

TEMPORARY ORDINANCE NO. 26-17

PERMANENT ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO ACCEPT AN ACCESS EASEMENT NECESSARY FOR USE AS A VEHICLE TURNAROUND

WHEREAS, Lancaster Memory Care, LLC is extending Wesley Way in order to access their new Memory Care Facility located at 1403 Wesley Way; and

WHEREAS, the proposed Wesley Way extension will terminate as a dead end street that will require a vehicle turnaround meeting City of Lancaster specifications; and

WHEREAS, Lancaster Memory Care, LLC has agreed that the private driveway into their proposed Memory Care Facility may be utilized as a part of a vehicle turnaround satisfying City of Lancaster requirements;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO:

SECTION 1. The following easement be accepted as shown in the attachment:

<u>PROPERTY OWNER</u>	<u>PERMANENT EASEMENT</u>	<u>EXHIBIT</u>
Lancaster Memory Care LLC	0.019 Acres	A

SECTION 2. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: \_\_\_\_\_ after \_\_\_\_\_ reading. Vote: Yeas \_\_\_\_\_ Nays \_\_\_\_\_

Approved: \_\_\_\_\_

\_\_\_\_\_  
President of Council

Clerk: \_\_\_\_\_

\_\_\_\_\_  
Mayor

Offered by: \_\_\_\_\_

Second by: \_\_\_\_\_

Requested by Law Committee

I, Teresa Lee Sandy, Clerk of Council do hereby certify that on \_\_\_\_\_, 2017 in the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

\_\_\_\_\_  
Clerk of Council



EASEMENT AND RIGHT-OF-WAY  
FROM  
LANCASTER MEMORY CARE, LLC  
TO  
THE CITY OF LANCASTER, OHIO,  
AN OHIO MUNICIPAL CORPORATION

It is hereby agreed that LANCASTER MEMORY CARE, LLC, P.O. Box 1359, 815 North Second Street, Aberdeen, South Dakota, 57402, hereinafter called "Grantor," for One Dollar (\$1.00) and other valuable consideration paid by, THE CITY OF LANCASTER, OHIO, AN OHIO MUNICIPAL CORPORATION, 104 East Main Street, Lancaster, Ohio, 43130, hereinafter called "Grantee," grants to Grantee:

**a permanent Easement and Right-of-Way (hereinafter "Easement Premises") over, under, upon and across a 2.889 acre tract of Real Property of Grantor (Parcel No. 0534244900) as further described by the metes and bounds survey (Exhibit A) and depicted in the accompanying exhibit (Exhibit B) which is attached hereto and incorporated herein.**

By acceptance of the Easement Premises, the parties mutually agree that it is in their best interest for the Grantor to grant and the Grantee to accept the following conditions and covenants:

1. Grantor hereby grants and conveys to Grantee the permanent Easement Premises to be utilized as a vehicle turnaround, subject to the terms and conditions hereinafter set forth, in, under, along, over, across, and upon the Easement Premises together with all reasonable rights of ingress and egress across the Real Property owned by Grantor as further set forth herein.
2. Grantor hereby warrants that Grantor has full power and authority to grant this easement and has a good and indefeasible fee simple title to the above described Real Property inclusive of the Easement Premises, free and clear of all liens and encumbrances, except those of record which do not unreasonably interfere with the uses herein described, and has the authority to convey said rights and interests to Grantee.
3. This easement shall be binding on, and shall inure to the benefit of, the successors and assigns of the parties hereto. Where the term Grantor or Grantee is used herein, the term shall be deemed to include the successors and assigns of that party.
4. Grantor, including its agents, employees, designees, contractors, guests, invitees, successors and assigns, and all those acting by or on behalf of it, may fully use and enjoy the Easement Premises, including for such purposes as the erection of new utility line(s) and/or granting of additional easement(s) within the Easement Premises for such or any other purpose, to the extent that such use and enjoyment does not interfere with either the conditions of or Grantee's rights under this Agreement.
5. The right to use the Easement Premises shall belong to both the Grantee, including its agents, employees, designees, contractors, guests, invitees, successors and assigns, and

all those acting by or on behalf of it, and the general public for the purposes of a vehicle turnaround.

6. Grantor shall be responsible for constructing and maintaining a driving surface for the purposes of a vehicle turnaround within the Easement Premises that meets the following requirements:
  - a. The driving surface shall be constructed of an all-weather material, as defined in Lancaster Codified Ordinance 1161.01.
  - b. The driving surface shall extend a minimum of 70 feet from the opposite edge of pavement of the adjacent public roadway, Wesley Way.
  - c. The driving surface shall be a minimum of 20 feet wide.
7. Grantor shall ensure that the driving surface within the Easement Premises remains accessible to all vehicular traffic at all times. The Grantor must receive written approval from the Grantee if the Easement Premises is to remain inaccessible to all vehicular traffic for a period of longer than twenty-four (24) consecutive hours.
8. Grantor shall be responsible for maintaining the Easement Premises in a clean and safe condition. Grantor will, insofar as reasonably practicable, maintain the Easement Premises clear of all litter, trash, and debris during periods of construction, operation, maintenance, or repair. Grantor may perform any construction, operation, maintenance, or repair activities within the Easement Premises that it deems necessary, to the extent that such activities do not interfere with either the conditions of or the Grantee's rights under this Agreement.
9. All construction, operation, maintenance, or repair activities within the Easement Premises shall be at the sole cost of the Grantor. Grantor shall hold neither the Grantee nor any member of the general public responsible for damage to the driving surface within the Easement Premises that occurs due to any vehicles, whether they belong to the Grantee or a member of the general public, operating within their normal course of operations.
10. Said Easement Premises may not be sold or transferred without Grantee's specific written authority.
11. The parties shall have the right to inspect the Easement Premises for violations of the covenants and restrictions set forth herein. If either party or its successors and assigns violate any of these covenants and restrictions, the violating party shall cure the violation(s) within sixty (60) days of receipt of notice thereof from the other party. If the violating party fails to adequately cure or eliminate the violation(s) within the sixty (60) day time period, the other party may cause the cure of the violation(s), and the violating party shall immediately reimburse the other party for all costs and expenses incurred in curing the violation(s), in addition, the other party shall also have the right to obtain injunctive relief for the enforcement of the covenants and restrictions from a court of competent jurisdiction.

12. Grantor shall indemnify and hold harmless Grantee from, against and in respect of any and all liability, claims, damages, costs, and losses of whatever character (collectively, “**Claims**”) arising from personal injury or death or damage to property of Grantor and any and all Claims of whatever character claimed by third parties, to the extent such Claims result from the action, negligence or willful misconduct of Grantor, its employees, agents, contractors and subcontractors in connection with the exercise of Grantor’s rights under this Agreement.
13. If at such time in the future an extension of Wesley Way is constructed north into the 29.29 acre tract of Real Property (Parcel No. 0534011500) that was part of a 66.38 acre tract conveyed to Karamel Lynn Van Atta by deed of record in Deed Book 649, Page 649, the Grantor shall have the right to file an affidavit of record in the Fairfield County, Ohio Recorder’s Office to terminate this Easement.
14. Any and all notices to which the parties shall be entitled hereunder or under any law, statute, rule, regulation, order, ordinance or policy of any governmental agency or entity having jurisdiction of the subject matter for which this Agreement is granted, shall be envelope or other appropriate mail container, addressed to the addressee shown below, bearing the adequate amount of postage to result in deliver of same to the address shown thereon, and sent by certified mail, retain receipt requested, to the party to whom such notice is given. In the alternative, either party may give such notice by United Parcel Service (UPS), Federal Express or other similar national expedited mail service guaranteeing not later than two (2) day delivery of any such letter or notice to the addresses provided for herein. Grantor and Grantee designate the following persons, addresses, telephone and facsimile numbers for all notices and information to be delivered hereunder:

GRANTOR

Lancaster Memory Care, LLC  
c/o General Counsel  
P.O. Box 1359  
815 N. 2nd Street  
Aberdeen, South Dakota 57402  
Telephone No.: (605) 226-3300  
Fax No.: (605) 226-2521

GRANTEE

City of Lancaster, Ohio, a Municipal Corporation  
c/o Service-Safety Director  
104 E. Main Street  
Lancaster, Ohio 43130  
Telephone No.: (740) 687-6600  
Fax No.: (740) 687-6698

Such parties’, addresses, telephone and facsimile numbers may be changed by the respective party by delivering written notice of such change to the other party.

15. This Agreement shall be interpreted, enforced and governed under the laws of the State of Ohio.
16. This Agreement embodies the entire agreement between the parties hereto with respect to the Easement and supersedes any and all agreements representations, warranties, or statements which may have been made between the parties prior to the date hereof, whether express, implied, written, or verbal, concerning the subject matter hereof and this Agreement shall not be modified or amended except by written instrument executed by each party hereto.
17. In the event any provision or any portion of any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable by reason or any law or public policy, such provision or portion thereof shall be considered to be deleted, and the remainder of this Agreement shall constitute the agreement between Grantor and Grantee covering the subject matter hereof.

Grantor:  
Lancaster Memory Care, LLC

Grantee:  
City of Lancaster, Ohio  
An Ohio Municipal Corporation

\_\_\_\_\_  
WILLIAM J. SCHAEFBAUER II  
VICE-PRESIDENT

\_\_\_\_\_  
PAUL D. MARTIN  
SERVICE-SAFETY DIRECTOR

State of Ohio:  
County of Fairfield:

BEFORE ME, a Notary Public in and for said county and state, personally appeared the above-named Paul D. Martin, Service-Safety Director of the City of Lancaster, Ohio, an Ohio Municipal Corporation, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed on behalf of said Municipal Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Lancaster, Ohio, this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public, State of Ohio

State of \_\_\_\_\_ :  
County of \_\_\_\_\_ :

BEFORE ME, a Notary Public in and for said county and state, personally appeared William J. Schaeftbauer II, Vice-President of Lancaster Memory Care, LLC, who represented that he is duly authorized in the premises, and who acknowledges that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

Prepared by:  
Stephanie L. Hall, Assistant Law Director  
The City of Lancaster Law Director & City Prosecutor's Office  
136 West Main Street  
P.O. Box 1008  
Lancaster, Ohio 43130

### 0.019 ACRE ACCESS EASEMENT

Situated in the State of Ohio, County of Fairfield, City of Lancaster, being a part of the Northeast Quarter of Section 32, Township-15, Range-18, and being a part of that 2.889 acre tract (Parcel No. 053-42449-00) as conveyed to Lancaster Memory Care, LLC, as recorded in O.R. Book 1741, Pages 660-662, all reference being to those of record in the Recorder's Office in Fairfield County, Ohio, said 0.019 acre access easement being more particularly bounded and described as follows:

Commencing at a 5/8" iron pin found at the northwesterly corner of Wesley Way (60' R/W) as recorded in Plat Cabinet 2 Slot 136, said iron pin found also being the northeasterly corner of said 2.889 acre tract;

Thence along the westerly right-of-way line of said Wesley Way, **South 2°49'55" West, 49.00 feet**, to a 5/8" iron pin set on the easterly line of said 2.889 acre tract, said iron pin being the **Point of Beginning** of the access easement herein described;

Thence leaving said easterly line and across said 2.889 acre tract following three (3) courses and distances:

**North 87°10'05" West, 26.50 feet** to a 5/8" iron pin set;

**South 2°49'55" West, 32.00 feet** to a 5/8" iron pin set;

**South 87°10'05" East, 26.50 feet** to a 5/8" iron pin set on the easterly line of said 2.889 acre tract and westerly right-of-way line of Wesley Way;

Thence along the easterly line of said 2.889 acre tract, **North 2°49'55" East 32.00 feet** to the **Point of Beginning** and containing **0.019** acres, more or less, according to a survey made by Jobes Henderson and Associates Inc. in April of 2017.

The bearings in the above description are based on the Ohio State Plane Coordinate System, South Zone, NAD 83.

All iron pins set are 5/8" in diameter by 30" in length with red identification caps marked "J&H,PS 8283".

July 27, 2017

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Jeremy L. Van Ostran, P.S.  
Surveyor No. 8283

# 0.019 ACRE ACCESS EASEMENT EXHIBIT

SITUATED IN THE STATE OF OHIO, COUNTY OF FAIRFIELD, CITY OF LANCASTER, AND BEING A PART OF THE N.E. QTR. OF SECTION 32, TOWNSHIP-15, RANGE-18

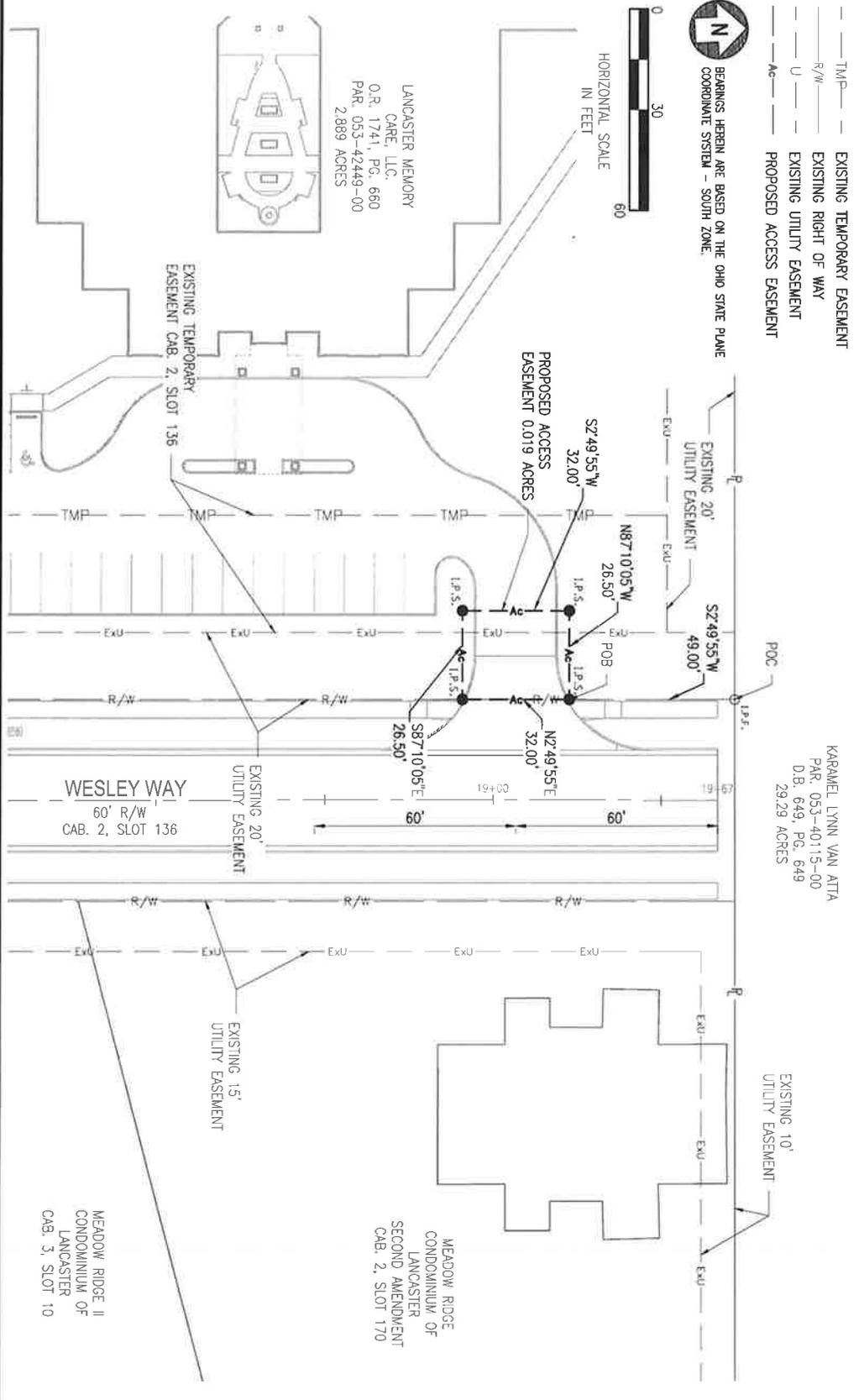
## LEGEND

- TMP --- EXISTING TEMPORARY EASEMENT
- R/W --- EXISTING RIGHT OF WAY
- U --- EXISTING UTILITY EASEMENT
- Ac --- PROPOSED ACCESS EASEMENT

 BEARINGS HEREIN ARE BASED ON THE OHIO STATE PLANE COORDINATE SYSTEM - SOUTH ZONE.



LANCASTER MEMORY CARE, LLC.  
O.R. 1741, PG. 660  
PAR. 053-42449-00  
2.889 ACRES



KARAMEL LYNN VAN ATTA  
PAR. 053-40115-00  
D.B. 649, PG. 649  
29.29 ACRES

This Survey Prepared For: PRIMROSE MEMORY CARE FACILITY, LANCASTER, OH		RECEIVED		 <p><b>Jobes Henderson</b> A HULL COMPANY</p>	59 Grant Street Newark, Ohio 43055 PH: (740) 344-5451 www.jobeshenderson.com
Foundation Survey Ord. No. Date:	Final Survey Ord. No. Date:	Drawing	REVISED DRAWN: ELB CHECKED: JLV F.B.		
JEREMY L. VAN OSTRAH P.S. 8283		DATE: 7/27/2017	ORDER NO. PMS001		