

ORDINANCE NO. 2019-044

ACCEPTING A UTILITY EASEMENT FOR DRAINAGE (WHITSEL PROPERTY) AND DECLARING AN EMERGENCY

WHEREAS, as part of a necessary municipal project, it has become necessary for the Village of Waynesville to accept a utility easement; and

WHEREAS, the owner of the affected property has agreed to donate said easement.

NOW, THEREFORE, BE IT ORDAINED by the Village Council of the Village of Waynesville, 5 members elected thereto concurring:

Section 1. That the utility easement set forth in Exhibit "A," incorporated herein by reference, is hereby accepted by the Village of Waynesville.

Section 2. That the Village Manager is hereby authorized to execute any necessary documents to further the acceptance of said easement.

Section 3. That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, and welfare and shall be effective immediately upon its adoption. The reason for said declaration of emergency is the need to accept the easement at the earliest possible date in order to timely proceed with the project.

Adopted this 19th day of August, 2019.

Attest:

Clerk of Council



Mayor



Auditor's Parcel ID # 05-01-406-026

DEED/GRANT OF UTILITY EASEMENT FOR DRAINAGE

KNOW ALL MEN BY THESE PRESENTS:

That the **Jeremiah E. Whitsel and Amy N. Whitsel**, husband and wife, hereafter, Grantor, the Fee Simple owner of the real estate (the Property), located at 415 Old Stage Road , Waynesville, Ohio 45068 within the Village of Waynesville, Ohio, Warren County, Ohio, identified in Official Record Book 5713, Page 813, of the Records of Warren County, Ohio, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, do hereby grant, bargain, sell, convey and release to the **Village of Waynesville, Ohio** an Ohio municipal corporation, whose tax mailing address is 1400 Lytle Road, Waynesville, Ohio 45068, hereafter, Grantee, and to their agents, employees, successors and assigns forever, **a non-exclusive, perpetual public utility drainage easement for the construction, operation, repair and/or replacement of utilities** on, above, under and through that portion of the aforementioned Property, as described on Exhibit "A" (the "Easement Area") and with the easement area being generally depicted on Exhibit "B", attached hereto and made a part hereof.

All costs and expenses associated with the **Grantee's** construction, operation, maintenance, repair, replacement and restoration activities within the Easement Area described on Exhibit A shall be borne solely by the **Grantee**.

Grantor shall not construct any improvements within or upon the Easement Area or otherwise use the Easement Area in a manner that would materially interfere with the exercise by **Grantee** of its rights provided by this document.

The consideration mentioned herein includes total compensation for all damages caused by said construction, repair, maintenance, operation and inspection within the above described easement. **Grantee** shall, as soon as practical after the completion of any construction, maintenance, repair or replacement activities, restore the surface of the Easement Area to the same condition or better as existed immediately prior to the commencement of such activities by **Grantee** or its agents, employees or contractors.

The terms and agreement set forth herein shall be deemed to be covenants running with the land and shall inure to the benefit of and be binding upon, as the case may be, the parties and their respective successors and assigns.

Grantor, for itself and for its successors and assigns, does hereby COVENANT with the said Grantee, its successors and assigns, that it is the true and lawful owner of the said premises, and has full power to convey said easement, unencumbered.

It is agreed that wherever a party is named in this instrument there shall be intended and included, in each case, that party, his heirs, administrators, successors, and assigns.

Executed by Jeremiah E. Whitsel and Amy N. Whitsel, husband and wife, on this 9 day of August, 2019.

Witness:

Amy N. Whitsel

STATE OF OHIO, COUNTY OF ^{Montgomery} ~~WARREN~~ ss:

Before me, a notary public in and for said County and State, personally appeared, Jeremiah E. Whitsel and Amy N. Whitsel who executed the foregoing instrument, who acknowledged that they did sign said instrument and that the execution of said instrument is their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal this 9 day of August 2019.



ERICA N. CAMPBELL
Notary Public, State of Ohio
My Commission Expires
November 28, 2021

Village of Waynesville, Ohio

Witness:

ACCEPTED BY:

State of Ohio, County of Warren ss.

The foregoing instrument was signed and acknowledged before me, a Notary Public, this 13 day of August, 2019, by **Gary Copeland, Acting Village Manager of the Village of Waynesville, Ohio**, an Ohio municipal corporation, on behalf of the corporation.



ASHLEY SUTTON-RICHARDSON
Notary Public, State of Ohio
My Commission Expires
02/07/2023

Notary Public

APPROVED AS TO FORM:

[Handwritten signature]

[Handwritten signature]

This instrument was prepared by: Wood & Lamping, LLP.

EXHIBIT "A"

Situate in Section 1, Town 3-E, Range 5-N, Village of Waynesville, Warren County, Ohio, Being part of 1.173 acre tract as conveyed to Jeremiah E. & Amy N. Whitsel by instrument as recorded in O.R. 5713, Pg. 813 of the deed records of said county and being more particularly bounded and described as follows:

BEGINNING at the northeast corner of Lot 59, Far Hills Village, Section Five as recorded in P.B. 7, Pg. 9 of the plat records of said county, said point also being located on the south line of said 1.173 acre tract;

Thence, leaving said south line N 30°16'00" E a distance of 5.00 feet to a point;

Thence S 58°21'20" E a distance of 154.24 feet to a point, said point being located on the west Right-of-Way line of Old Stage Road;

Thence along said west Right-of-Way line S 24°20'45" W a distance of 5.04 feet to a point, said point being located at the intersection of said west Right-of-Way line with the south line of said 1.173 acre tract;

Thence leaving said west Right-of-Way line and along said south line N 58°21'20" W a distance of 154.76 feet to the **POINT OF BEGINNING**, containing 0.0177 acres (772.5069 sq. ft.), more or less, subject to all easement, restrictions, conditions and legal highways of record pertaining to the parent tract.

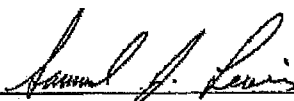
Prior Instrument Reference(s) as of the date this description was prepared: O.R. 7195, Pg. 735 of the Official Deed Records of Warren County, Ohio.

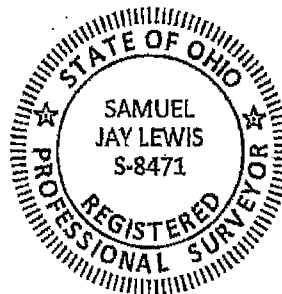
This description is based on a field survey made in November 2013 and is further shown on attached Exhibit "B".

The above described area is contained within Warren County Auditor's Parcel Identification Number(s): 05-01-406-026 and is outside of the present road right-of-way.

The basis of bearings for this description is the east line of Lot 59 (South 30°16'00" West) as recorded in Far Hills Village, Section Five (P.B. 7, Pg. 9).

Jones Warner Consultants, Inc.


Samuel J. Lewis, Ohio P.S. 8471



FAR HILLS VILLAGE-SECTION 5
PLAT BOOK 7, PAGE 9

Lot 82

Lot 80

FIFTH STREET
(50' R/W)

Z
BASIS OF BEARINGS:
EAST LINE OF LOT 59
FAR HILLS VILLAGE, SECTION 5
P.B. VOL. 7, PG. 9 (S 30°16'00" W)

PL
Existing 5' Utility Easement
PL
Existing 5' Utility Easement

PID - 05-01-406-009
Lamb, Timothy Keith &
Bonnie Olivia
4/1/1998
O.R. Vol. 1512/75
Far Hills Village, Sec. 5
P.B. 7/9
Lot 59

PID - 05-01-406-026
Whitsel, Jeremiah E. & Amy N.
12/13/2012 - O.R. Vol. 5713/813
1.173 Acres

PID - 05-01-406-007
Miltenerberger, Tim Ian &
Heidi A.
2/9/1999
O.R. Vol. 1700/108
Lot 14

P.O.B.
Existing 10' Utility Easement
PL

N 30°18'00" E
5.00'

TEMP. 5' CONSTRUCTION EASEMENT

0.0177 ACRES DRAINAGE EASEMENT

N 58°21'20" W
154.76'

PID - 05-01-406-044
Board of Trustees of the Wayne Local
School District Public Library,
AKA Mary L. Cook Public Library
1/28/2002 - O.R. Vol. 2429/255
2.8485 Acres

S 58°21'20" E
154.24'

PL
Existing 5' Utility Easement
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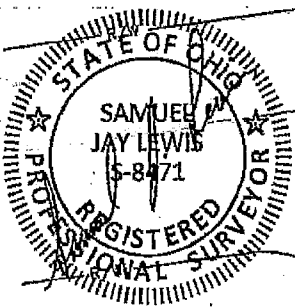
OAKWOOD FARMS
ESTATES,
SECTION I
PLAT BOOK 8
PAGE 50

PID - 05-01-406-025
Hamm, John W. &
Mary G.
4/15/1988
O.R. Vol. 432/894
Lot 13

S 24°20'45" W
5.04'

OLD STAGE ROAD
(60' R/W)

EXHIBIT "B"
PAGE 1 OF 1



DRAINAGE EASEMENT - PID # 05-01-406-026

SCALE:
1" = 50'

DATE:
11/25/13

WHITSEL, JEREMIAH E. & AMY N.

JONES WARNER CONSULTANTS, INC.
CONSULTING ENGINEERS
6401 CLAUDE THOMAS ROAD, SUITE 51
FRANKLIN, OHIO 45005
PH: 937-704-9868 FAX: 937-704-9849
EMAIL: jwci@joneswarner.com
VISIT US AT: JONESWARNER.COM

**TEMPORARY RIGHT OF ENTRY AND
CONSTRUCTION EASEMENT AGREEMENT**

This Temporary Right of Entry and Construction Easement Agreement (this "Agreement") is entered into on this 9 day of August, 2019 (the "Agreement"), between Jeremiah E. Whitsel and Amy N. Whitsel, husband and wife, "Owner" of the property described as 415 Old Stage Road, Waynesville, Ohio 45068 ("Owner"), and the Village of Waynesville, Ohio (the "Village").

The Owner is the owner of the real estate property (the "Property"), which is known as:

Parcel ID No. 05-01-406-026

The Village and its contractors, engineers, agents and/or employees desire to enter upon a portion of the Property in the area shown on the approved construction drawings by Jones Warner Consultants, Inc., on Exhibit "A" affixed hereto (the "Temporary Construction Easement Area") for the purposes of commencement of the construction of utilities in connection with the 4th/5th Street Drainage Improvements (the "Work").

The Village agrees to pay to Owner, upon execution of this agreement, the sum of \$1.00 and other valuable consideration (the "Entry Price"), as full compensation for the rights granted to the Village by the Owner pursuant of this Agreement. Village accepts Owner's donation of the rights granted hereunder as a contribution toward the success of the above-referenced project.

Owner hereby grants to the Village, in consideration of the Entry Price, the temporary right and easement for the Village, its employees, agents, engineers, and/or contractors, to enter upon the Temporary Construction Easement Area by persons, equipment, and vehicles, and use the same for the sole purposes of construction in connection with the 4th/5th Street Drainage Improvements.

Owner, for itself, its successors, and assigns, does hereby covenant with Village that it is the true and lawful owner of the Property and has full power to convey the Temporary Right of Entry and Construction Easement Agreement.

The foregoing rights and easement granted by Owner to the Village and all rights under this Agreement shall automatically expire upon completion of the Project.

This Agreement is the entire agreement between the parties and cannot be modified by an oral or other communication, except as signed by both parties.

APPROVED AS TO FORM:

Law Director 

This instrument was prepared by: Wood & Lamping LLP

1609736.1

FAR HILLS VILLAGE-SECTION 5
PLAT BOOK 7, PAGE 9

Lot 62

Lot 60

FIFTH STREET
(50' R/W)

2
BASIS OF BEARINGS:
EAST LINE OF LOT 59
FAR HILLS VILLAGE, SECTION 5
P.B. VOL. 7, PG. 9 (S 30°16'00" W)

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1.173 Acres

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Mittenberger, Tim Ian &
Heidi A.
2/9/1999
O.R. Vol. 1700/106
Lot 14

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Existing 5' Utility Easement

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P.O.B.

N 30°16'00" E
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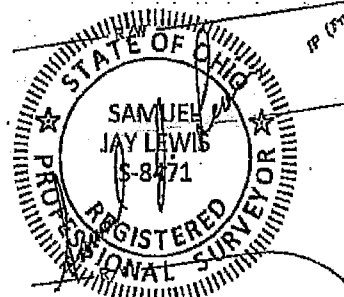
Existing 10' Utility Easement

OLD STAGE ROAD
(60' R/W)

S 24°20'45" W
5.04'

"A"

EXHIBIT "B"
PAGE 1 OF 1



DRAINAGE EASEMENT - PID # 05-01-406-026

WHITSEL, JEREMIAH E. & AMY N.

SCALE:
1" = 50'

DATE:
11/25/13

JONES WARNER CONSULTANTS, INC.

CONSULTING ENGINEERS
8401 CLAUDE THOMAS ROAD, SUITE 51
FRANKLIN, OHIO 45005
PH: 937-704-9868 FAX: 937-704-9949
EMAIL: jwc@joneswarner.com
VISIT US AT: JONESWARNER.COM

**AUTHORIZATION TO CONTACT LENDER
REGARDING CONSENT TO EASEMENT**

The undersigned Mortgagor hereby authorizes Roccina S. Niehaus, Esq., of Wood & Lamping LLP, to discuss with JEREMIAH WHITSEL the execution of the Consent of Mortgagee to Utility Easement regarding Loan No. 662056184. The Village of Waynesville, Ohio has requested a Utility Easement for drainage across my property located at 415 Old Stage Road, Waynesville, Ohio 45068. I am willing to execute the Easement, but the conveyance cannot be finalized until

_____ consents to the Easement.

Any questions regarding this authorization should be directed to me at 513-317-0229

Dated: AUGUST 9th, 2019

Amy N. Whitsel, Owner/Mortgagor

Prepared by Wood and Lamping LLP, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202.