomery County, Ohio**, for valuable consideration paid, grant, with general warranty covenants, to **Michael K. Castor and Julia L. Castor**, husband and wife, for their joint lives, remainder to the survivor of them, whose tax mailing address is: **111 Hampton Road, Centerville, OH 45459**, the following Real Property:

Situate in the State of Ohio, County of Montgomery, City of Centerville and being part of Lot Numbered NINETEEN (19) Gorman Plat, Section Four (4), as recorded in Plat Book "OO," Page 4 of the Plat Records of Montgomery County, Ohio and being more particularly described as follows:

Beginning at an iron pipe marking the northeast corner of aforesaid Lot Numbered NINETEEN (19), in the west right of way line of Hampton Road; thence, with the east line of said Lot Numbered NINETEEN (19) along the the west right of way line of said Hampton Road, south 10° 00' 00" west, 15.60 feet to an iron pipe; thence, leaving said Hampton Road and running within said Lot Numbered NINETEEN (19), south 84° 00' 00" west 77.70 feet to an iron pipe; thence, north 06° 00' 00" west 15.00 feet to an iron pipe in the north line of said Lot Numbered NINETEEN (19); thence, with said north line of Lot Numbered NINETEEN (19), north 84° 00' 00" east, 82.00 feet, to the place of beginning, containing 0.0275 acres, more or less.

Also the following described property: Situate in the State of Ohio, County of Montgomery, City of Centerville and being Lot Numbered SIXTEEN (16) Gorman Plat, Section Three (3), as recorded in Plat Book "JJ," Page 78 of the Plat Records of Montgomery County, Ohio.

Parcel ID No. O68-1-2-96,142

Property Address: 111 Hampton Road, Centerville, OH 45459

Subject to all easements, covenants, conditions, restrictions, rights-of-way and reservations of record and all zoning and legal highways.

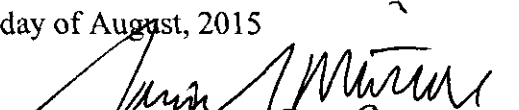

PRIOR INSTRUMENT REFERENCE: Deed Microfiche Number 97-623-A11 of Montgomery County, Ohio.

Saving and excepting all taxes and assessments due and payable with the January, 2016, installment and thereafter, all of which the grantees herein assume and agree to pay.

Deed HST-22853 Page 1 of 2



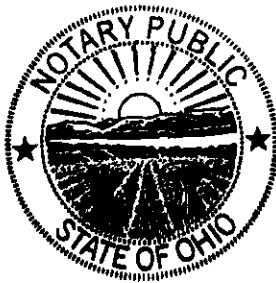
EXECUTED THIS 21st day of August, 2015


James J. Mitchell

Lolita V. Mitchell


STATE OF OHIO)
)
COUNTY OF MONTGOMERY)

BE IT REMEMBERED, that on this 21st day of August, 2015, before me, the subscriber, a notary public, in and for said county and state, personally appeared James J. Mitchell and Lolita V. Mitchell, the grantors in the foregoing Deed and acknowledged the signing thereof to be their voluntary act and deed.

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



JERRY D BOGGS, Notary Public
In and for the State of Ohio
My Commission Expires April 29, 2020


NOTARY PUBLIC
Commission Expires: 4/29/2020

THIS INSTRUMENT PREPARED BY:
John R. Mohr, Esq.
Gottschlich & Portune, LLP
201 E. Sixth Street, The Armory
Dayton, OH 45402-2836
(937) 913-0200

HST-22853

Home Services Title, LLC
4060 Executive Drive
Dayton, OH 45430

EXHIBIT B

Project Area

