

**AN EMERGENCY ORDINANCE AUTHORIZING AND DIRECTING
THE MAYOR AND PRESIDENT OF COUNCIL TO ENTER INTO EASEMENT
AGREEMENTS WITH DALE MARSTON AND LAVINIA NEGREA**

WHEREAS, the Village has determined it is necessary to make certain drainage and infrastructure improvements on property owned by Dale Marston and Lavinia Negrea to facilitate the Worton Park Culvert Replacement Project- Phase 1; and

WHEREAS, in order to allow the Village to make such improvements and perform continued maintenance of such improvements Dale Marston and Lavinia Negrea desire to grant the Village a permanent and temporary easement; and

WHEREAS, the Council deems it necessary and in the best interest to the health, safety and welfare of all Mayfield Village residents to enter into easement agreements with Dale Marston and Lavinia Negrea for the installation and maintenance of certain drainage and infrastructure improvements.

NOW, THEREFORE, BE IT ORDAINED by the Council of Mayfield Village, Cuyahoga County, State of Ohio, that:

SECTION 1. The Council of Mayfield Village, Ohio hereby authorizes and directs the Mayor and President of Council to enter into the permanent easement agreement with Dale Marston and Lavinia Negrea, as is more fully set forth in the document attached and incorporated by reference as Exhibit "A" and the temporary easement as is more fully set forth in the document attached and incorporated by reference as Exhibit "B".

SECTION 2. The Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance pursuant to the Village's Charter and Ordinances have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of health, safety and welfare of the residents of Mayfield Village,

Ohio, for the reason that it is necessary to ensure certain drainage and infrastructure improvements are completed as soon as possible. It shall, therefore, take effect immediately upon the passage by the affirmative vote of not less than five (5) members elected to Council and approved by the Mayor or otherwise at the earliest time allowed by law.



STEPHEN SCHUTT
Council President

First Reading: July 5, 2022

Second Reading: suspended, 2022

Third Reading: suspended, 2022

PASSED: July 5, 2022




BRENDA T. BODNAR, Mayor

APPROVED AS TO FORM:



DIANE A. CALTA
Director of Law

ATTEST: 

MARYBETH BETSA,
Clerk of Council

EXHIBIT A

DRAINAGE EASEMENT AGREEMENT

THIS DRAINAGE EASEMENT AGREEMENT (this “Agreement”) is made as of the 1st day of JULY, 2022 (the “Effective Date”) by and between DALE MARSTON and LAVINIA NEGREA (collectively “Marston”) having an address of 940 Worton Park Drive, Mayfield Village, Ohio and MAYFIELD VILLAGE, Ohio, which is an Ohio municipal corporation (“Village”) having an address of 6622 Wilson Mills Road, Mayfield, Ohio 44143 (Marston and the Village are sometimes collectively referred to as the “Owners” and individually as an “Owner”).

RECITALS

- A. Marston is the fee owner of certain land located at 940 Worton Park Drive, Mayfield, Ohio, also known as permanent parcel number 831-33-030; the area is hereinafter referred to as the (“Marston Parcel”).
- B. The Village is the fee owner of land adjacent to the Marston Parcel, that is used as public right of way and for drainage and infrastructure improvements; the area is hereinafter referred to as the (“Village Parcel”).
- C. The Village wishes to make certain drainage and infrastructure improvements on the Village Parcel and on a certain part of the Marston Parcel that is adjacent and upstream from the Village’s drainage and infrastructure improvements and Marston wishes to grant a perpetual non-exclusive easement to the Village over this area on the Marston Parcel for those improvements to be made and maintained by the Village; the area is more fully described in Exhibit “A” attached hereto and incorporated herein (“Marston Drainage Area”).

- D. The drainage and infrastructure improvements to be made to the Village Parcel are as follows: The replacement of two existing corrugated metal pipe arch culverts with one new 16' wide x 4' high concrete box culvert and new headwalls.
- E. The drainage and infrastructure improvement to be made to the Marston Drainage Area are as follows: Channel widening and grading as well as the installation of rock channel protection.
- F. The Village and Marston now desire to memorialize their agreements as to the Village's improvements to, use and maintenance of, the Marston Drainage Area.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owners hereby agree as follows:

1. Grant of Ingress and Egress and Access to the Marston Drainage Area. Marston hereby grants to the Village and its Engineer, for the use and benefit of the Village and the public, a perpetual and non-exclusive easement on, through and across that portion of the Marston Parcel for purposes of ingress and egress to the Marston Drainage Area and a perpetual and exclusive easement on, through and across the Marston Drainage Area for certain improvements to be made to the area and for inspections and maintenance thereafter. Specifically, the Village agrees to maintain the rock lined stream channel located in the Marston Drainage Area and Marston agrees to maintain the lawn located in the Marston Drainage Area. Marston agrees not to construct or locate on the Marston Parcel or the Marston Drainage Area any structure, obstruction or improvement that would interfere with the Village's ability to construct, repair or maintain the drainage and infrastructure improvement. The Village shall have the right of pedestrian, equipment, vehicular ingress and egress over the Marston Parcel for purposes of obtaining access to the Marston Drainage Area for maintenance purposes.
2. Covenants. Marston and the Village agree that the Marston Drainage Area and ingress and egress to the Marston Parcel shall be occupied and used in a careful, safe and proper manner, no nuisance, trade or occupation which is known in insurance as extra or especially hazardous shall be permitted thereon, that no waste shall be committed or permitted upon, or damage done to the the Marston Drainage Area. The Owners agree that the Marston Drainage Area shall only be used as a stream and not be used for the purposeful dumping or storage of any lawn, leaf or other materials. In the event of damage to the Marston Drainage Area caused by Marston or their invitees, reasonable wear and tear excepted, Marston shall pay, within thirty (30) days' written notice from the Village, for the cost to repair any damages.
3. Maintenance Obligations.
 - a. Marston shall continue to be responsible for the Marston Parcel.
 - b. The Village shall be responsible, at its sole cost and expense, to maintain and repair the drainage and infrastructure improvements installed and constructed by the

Village in the Marston Drainage Area accruing on or after the Effective Date of this Agreement.

- c. The Village shall be responsible, at its sole cost and expense, for the maintenance, repair and replacement of any and all drainage and other infrastructure improvements on the Village Parcel.
4. Termination. The Village shall have the right to terminate the easements granted in Paragraph 1 upon a sixty (60) days' written notice to Marston, in the event that the Marston Drainage Area is no longer needed for the purposes set forth in this Agreement.
5. Default and Remedies. In the event of any default by any Owner under the terms of this Agreement and following thirty (30) days written notice from the non-defaulting Owner to the defaulting Owner specifying such default, the non-defaulting Owner shall be entitled to exercise all remedies available at law or equity, including specific performance. In the event that either Owner exercises its rights under this Paragraph 5, the defaulting Owner shall promptly reimburse the non-defaulting Owner for the costs incurred by the defaulting Owner in the exercise of such rights.
6. Covenants Running with the Land. The provisions of this Agreement, all of the easements, covenants and agreements set forth in this Agreement, are intended to be and shall be construed as covenants running with the land and shall be binding upon and inure to the benefit of the Marston Parcel and the Village Parcel, respectively, as the case may be, and also upon Marston and the Village and their respective successors and assigns. This Agreement may be amended only by a written document in recordable form executed and acknowledged by the fee owners of the Marston Parcel and the Village Parcel.
7. Taxes and Assessments. Marston shall continue to pay any and all real estate taxes or assessments, both general and special, to the extent levied against the Marston Parcel including the Marston Drainage Area on or after the Effective Date of this Agreement.
8. Indemnity and Insurance.
 - a. Marston agrees to maintain the lawn located in the Marston Drainage Area and be responsible for any damage, loss or liability for the injury to or death of person and/or loss of damage to property occasioned by, growing out of, or arising or resulting from **Marston's use** of the Marston Drainage Area, Marston's default hereunder or from any other act of omission of Marston, its agents or employees.
 - b. The Village agrees, subject to Ohio Revised Code 2744, to be responsible for any damage, loss or liability for the injury to or death of person and/or loss of damage to property occasioned by, growing out of, or arising or resulting from the Village's use of the Marston Drainage Area, the Village's default hereunder or from any other act of omission of the Village, its agents or employees.
9. Mechanic's Liens and Other Liens. If, because of any act or omission (or alleged act or omission), of Marston, any mechanic's or other lien, charge, or order for the payment or

any other encumbrances shall be filed against the Marston Drainage Area (whether or not such lien, charge, order or encumbrance is valid or enforceable as such) Marston shall, at its sole cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after notice to Marston of the filing thereof; and Marston shall indemnify, defend and save harmless the Village from and against any and all costs, liabilities, suits, penalties, claims, losses damages, demands and expenses (including attorneys' fees and court costs), resulting from or in any way connected therewith. The obligations of Marston pursuant to this Paragraph shall survive the termination or expiration of this Agreement.

10. Notices. Any notice required or permitted to be given to Marston and/or the Village hereunder shall be sufficiently given if in writing, addressed to Marston and/or the Village, and personally delivered or mailed postage paid by certified mail, return receipt requested, to such address as Marston and/or the Village may from time to time designate in writing, or in the absence of designation, to the address set forth above.

11. Miscellaneous.

- (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.
- (b) All exhibits to this Agreement are incorporated into this Agreement as if fully rewritten herein.
- (c) The easements, covenants and restrictions establish and created by this Agreement shall not merge or be otherwise impaired or affected by reason of the common ownership of all or any portion of the parcels benefitted or burdened by this Agreement.
- (d) The Paragraph headings herein are for convenience and reference only and in no way define or limit the scope of the Agreement or in any way affect its provisions.
- (e) If any provisions of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision, or portion thereof, to any other persons or circumstances shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- (f) Each party, respectively, hereby represents and warrants that it has the authority to enter into this Agreement and that all necessary actions have been taken to authorize the party to execute this Agreement. Each person signing on behalf of a party individually warrants his authority to do so and individually warrants that the party on whose behalf he is signing has taken all necessary actions to authorize the execution of this Agreement.
- (g) The recitals contained in this Agreement are incorporated in this Agreement as if fully rewritten herein.

(h) This Agreement may be executed in two counterparts, each of which shall be considered an original, but such counterparts shall constitute one and the same instrument.

This Agreement is made as of the Effective Date.

Dale Marston

By: Dale K Marston
Name: Dale K. Marston
Title: Home owner

Lavinia Negrea

By: Lavinia
Name: Lavinia Negrea
Title: Home owner

State of Ohio)
) SS:
County of Cuyahoga)

BEFORE ME, a Notary Public in and for said County and State, personally appeared, known to me to be Dale Marston and Lavinia Negrea who executed the foregoing instrument, who acknowledged that they did sign the foregoing instrument, and that the same is their free act and deed. This is an acknowledgment certificate. No oath or affirmation was administered to the signer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at MAYFIELD VILLAGE, Ohio this 1ST day of JULY, 2022.

Annette Jerome
Notary Public

ANNETTE JEROME
Notary Public, State of Ohio
Recorded in Cuyahoga County
My Commission Expires April 15, 2024

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EXHIBIT A

MAYFIELD VILLAGE, OHIO
DRAINAGE EASEMENT
940 WORTON PARK DRIVE
PP# 831-33-030



830 WORTON PARK DR.
 KHOURY ALLAN T &
 ZIMLE K TRUSTEES
 PP# 831-33-031

HEMINGWAY RD. (50')

P.O.B.
 DRAINAGE EASEMENT

940 WORTON PARK DR.
 MARSTON, DALE &
 NEGREA, LAYNNA
 PP# 831-33-030
 APN 200310081011

DRAINAGE EASEMENT
 (2,913 SQ. FT.)

TEMPORARY EASEMENT
 (3,171 SQ. FT.)

860 WORTON PARK DR.
 WINTERS, BARBARA TRS
 PP# 831-33-028

P.O.B.
 TEMPORARY EASEMENT

WORTON PARK DR. (60')

C1

CURVE #1
 R=20.00'
 A=31.58'
 Δ=90°27'35"
 T=20.16'
 C=28.40'
 S45°15'45"E



SCALE: 1"=50'

DATE: 04/28/2022

JOB NO. 20-102

STEPHEN HOVANCSEK & ASSOCIATES

CONSULTING ENGINEERS

Two Merit Drive Richmond Heights, Ohio
 (216) 731-8293



STEPHEN HOVANCSEK & ASSOCIATES, INC.
Consulting Engineers & Planners
TWO MERIT DRIVE • RICHMOND HEIGHTS, OHIO 44143
(216) 731-6200 FAX No: (216) 731-1463

**DRAINAGE EASEMENT
DALE MARSTON AND LAVINIA NEGREA
940 WORTON PARK DRIVE
PP# 831-33-030**

Situated in the Village of Mayfield, County of Cuyahoga and State of Ohio and known as being a part of the land conveyed to Dale Marston and Lavinia Negrea by deed recorded in AFN 200310081011 of Cuyahoga County Records, of part of Original Mayfield Township Lot No. 20, Tract No. 2, and being further bounded and described as follows:

Beginning in the Southerly line of Hemingway Road, 50 feet wide at the Westerly end of a curved turnout between said Southerly line and the Westerly line of Worton Park Drive, 50 feet wide;

Thence Southeasterly, along said curved turnout deflecting to the right an arc distance of 31.58 feet to the Westerly line of Worton Park Drive, said curved line having a radius of 20.00 feet and a chord which bears South 45°15'45" East, 28.40 feet;

Thence South 00°01'57" East, along said Westerly line distance of 39.84 feet to a point;

Thence South 89°30'28" West, a distance of 50.00 feet to point;

Thence North 00°01'57" West, a distance of 60.00 feet to point in the Southerly line of Hemingway Road;

Thence North 89°30'28" East, along said Southerly line a distance of 29.84 feet to the place of beginning and containing 0.0669 acres (2,913 square feet) of land as described by Stephen Hovancsek & Associates, Inc., in April, 2022 under the direction of Thomas Cappello, Registered Surveyor No. 7880, State of Ohio, be the same more or less but subject to all legal highways.

The basis of bearing for this description is Ohio State Plane, North Zone, NAD 83 and used to denote angles only.

Part of Permanent Parcel Number 831-33-030.

TEMPORARY EASEMENT

DALE MARSTON and LAVINIA NEGREA, having an address of 940 Worton Park Drive, Mayfield Village, Ohio, the Grantor, for use by the VILLAGE OF MAYFIELD, the Grantee, does grant to Grantee the temporary easement to exclusively occupy and use for the purpose mentioned below upon and across the property of Grantor, as fully described in Exhibit "A" ("Easement Premises") which exhibit is incorporated herein by reference as if fully rewritten here. The Easement Premises are part of the larger parcel of land owned by Grantor identified as permanent parcel no. 831-33-030, Mayfield Village, Ohio.

To have and to hold the temporary easement, for the aforesaid purposes and for the anticipated period of time described below, unto the Grantee, its successors and assigns.

The duration of the temporary easement granted to Grantee is one (1) year immediately following the date on which the work described above is commences by the Grantee, or its duly authorized employees, agents, and contractors.

The temporary easement interest granted is being acquired by Grantee to a public purpose, namely the establishment, construction, reconstruction, widening, repair or maintenance of a temporary access road. Once this temporary access road is no longer needed, all stone sub-base, asphalt paving and temporary drainage culverts shall be removed and the disturbed area shall be restored to original or better condition.

[signature page to immediately follow]

IN WITNESS WHEREOF, this instrument is executed this 15th day of ~~May~~ JULY, 2022.

GRANTOR:

DALE MARSTON

Dale Marston

LAVINIA NEGREA

Lavinia Negrea

STATE OF OHIO)
) ss
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared DALE MARSTON and LAVINIA NEGREA known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed same as their free and voluntary act and deed for the use and purpose therein set forth. This is an acknowledgment certificate. No oath or affirmation was administered to the signer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 15th day of ~~May~~ JULY, 2022.

Annette Jerome
Notary Public

This Instrument Prepared By:

Mansour Gavin LPA
North Point Tower
1001 Lakeside Ave., Suite 1400
Cleveland, Ohio 44114
(216) 523-1500

ANNETTE JEROME
Notary Public, State of Ohio
Recorded in Cuyahoga County
My Commission Expires April 15, 2024

EXHIBIT A



STEPHEN HOVANCSEK & ASSOCIATES, INC.
Consulting Engineers & Planners
TWO MERIT DRIVE • RICHMOND HEIGHTS, OHIO 44118
(216) 731-6200 Fax No: (216) 731-4483

**TEMPORARY EASEMENT
DALE MARSTON AND LAVINIA NEGREA
940 WORTON PARK DRIVE
PP# 831-33-030**

Situated in the Village of Mayfield, County of Cuyahoga and State of Ohio and known as being a part of the land conveyed to Dale Marston and Lavinia Negrea by deed recorded in AFN 200310081011 of Cuyahoga County Records, of part of Original Mayfield Township Lot No. 20, Tract No. 2, and being further bounded and described as follows:

Beginning in the Westerly line of Worton Park Drive, 50 feet wide at the Southeasterly corner of aforesaid land conveyed to Dale Marston and Lavina Negrea;
Thence North $37^{\circ}25'00''$ West, a distance of 159.46 feet to point in the Southerly line of Hemingway Road, 50 feet wide;
Thence North $89^{\circ}30'28''$ East, along said Southerly line distance of 46.82 feet to a point;
Thence South $00^{\circ}01'57''$ East, a distance of 60.00 feet to a point;
Thence North $89^{\circ}30'28''$ East, a distance of 50.00 feet to a point in the Westerly of Worton Park Drive;
Thence South $00^{\circ}01'57''$ East, along said Westerly line a distance of 67.48 feet to the place of beginning and containing 0.0728 acres (3,171 square feet) of land as described by Stephen Hovancsek & Associates, Inc., in April, 2022 under the direction of Thomas Cappello, Registered Surveyor No. 7880, State of Ohio, be the same more or less but subject to all legal highways.

The basis of bearing for this description is Ohio State Plane, North Zone, NAD 83 and used to denote angles only.

Part of Permanent Parcel Number 831-33-030.