

ORDINANCE NO. 2022-15
INTRODUCED BY: Mayor Bodnar

**AN EMERGENCY ORDINANCE AUTHORIZING AND DIRECTING
THE MAYOR AND PRESIDENT OF COUNCIL TO ENTER INTO AN EASEMENT
AGREEMENT WITH CONNIE MARIE KELLERS**

WHEREAS, the Village has determined it is necessary to make certain drainage and infrastructure improvements on property owned by Connie Marie Kellers 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 Connie Marie Kellers desires to grant the Village an 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 an easement agreement with Connie Marie Kellers 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 easement agreement with Connie Marie Kellers, as is more fully set forth in the document attached and incorporated by reference as Exhibit "A."

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 Betts
MARYBETH BETSA,
Clerk of Council

EXHIBIT A

DRAINAGE EASEMENT AGREEMENT

THIS DRAINAGE EASEMENT AGREEMENT (this "Agreement") is made as of the 29TH day of JUNE, 2022 (the "Effective Date") by and between CONNIE MARIE KELLERS ("Kellers") having an address of 939 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 (Kellers and the Village are sometimes collectively referred to as the "Owners" and individually as an "Owner").

RECITALS

- A. Kellers is the fee owner of certain land located at 6206 North Woodlane, Mayfield, Ohio, also known as permanent parcel number 831-33-027; the area is hereinafter referred to as the ("Kellers Parcel").
- B. The Village is the fee owner of land adjacent to the Kellers 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 Kellers Parcel that is adjacent and downstream from the Village's drainage and infrastructure improvements and Kellers wishes to grant a perpetual non-exclusive easement to the Village over this area on the Kellers 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 ("Kellers 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 Kellers Drainage Area are as follows: Channel widening and grading as well as the installation of rock channel protection.
- F. The Village and Kellers now desire to memorialize their agreements as to the Village's improvements to, use and maintenance of, the Kellers 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 Kellers Drainage Area. Kellers 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 Kellers Parcel for purposes of ingress and egress to the Kellers Drainage Area and a perpetual and exclusive easement on, through and across the Kellers Drainage Area for certain improvements to be made to the area and for inspections and maintenance thereafter. Specifically, the Village agree to maintain the rock lined stream channel located in the Kellers Drainage Area and Kellers agrees to maintain the lawn located in the Kellers Drainage Area. Kellers agrees not to construct or locate on the Kellers Parcel or the Kellers 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 Kellers Parcel for purposes of obtaining access to the Kellers Drainage Area.
2. Covenants. Kellers and the Village agree that the Kellers Drainage Area and ingress and egress to the Kellers 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 Kellers Parcel and/or the Kellers Drainage Area. The Owners agree that the Kellers Drainage Area shall not be used for 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 Kellers Drainage Area caused by Kellers or their invitees, reasonable wear and tear excepted, Kellers shall pay, within thirty (30) days' written notice from the Village, for the cost to repair any damages.
3. Maintenance Obligations.
 - (a) Kellers shall continue to be responsible for the Kellers 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 Kellers 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 Kellers, in the event 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 Kellers Parcel and the Village Parcel, respectively, as the case may be, and also upon Kellers 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 Kellers Parcel and the Village Parcel.
7. Taxes and Assessments. Kellers shall continue to pay any and all real estate taxes or assessments, both general and special, to the extent levied against the Kellers Parcel, including the Kellers Drainage Area, on or after the Effective Date of this Agreement.
8. Indemnity and Insurance.
- a. Kellers 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 Kellers' use of the Kellers Parcel and Kellers Drainage Area, Kellers' default hereunder or from any other act of omission of Kellers, 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 Kellers 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 Kellers, any mechanic's or other lien, charge, or order for the payment or any other encumbrances shall be filed against the Kellers Drainage Area (whether or not such lien, charge, order or encumbrance is valid or enforceable as such) Kellers shall, at its sole cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after notice to Kellers of the filing thereof; and Kellers 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 Kellers pursuant to this Paragraph shall survive the termination or expiration of this Agreement.
10. Notices. Any notice required or permitted to be given to Kellers and/or the Village hereunder shall be sufficiently given if in writing, addressed to Kellers and/or the Village, and personally delivered or mailed postage paid by certified mail, return receipt requested, to such address as Kellers 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.

Connie Marie Kellers

By: *Connie Kellers*
 Name: CONNIE KELLERS
 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 Connie Marie Kellers who executed the foregoing instrument, who acknowledged that she did sign the foregoing instrument, and that the same is her free act and deed. This is an acknowledgment certificate. No oath or affirmation was administered to the signer.

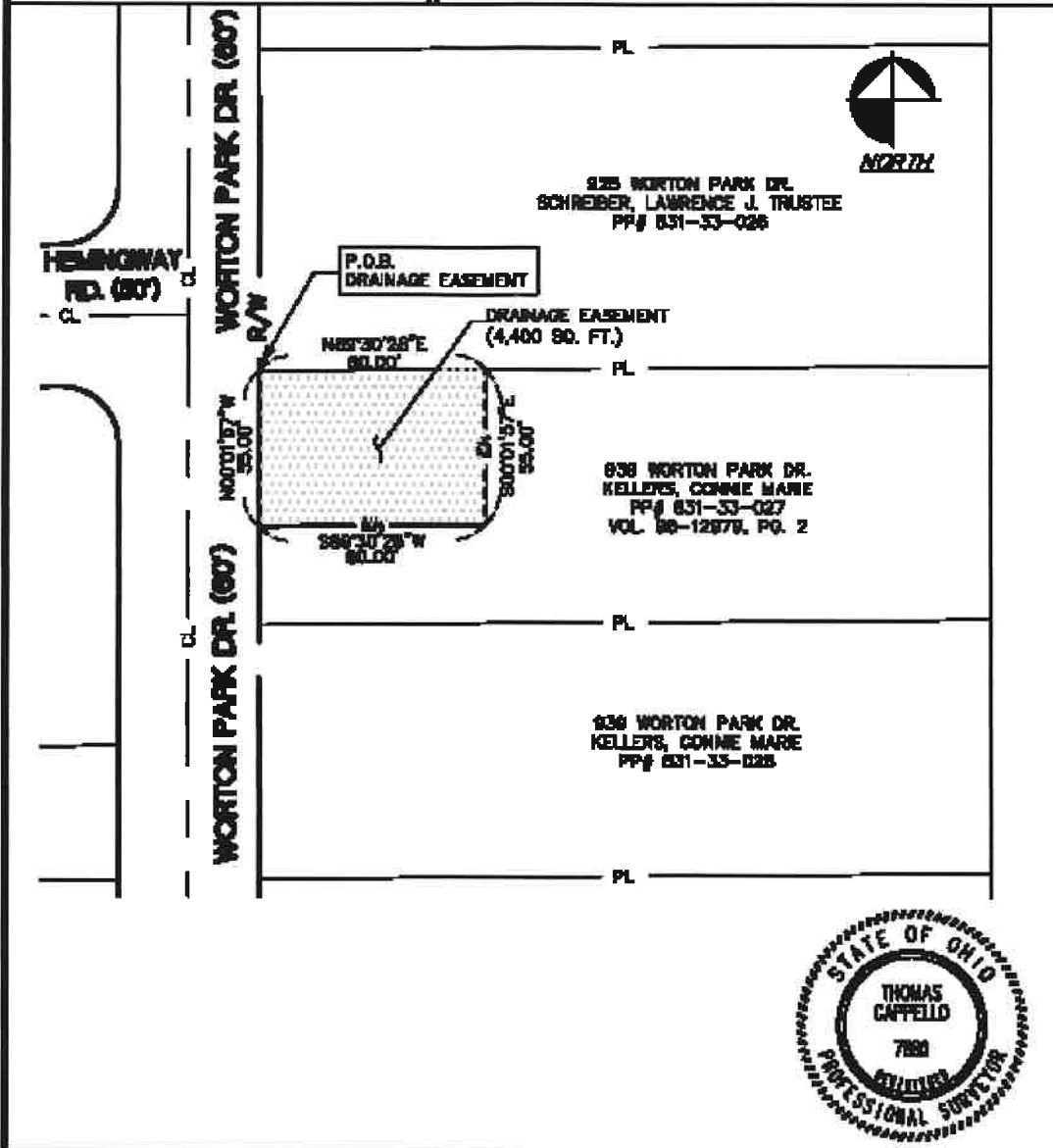
IN WITNESS WHEREOF, I have hereunto set my hand and official seal at MAYFIELD VILLAGE,
 Ohio this 29th day of JUNE, 2022.

Annette Jerome
 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
939 WORTON PARK DRIVE
PP# 831-33-027



SCALE: 1"=50'
 DATE: 04/28/2022
 JOB NO. 2D-102

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

D:\2022\2D-102 BY WORTON PARK HOMEOWNER CLIENT REPLACEMENT\DWG\2D-102-33-027-PLAT.dwg 4/28/2022 11:08:46 AM EDT



STEPHEN HOVANCSEK & ASSOCIATES, INC.
Consulting Engineers & Surveyors
TWO MERIT DRIVE • RICHMOND HEIGHTS, OHIO 44124
(216) 731-8200 FAX NO. (216) 731-4483

**DRAINAGE EASEMENT
CONNIE MARIE KELLERS
939 WORTON PARK DRIVE
PP# 831-33-027**

Situated in the Village of Mayfield, County of Cuyahoga and State of Ohio and known as being a part of the land conveyed to Connie M. Papa, now Connie M. Kellers by deed recorded in Volume 98-12979, Page 02 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 Easterly line of Worton Park Drive, 50 feet wide at the Northwesterly corner of aforesaid land conveyed to Connie M. Papa;

Thence North $89^{\circ}30'28''$ East, along the Northerly line of said lands, a distance of 80.00 feet to point;

Thence South $00^{\circ}01'57''$ East, a distance of 55.00 feet to a point;

Thence South $89^{\circ}30'28''$ West, a distance of 80.00 feet to point in the Easterly line of Worton Park Drive;

Thence North $00^{\circ}01'57''$ West, along said Easterly line a distance of 55.00 feet to the place of beginning and containing 0.1010 acres (4,400 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 831-33-027.