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ORDINANCE NO. 2022-14  
INTRODUCED BY: Mayor Bodnar

**AN EMERGENCY ORDINANCE AUTHORIZING AND DIRECTING  
THE MAYOR AND PRESIDENT OF COUNCIL TO ENTER INTO EASEMENT  
AGREEMENTS WITH TIMOTHY JAMES MACKIE**

WHEREAS, the Village has determined it is necessary to make certain drainage and infrastructure improvements on property owned by Timothy James Mackie 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 Timothy James Mackie desires 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 Timothy James Mackie 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 Timothy James Mackie, 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 29<sup>TH</sup> day of JUNE, 2022 (the "Effective Date") by and between TIMOTHY JAMES MACKIE ("Mackie") having an address of 6206 North Woodlane, 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 (Mackie and the Village are sometimes collectively referred to as the "Owners" and individually as an "Owner").

### RECITALS

- A. Mackie is the fee owner of certain land located at 6206 North Woodlane, Mayfield, Ohio, also known as permanent parcel number 831-34-085; the area is hereinafter referred to as the ("Mackie Parcel").
- B. The Village is the fee owner of land adjacent to the Mackie 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 Mackie Parcel that is adjacent and upstream from the Village's drainage and infrastructure improvements and Mackie wishes to grant a perpetual non-exclusive easement to the Village over this area on the Mackie 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 ("Mackie Drainage Area").

- D. The drainage and infrastructure improvements to be made to the Village Parcel are as follows: The replacement of an existing corrugated metal pipe arch culvert with a new 14' wide x 4' high concrete box culvert and new headwalls.
- E. The drainage and infrastructure improvement to be made to the Mackie Drainage Area are as follows: A portion of the new 14' wide x 4' high concrete box culvert and headwall, channel widening and grading as well as the installation of rock channel protection.
- F. The Village and Mackie now desire to memorialize their agreements as to the Village's improvements to, use and maintenance of, the Mackie 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 Mackie Drainage Area. Mackie 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 Mackie Parcel for purposes of ingress and egress to the Mackie Drainage Area and a perpetual and exclusive easement on, through and across the Mackie 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 Mackie Drainage Area and Mackie agrees to maintain the lawn located in the Mackie Drainage Area. Mackie agrees not to construct or locate on the Mackie Parcel or the Mackie 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 Mackie Parcel for purposes of obtaining access to the Mackie Drainage Area.
2. Covenants. Mackie and the Village agree that the Mackie Drainage Area and ingress and egress to the Mackie 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 Mackie Parcel and/or the Mackie Drainage Area. The Owners agree that the Mackie Drainage Area shall 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 Mackie Drainage Area caused by Mackie or their invitees, reasonable wear and tear excepted, Mackie shall pay, within thirty (30) days' written notice from the Village, for the cost to repair any damages.
3. Maintenance Obligations.
  - (a) Mackie shall continue to be responsible for the Mackie Parcel.


- (b) The Village shall be responsible, at its sole cost and expense, to maintenance and repair the drainage and infrastructure improvements installed and constructed by the Village in the Mackie 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 Mackie, in the event that the Mackie 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 Mackie Parcel and the Village Parcel, respectively, as the case may be, and also upon Mackie 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 Mackie Parcel and the Village Parcel.
  7. Taxes and Assessments. Mackie shall continue to pay any and all real estate taxes or assessments, both general and special, to the extent levied against the Mackie Parcel and the Mackie Drainage Area on or after the Effective Date of this Agreement.
  8. Indemnity and Insurance.
    - a. Mackie agrees to indemnify, defend and save the Village free and harmless from and against 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 Mackie's use of the Mackie Parcel and Mackie Drainage Area, Mackie's default hereunder or from any other act of omission of Mackie, 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 Mackie 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 Mackie, any mechanic's or other lien, charge, or order for the payment or any other encumbrances shall be filed against the Mackie Drainage Area (whether or not such lien, charge, order or encumbrance is valid or enforceable as such) Mackie shall, at its sole cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after notice to Mackie of the filing thereof; and Mackie 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 Mackie pursuant to this Paragraph shall survive the termination or expiration of this Agreement.
10. Notices. Any notice required or permitted to be given to Mackie and/or the Village hereunder shall be sufficiently given if in writing, addressed to Mackie and/or the Village, and personally delivered or mailed postage paid by certified mail, return receipt requested, to such address as Mackie 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.

Timothy James Mackie

By:   
 Name: Timothy Mackie  
 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 Timothy James Mackie who executed the foregoing instrument, who acknowledged that he did sign the foregoing instrument, and that the same is his 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 29<sup>th</sup> day of JUNE, 2022.

  
 Notary Public

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





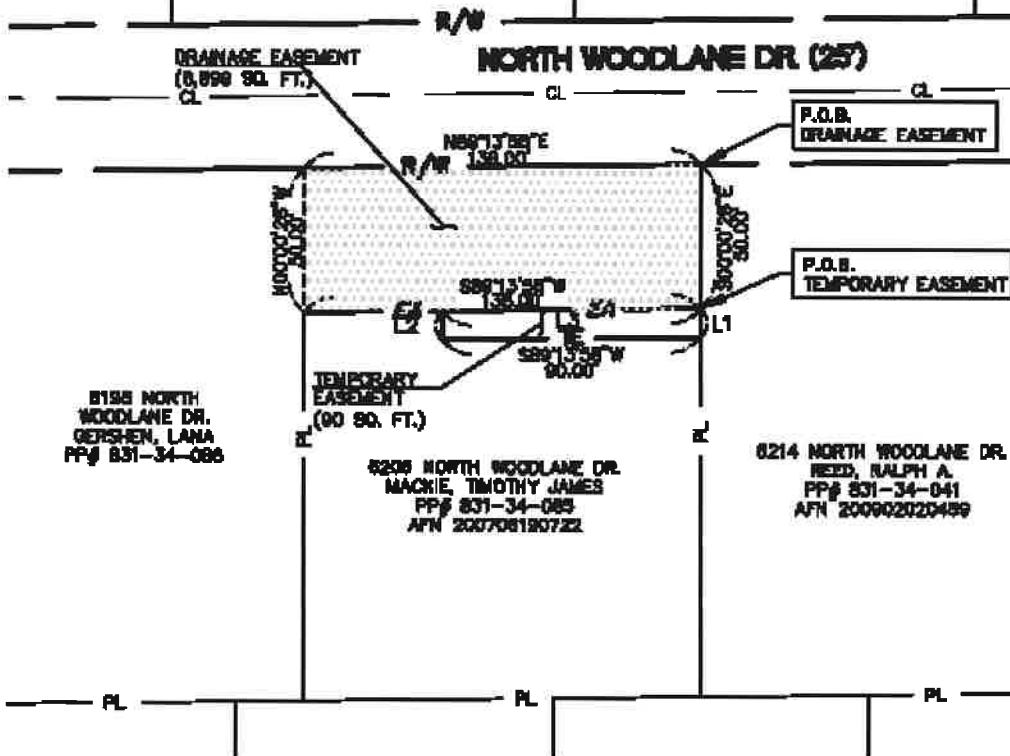
EXHIBIT A

MAYFIELD VILLAGE, OHIO  
**DRAINAGE EASEMENT**  
**6206 NORTH WOODLANE DR.**  
**PP# 831-34-085**



8205 NORTH WOODLANE DR.  
 SCHOLL, VIRGINIA I TRUSTEE  
 PP# 831-34-040

8213 NORTH WOODLANE DR.  
 NORTHEAST OHIO REGIONAL  
 SEWER DISTRICT  
 PP# 831-34-087



LINE TABLE 1		
LINE	DISTANCE	BEARING
L1	10.00'	S 00°00'28" E
L2	10.00'	N 00°00'28" W
L3	90.00'	N 89°13'58" E



SCALE: 1"=50'  
 DATE: 04/25/2022  
 JOB NO. 20-102

**STEPHEN HOVANČEK & ASSOCIATES**  
 CONSULTING ENGINEERS  
 Two Merit Drive Richmond Heights, Ohio  
 (216) 731-8255



STEPHEN HOVANCSEK & ASSOCIATES, INC.  
*Consulting Engineers & Planners*  
TWO MERIT DRIVE • RICHMOND HEIGHTS, OHIO 44118  
(216) 731-4800                      Fax No: (216) 731-1485

**DRAINAGE EASEMENT  
TIMOTHY JAMES MACKIE  
6206 NORTH WOODLANE DRIVE  
PP# 831-34-085**

Situated in the Village of Mayfield, County of Cuyahoga and State of Ohio and known as being a part of the land conveyed to Timothy James Mackie by deed recorded in AFN 200706190722 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 North Woodland Drive, 50 feet wide at the Northeasterly corner of aforesaid land conveyed to Timothy James Mackie;

Thence South 00°00'28" East, along the Easterly line of said lands, a distance of 50.00 feet to point;

Thence South 89°13'58" West, a distance of 138.00 feet to a point in the Westerly line of aforesaid Mackie's lands;

Thence North 00°00'28" West, along said Westerly line a distance of 50.00 feet to point in the Southerly line of North Woodlane Drive;

Thence North 89°13'58" East, along said Southerly line a distance of 138.00 feet to the place of beginning and containing 0.1584 acres (6,899 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 831-34-085.

**EXHIBIT B**

## TEMPORARY EASEMENT

TIMOTHY JAMES MACKIE, having an address of 6206 North Woodlane 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. 831-34-085, 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 as a public purpose, namely the establishment, construction, reconstruction, widening, repair or maintenance of a temporary access road as well as the removal and replacement of the existing concrete driveway. 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 \_\_\_ day of May, 2022.

**GRANTOR:**

*TIMOTHY*  
THOMAS JAMES MACKIE

*[Handwritten Signature]*  
\_\_\_\_\_

STATE OF OHIO                    )  
  ) ss  
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared *TIMOTHY* THOMAS JAMES MACKIE known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed same as his 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 *29<sup>th</sup>* day of ~~May~~, 2022.

*JUNE*

*[Handwritten Signature]*  
\_\_\_\_\_  
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







STEPHEN HOVANCSEK & ASSOCIATES, INC.

*Consulting Engineers & Planners*

TWO MERIT DRIVE • RICHMOND HEIGHTS, OHIO 44118

(216) 731-6200

Fax No. (216) 731-1483

**TEMPORARY EASEMENT  
TIMOTHY JAMES MACKIE  
6206 NORTH WOODLANE DRIVE  
PP# 831-34-085**

Situated in the Village of Mayfield, County of Cuyahoga and State of Ohio and known as being a part of the land conveyed to Timothy James Mackie by deed recorded in AFN 200706190722, Tract No. 2, and being further bounded and described as follows:

Commencing in the Southerly line of North Woodland Drive, 50 feet wide at the Northeasterly corner of aforesaid land conveyed to Timothy James Mackie; Thence South 00°00'28" East, along the Easterly line of said lands, a distance of 50.00 feet to the principal place of beginning of the parcel of land herein described;

Thence South 00°00'28" East, continuing along said Easterly line a distance of 10.00 feet to point;

Thence South 89°13'58" West, a distance of 90.00 feet to a point;

Thence North 00°00'28" West, a distance of 10.00 feet to point;

Thence North 89°13'58" East, along said a distance of 90.00 feet to the principal place of beginning and containing 0.0207 acres (900 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 831-34-085.