

TEMPORARY ORDINANCE NO. 14-22

PERMANENT ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR TO ACQUIRE A PERMANENT GENERAL UTILITY EASEMENT

WHEREAS, the City of Lancaster Water Department is planning to install additional utility infrastructure to service the new Bowers Park as a part of the Bowers Property Water Line Extension Project; and

WHEREAS, an easement is necessary as a part of this project to allow utility infrastructure to cross private property located at 3700 Wilson Road NW, Lancaster, Ohio, also known as Fairfield County Auditor Parcel Number 0140112600; and

WHEREAS, the property owners and the Water Department have agreed to enter into a General Utility Easement for the benefit of both parties as described in Exhibit 1 attached hereto which includes a legal description and plat for the parcel (marked as Exhibits A and B);

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

SECTION 1. That the Mayor is hereby authorized to enter into a General Utility Easement with the owners of Fairfield County Auditor Parcel Number 0140112600, to execute all documents necessary to complete said easement, and pay any fees associated with the acquisition thereof.

SECTION 2. The General Utility Easement attached as Exhibit 1 is hereby approved and authorized with changes therein not inconsistent with this Ordinance and not substantially adverse to the City. This Council further authorizes the Mayor for and in the name of the City, to execute any amendments or changes to the final documents, which amendments are not inconsistent with this Ordinance and not substantially adverse to the City.

SECTION 3. 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 _____

Date Approved: _____

President of Council

Clerk: _____

Mayor

Offered by: _____

Second by: _____

Requested by Public Works Committee

I, Teresa Lee Sandy, Clerk of Council do hereby certify that on _____, 2022 the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

Clerk of Council



**DEED OF PERMANENT EASEMENT
GENERAL UTILITY UNDERGROUND FACILITIES EASEMENT**

Mr. Robin E. Matheney and Mrs. Bertha H. Matheney, having a mailing address of 3700 Wilson Road NW, Lancaster, Ohio, ("Grantors"), for good and valuable consideration received, do hereby grant, bargain, sell and convey to the **City of Lancaster**, an Ohio municipal corporation, having a mailing address of 104 East Main Street, Lancaster, Ohio 43130, its successors and assigns ("Grantee"), a **permanent General Utility Underground Facilities Easement** ("Easement"), together with appurtenant rights in, under, along, over, across, and upon the real property (or a portion of the real property) owned by Grantors, located in the State of Ohio, County of Fairfield, City of Lancaster, and more fully described as Fairfield County Auditor Parcel No. 0140112600, Lancaster, Ohio 43130, and being five (5) acres recorded in Official Record Book 1516, Page 171 ("Real Property"). The exact location of the Easement consists of an 8,325 square foot portion of the Real Property more specifically described in the legal description and plat attached as Exhibit "A" and "B" hereto and incorporated herein by reference ("Easement Premises").

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

1. Grantors hereby grant and convey to Grantee a permanent Easement to survey, construct, operate, maintain, remove, replace and control General Utility Underground Facilities, 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 Grantors necessary for the exercise of the rights herein granted.
2. Grantors shall permit Grantee's employees, agents, and contractors to enter upon the Real Property for the purposes of constructing, maintaining, operating, repairing, inspecting, and replacing the General Utility Underground Facilities and associated equipment and appurtenances thereto over and across the Easement Premises, and shall not interfere with Grantee's use, access, ingress, and egress to the Easement Premises. Grantee shall be permitted to construct roadways, signage, barriers, fencing, and landscaping as Grantee determines is necessary. The right to use the Easement Premises shall belong to the Grantee
and
its

agents, employees, designees, contractors, guests, invitees, successors and assigns, and all those acting by or on behalf of it for the purposes of establishing, laying, constructing, reconstruction, installing, realigning, modifying, replacing, improving, adding, altering, substituting, operating, maintaining, accessing, inspecting, patrolling, protecting, repairing, changing the size of, or relocating the General Utility Underground Facilities and associated equipment and appurtenances thereto within the Easement Premises.

3. All improvements on the Easement Premises shall be at the sole cost of the Grantee.
4. Grantee agrees to comply in all material respects, at its sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including without limitation, the construction, use, operation, maintenance, repair and service of the General Utility Underground Facilities and associated equipment and appurtenances thereto.
5. Grantee will, insofar as reasonably practicable, level, re-grade, and reseed the ground disturbed by Grantee's use of the Easement Premises and will maintain the Easement Premises clean of all litter and trash during periods of construction, operation, maintenance, repair, inspection, or removal. All construction debris shall be cleaned up and removed from Grantors' land upon completion of installation and construction of the General Utility Underground Facilities and associated equipment and appurtenances thereto.
6. Grantee shall have the right to prohibit public access to the Easement Premises.
7. Grantors may not erect new or additional power and transmission lines, water, sewer, or other utility lines, or wells within the Easement Premises, and Grantors may not grant any additional easement(s) within the Easement Premises.
8. No buildings or other structures shall be constructed in the Easement Premises by Grantors, nor shall Grantors cause any excavating or filling to be done which, in the reasonable judgment of Grantee, would impair Grantee's exercise of the rights granted hereunder or its ability to maintain its Easement.
9. Grantee has the right (1) to mow the Easement Premises, (2) to trim, cut down or eliminate trees or shrubbery that, in the sole judgment of Grantee, interfere with the operation of the General Utility Underground Facilities, (3) to remove possible hazards to the General Utility Underground Facilities, and (4) to remove or prevent the construction of any and all buildings, structures, reservoirs or other obstructions on the Easement Premises which, in the sole judgment of the Grantee, may endanger or interfere with the efficiency, safety, or convenient operation of the General Utility Underground Facilities. All trees, brush and other debris caused by construction shall be burned and/or chipped and spread on the Easement Premises or removed to an authorized disposal site. The method of disposal shall be selected by Grantee.

10. Grantors reserve the right to use the Easement Premises in any manner that will not prevent or interfere with the exercise by the Grantee of the rights granted hereunder; provided, however, that Grantors shall not obstruct, or permit to be obstructed, the Easement Premises without the express prior written consent of Grantee.
11. Grantee shall have the right to periodically inspect the Easement Premises for violations of the covenants and restrictions set forth herein. If Grantors or their successors and assigns violate any of these covenants and restrictions Grantors shall cure the violation(s) within sixty (60) days of receipt of notice thereof from Grantee. If Grantors fail to adequately cure or eliminate the violation(s) within the sixty (60) day time period, Grantee may cause the cure of the violation(s), and Grantors shall immediately reimburse Grantee for all costs and expenses incurred in curing the violation(s). Grantee shall also have the right to obtain injunctive relief for the enforcement of the covenants and restrictions from a court of competent jurisdiction.
12. Grantee shall have the right to post and/or mark the boundaries of the Easement Premises.
13. Grantee shall have exclusive possession of the Easement Premises at all times.
14. This Easement, its terms and conditions contained herein, and all rights, title and privileges herein granted, including all benefits and burdens, shall run with the land and shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors, assigns, and legal representatives.
15. Grantors agree that Grantee may assign the rights granted to it hereunder to any assignee who demonstrates sufficient competence and gives adequate assurances that any work to be performed pursuant to such assignment shall be done in a skillful manner.
16. If any damage to Grantors' Real Property is caused by Grantee's exercise of its rights hereunder, Grantee shall promptly restore any disturbed areas as nearly as possible to the condition existing prior to the occurrence of the damage.
17. Grantors covenant with Grantee that they are the true and lawful owners of the Real Property inclusive of the Easement Premises and are lawfully seized of the same in fee simple and have good right and full power to grant this Easement. Grantors represent and warrant that they are the sole free owners of the property herein described and they have the authority to convey said rights and interests to the Grantee. Grantors represent and warrant that, except for easements, conditions, agreements, restrictions, reservations, and covenants of record prior to the date of this Agreement, there are no liens, encumbrances or mortgages affecting the land underlying the Easements except: NONE.
18. Grantors agree to defend, indemnify, and hold harmless Grantee from any and all claims disputing Grantors' legal right to convey the Easement to Grantee, as well as all claims

for payment or restitution made by a third party. Grantors agree to reimburse Grantee for its costs, including attorney's fees, in asserting or defending all claims made which dispute Grantors' legal right(s) to convey the Easement.

19. This Easement shall be interpreted, enforcement and governed under the laws of the State of Ohio. Since the Easement is located in Fairfield County, venue shall exist therein.

20. This Easement embodies the entire agreement between the parties hereto with respect to the Easement Premises 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 Easement shall not be modified or amended except by written instrument executed by each party hereto.

IN WITNESS WHEREOF, the parties have executed or have caused this instrument to be executed by their proper officers duly authorized to do so on this ____ day of _____, 2022.

GRANTORS:

GRANTEE:

City of Lancaster, Ohio

By: Robin E. & Bertha H. Matheney

David L. Scheffler
Mayor

State of Ohio :
County of Fairfield : ss

BEFORE ME, a Notary Public in and for said county and state, did personally appear the above-named **Robin E. & Bertha H. Matheney**, who acknowledged that he/she/they did sign the foregoing instrument and that the same was his/her/their free act and deed.

IN TESTIMONY WHEREOF, I have set my hand and official seal, at Lancaster, Ohio, this ____ day of _____, 2022.

Notary Public, State of Ohio

My Commission Expires: _____

State of Ohio :
County of Fairfield : ss

BEFORE ME, a Notary Public in and for said county and state, did personally appear the above-named **David L. Scheffler**, who acknowledged that he did sign the foregoing instrument and that the same was his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Lancaster, Ohio, this ____ day of _____, 20 ____.

Notary Public, State of Ohio
My Commission Expires: _____

This instrument prepared by:
Stephanie L. Hall (0082045)
Law Director & City Prosecutor
City of Lancaster, Ohio
P.O. Box 1008
Lancaster, Ohio 43130

TOBIN-McFARLAND SURVEYING, INC.



Professional Land Surveyors

111 West Wheeling Street
Lancaster, Ohio 43130
Phone (740) 687-1710
Fax. (740) 687-0877

Description of Utility Easement

Situated in the State of Ohio, Fairfield County, Greenfield Township, Township 15, Range 19, Section 33, northwest quarter.

Being over a 5.0 acre tract described in a deed to Bertha H. Matheney and Robin E. Matheney recorded in Official Record 1516, Page 171 and being more fully described as follows:

Beginning at a point on the west line of the aforementioned 5.0 acre tract and the northerly right of way line of Wilson Road (33 foot right of way), said point being North 04 degrees 03'58" East a distance of 16.50 feet from the southwest corner of said 5.0 acres and the centerline of the road;

Thence North 04 degrees 03'58" East, passing a 1/2 inch rebar found at 13.25 feet, a distance of 18.50 feet to a point on the west line of said 5.0 acres;

Thence South 86 degrees 09'47" East a distance of 450.00 feet to a point on the east line of said 5.0 acres;

Thence with said east line South 04 degrees 03'58" West, passing a concrete monument found at 5.00 feet, a distance of 18.50 feet to the northerly right of way line of Wilson Road;

Thence North 86 degrees 09'47" West a distance of 450.00 feet to the point of beginning, Containing 8325 Square Feet.

Bearings are based on the ODOT right of way plan FAI-33-7.31 and are used to denote angles only. For additional information see "Plat of Easement" made in conjunction with and considered an integral part of this description.

This description is based on a survey made in November of 2021 by Tobin-McFarland Surveying, Inc., and was prepared by Rodney McFarland, Registered Professional Surveyor No. 6416.

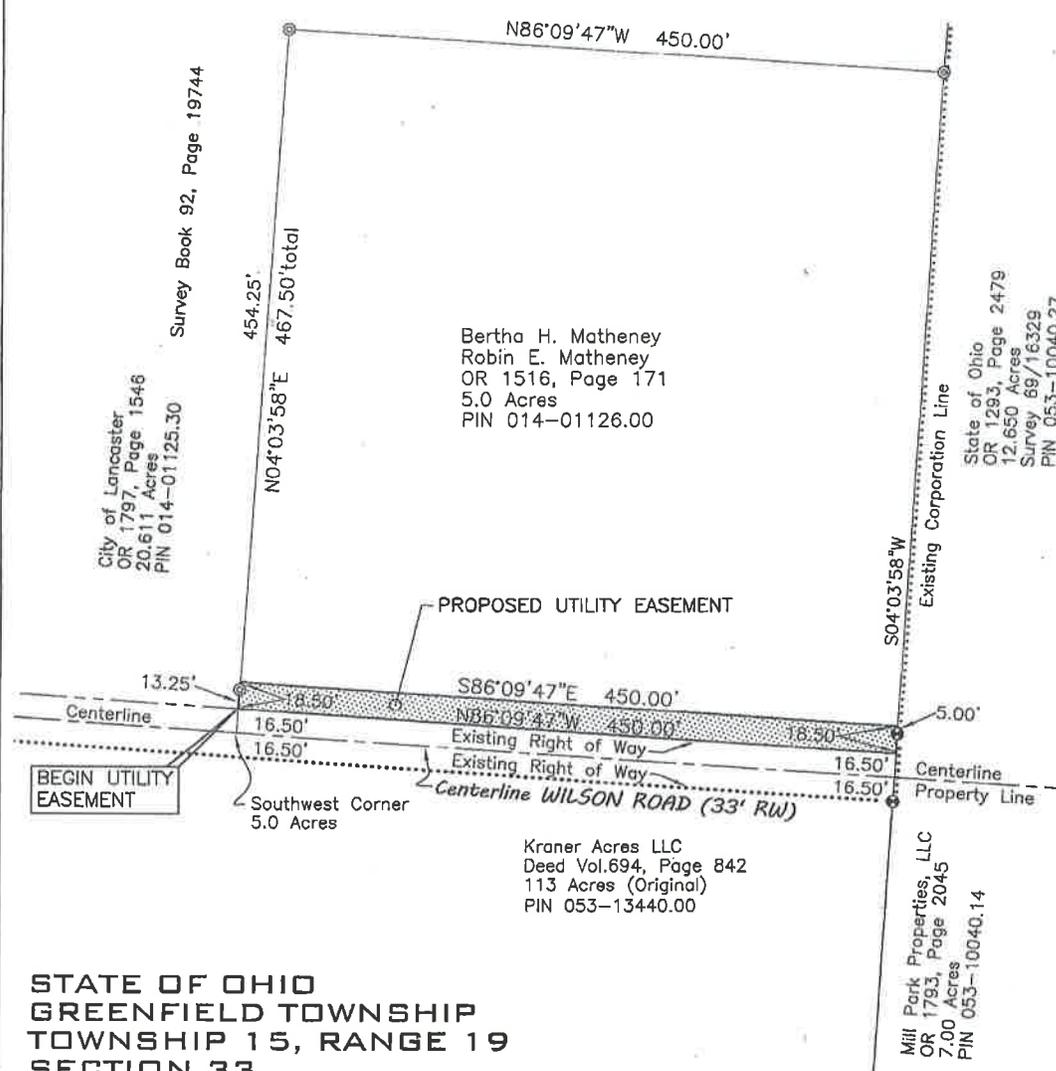


Rodney McFarland 11/4/21

Rodney McFarland, P.S.
Nov.4, 2021 originals are signed in blue ink

PLAT OF EASEMENT

EXHIBIT B



City of Lancaster
OR 1797, Page 1546
20.611 Acres
PIN 014-01125.30
Survey Book 92, Page 19744

Bertha H. Matheney
Robin E. Matheney
OR 1516, Page 171
5.0 Acres
PIN 014-01126.00

State of Ohio
OR 1293, Page 2479
12.650 Acres
Survey 69/16329
PIN 053-10040.27

Kraner Acres LLC
Deed Vol.694, Page 842
113 Acres (Original)
PIN 053-13440.00

Mill Park Properties, LLC
OR 1793, Page 2045
7.00 Acres
PIN 053-10040.14

**STATE OF OHIO
GREENFIELD TOWNSHIP
TOWNSHIP 15, RANGE 19
SECTION 33
NORTHWEST QUARTER**

- LEGEND**
- ⊙ 1/2 inch rebar found
 - ⊙ Concrete monument found

Bearings are based on the ODOT right-of-way plan FAI-33-7.31.

For: City of Lancaster
Date of Drawing: Nov.4, 2021



Annexations/bowers park/utility ease



BY: *Rodney McFarland* 11/4/21
Registered Surveyor No.6416 Date

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