

## SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release is entered into between and among John Mays and Kim Mays. ("Plaintiffs"), and the City of Mason ("Defendant"), dated this \_\_\_\_\_ day of \_\_\_\_\_, 2004, and is made under the following circumstances.

A. Plaintiffs have filed claims against Defendant, in Warren County Court of Common Pleas Case No. 01CV58806, hereinafter referenced as the "Complaint" All claims relate generally to Plaintiffs' claims regarding the real property located at 220 Kings Mills Road, Mason, Ohio caused by storm water that previously came onto Plaintiffs' property from the storm water sewers at station 27+50.

B. The defendant denies any liability for the claims that were or could have been asserted in the Complaint.

C. Plaintiffs and Defendant have agreed to settle the Complaint as well as all differences, disputes and claims between them, including any claims which may have resulted in damages to plaintiffs' property that plaintiffs might otherwise have against the defendant.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. In consideration of this Settlement Agreement and General Release, plaintiffs hereby agree to dismiss, with prejudice, all claims asserted or which could have been asserted against Defendant. Plaintiffs will file an Entry dismissing the action with prejudice within seven (7) days of the receipt of the proceeds referenced in paragraph two (2) below.

2. Defendant agrees to pay Plaintiffs the total sum of Fifty Thousand Dollars and 00/100 (\$50,000.00.) The check will be made payable to "John and Kim Mays, and their attorney, James A. Whitaker." A check for Twenty-five Thousand Dollars and 00/100 (\$25,000.00.) will be delivered to the Plaintiffs' counsel within ten (10) days of

Plaintiffs' return of an executed copy of this Settlement Agreement and General Release to counsel for Defendant. An additional check for Twenty-five Thousand Dollars and 00/100 (\$25,000.00.) will be delivered to Plaintiffs' counsel within sixty (60) days of plaintiffs' return of an executed copy of this Settlement Agreement and General Release to counsel for Defendant. The City of Mason will make a good faith effort to shorten the sixty day period.

3. In consideration of this Settlement Agreement and General Release, the defendant agrees to maintain the storm sewer plug at station 27+50 as depicted in the Kings Mills Road Water Main Replacement and Storm Sewer/Culvert Improvements drawing. This is the same storm water pipe that previously discharged onto the property currently owned by Mark and Robin Sempschrott which then flowed onto the Mays property.

4. In consideration of this Settlement Agreement and General Release, the plaintiffs hereby release the City of Mason, and each of its respective departments, employees, council members, insurers, attorneys and agents, from any and all claims, against Defendant for any and all events that have occurred up to the date of signing of this release, including but not limited to, causes of action, damages, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, judgments, executions, claims and demands of whatsoever kind or nature (in law or in equity) which Plaintiffs ever had. This release includes any and all future claims relative to 27+50, so long as that pipe remains plugged. This includes damages whether known or unknown, for any act, event, omission or statement that was in existence up to the date of signing of this release including but not limited to those claims asserted in or relating to, or which could have been asserted in the Complaint.. Plaintiffs likewise agree not to assert any future claims against Defendant relative to storm water drainage onto 220 Kings Mill Road unless the City takes

affirmative steps to direct storm water onto the Mays' property from areas that do not currently drain on the Mays' property.

5. If Defendant makes any future modification to the storm water system at, near or upon the property located at 220 Kings Mills Road, Mason, Ohio, the Plaintiff shall receive the same benefits as provided by the Defendant for all similarly situated property owners. In the future, if any federal, state, or municipal governmental unit or agency thereof determines that the existing conditions of the Plaintiffs' dam requires modification, nothing in this agreement should preclude Plaintiffs from being eligible to participate in any grant program, payment or measured offered by the City of Mason or any other government agency to fix, repair, maintain or correct Plaintiffs' dam.

6. This Settlement Agreement and General Release shall be binding upon and inure to the benefit of the plaintiffs hereto together with their heirs, administrators, executors, successors, and assigns.

7. If the facts that existed at the time of the signing of this release with respect to this Settlement Agreement and General Release as executed are found to be other than or different from the facts in that regard now believed to be true, the plaintiffs expressly agree, accept and assume the risk of the possible difference in the facts and agree that this Settlement Agreement and General Release shall be and remain effective notwithstanding such difference.

8. It is further acknowledged that this Settlement Agreement and General Release is the compromise of doubtful and disputed claims, and is not to be construed as an admission of liability on the part of the defendant. The defendant denies all liability, and by entering into this Settlement Agreement and General Release intends to merely avoid the expense and risks of further litigation. Nor can the release be interpreted to establish that the Mays admit any structural damage or damage to the integrity of the dam located on their property.

9. Plaintiffs represent and acknowledge that in executing this Settlement Agreement and General Release, they did not rely and have not relied upon any representations or statements made by the defendant or by its agents, representatives, or attorneys with respect to the subject matter, basis, or effect of this Settlement Agreement and General Release.

10. Plaintiffs acknowledge that they have read this Settlement Agreement and General Release in its entirety and have thoroughly discussed all aspects of it with their attorney, who represented them throughout the Action and that this Agreement with all of its provisions is made freely, voluntarily and with full knowledge and understanding of its content.

11. This Settlement Agreement and General Release sets forth the entire agreement between the parties hereto and fully supersedes any and all prior agreements or understandings, whether or oral or written, among the parties pertaining to the subject matter hereof.

IN WITNESS WHEREOF, we set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

**CAUTION: READ THIS DOCUMENT BEFORE SIGNING!**

\_\_\_\_\_  
**Witness as to both signatures**

\_\_\_\_\_  
**John Mays**

\_\_\_\_\_  
**Witness as to both signatures**

\_\_\_\_\_  
**Kim Mays**