

ORDINANCE NO. 2009 - 14

AUTHORIZING THE CITY MANAGER TO EXECUTE AN ACQUISITION AGREEMENT AND TO ACCEPT A PERPETUAL PUBLIC RECREATIONAL BIKE PATH EASEMENT AND EASEMENT/GRANT OF EASEMENT FOR THE MUDDY CREEK BIKE PATH PHASE II/US 42 AND DECLARING AN EMERGENCY (GREEN VALLEY/JRM)

WHEREAS, the City of Mason has undertaken the Muddy Creek Bike Path Phase II/ US 42

North Project; and

WHEREAS, it is necessary to acquire certain easements from property owners in order to complete the project; and

WHEREAS, the City has reached an agreement for a Public Recreational Bike Path Easement and Easement/Grant of Easement with Green Valley Apartments, LLC and JRM Ventures, LLC regarding the acquisition of a public recreational bike path easement and easement/grant of easement on their property.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mason, Ohio, seven members elected thereto concurring:

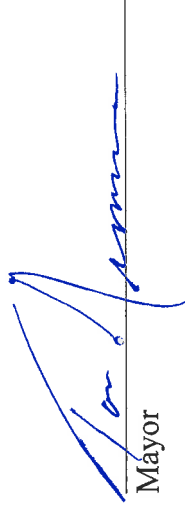
Section 1. That the City Manager is hereby authorized to execute the attached Public Recreational Bike Path Easement and Easement/Grant of Easement hereto as Exhibit "A" and incorporated herein by reference.

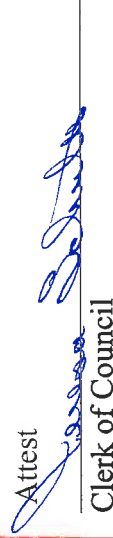
Section 2. That the Finance Director is hereby authorized to make any payment to consistent with the terms of the Acquisition Agreement.

Section 3. That the City of Mason hereby accepts the Public Recreational Bike Path Easement and Easement/Grant of Easement attached hereto as Exhibit "A" and incorporate herein by reference.

Section 4. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and general welfare and shall be effective immediately upon its passage. The need for said emergency is the necessity to begin the Muddy Creek Bike Path Phase II/ US 42 North Project as soon as possible.

Passed this 23<sup>rd</sup> day of February, 2009.

  
Mayor

Attest  
  
Clerk of Council

**PERPETUAL PUBLIC RECREATIONAL/BIKE PATH EASEMENT**

This Perpetual Public Recreational/Bike Path Easement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008 by and among Green Valley Apartments, LLC, an Ohio limited liability company and JRM Ventures, LLC, an Ohio limited liability company, (hereinafter referred to as “Grantor”) and the City of Mason, Ohio (hereinafter referred to as “Grantee”).

**WHEREAS**, Grantor is the fee simple owner of the real estate consisting of 24.5620 acres located in the City of Mason, Warren County, Ohio and designated as Auditor’s Parcel No. 16-30-127-017 as recorded in Official Record Book 4390, page 684, (the “Property”); attached hereto as Exhibit “A”, and

**WHEREAS**, Grantee is the fee simple owner of the real estate consisting of 1.240 acres located in the City of Mason, Warren County, Ohio and designated as Auditor’s Parcel No. 16-30-251-001 as recorded in Official Record Book 424, page 551, (the “Property”); attached hereto as Exhibit “B”, and

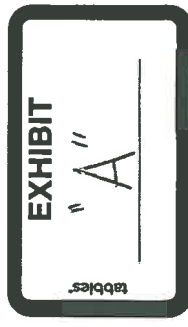
**WHEREAS**, Grantor has agreed to grant to Grantee a Public Recreational/Bike Path Easement across the Property attached hereto as Exhibits “C” and (“Easement Area”) for recreational and bike path purposes and so that there can be ingress and egress along the Grantor and Grantee’s Properties, and

**WHEREAS**, Grantee has agreed to certain restrictions related to the use, care and maintenance of the Easement Area.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties agree as follows:

**PERPETUAL EASEMENT**

1. Grantor hereby grants to Grantee, its successors and assigns, a non-exclusive perpetual Public Recreational/ Bike Path Easement, for recreational and bike path purposes and ingress and egress along and across that portion of the Property which has been designated as the Easement Area, attached hereto as Exhibit “C”.
2. Grantee hereby agrees that the uses of the Easement Area shall be limited to those typically associated with a green space park for recreational purposes and a bike path, and may also include the construction and improvements consistent with these uses. Any use by Grantee of the Easement Area shall be restricted to public recreation, bike path, construction and maintenance by Grantee or their contractors and their assigns consistent with such public recreation and bike path use as shall be determined by Grantee.
3. Grantee shall not be permitted to commit any waste or cause any other damage to the Easement Area or use the Easement Area for purposes other than those



specified. 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. Grantee shall cause the Easement Area to be properly maintained and repaired at its sole cost, including without limitation, that the Easement Area shall be kept in good order, clean, sightly and in sanitary condition and state of repair, with proper removal of rubbish, debris, litter and the same; provided if the Easement Area is paved or graveled by Grantee that such will be maintained, repaired and replaced in good order at Grantee's sole cost.

4. Consistent with the use associated with a park and green space, the Easement Area shall be free and open to the public, emergency vehicles, construction equipment and maintenance vehicles.

5. Grantee further agrees to obtain and maintain in force public liability insurance in one or more companies, insuring against liability to third persons for personal injuries or property damage arising out of the use of the Easement Area. The insurance shall provide minimum limits of \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage. Each policy shall name Grantor as an additional insured and shall provide that the insurer will give Grantor written notice at least 30 days prior to the effective date of cancellation. Grantee shall furnish appropriate certificates or other satisfactory proof of insurance to Grantor. In the event that the Property is ever sold or transferred, the policy of insurance referenced herein shall name the owners of the Property as additional insureds subject to the remaining terms of this Agreement. The amount of insurance limits set forth herein may be increased from time to time as agreed upon by the parties. Grantee shall be liable for any and all damage, cost and expense, including but not limited to reasonable attorney's fees for injury, death, loss or damage of whatever nature to any person or property in connection with its use of the Easement Area, as related to this Agreement. Grantee will not permit any claim, lien or other encumbrance arising from use of the Easement Area to accrue against or attach to the Easement Area or to the Grantor's property.

6. It is the intent of the parties that the Perpetual Public Recreational/Bike Path Easement granted herein and the rights, responsibilities and obligations set forth shall be perpetual and shall run with the land and shall inure to the benefit of, and be binding upon, the parties, their heirs, successors and assigns forever.

7. **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, has full power to convey said easement.

Executed by \_\_\_\_\_ as \_\_\_\_\_ member of Green Valley Apartments, LLC, and by \_\_\_\_\_ as \_\_\_\_\_ member of JRM Ventures, LLC, and the City of Mason, Ohio on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Green Valley Apartments, LLC

By \_\_\_\_\_

JRM Ventures, LLC

By \_\_\_\_\_

**CITY OF MASON, OHIO:**

By \_\_\_\_\_

Eric Hansen, City Manager

STATE OF OHIO )  
 )SS:  
COUNTY OF WARREN )

BE IT REMEMBERED that on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the subscriber, a Notary Public in and for said county and state, personally came \_\_\_\_\_ as \_\_\_\_\_ member of Green Valley Apartments, LLC, and acknowledged the signing of the foregoing instrument, and that the same is \_\_\_\_\_ voluntary act and deed, on behalf of said limited liability company as duly authorized.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year first above written.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

STATE OF OHIO )  
 )SS:  
COUNTY OF WARREN )

BE IT REMEMBERED that on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the subscriber, a Notary Public in and for said county and state, personally came \_\_\_\_\_ as \_\_\_\_\_ member of JRM Ventures, LLC and acknowledged the signing of the foregoing instrument, and that the same is \_\_\_\_\_ voluntary act and deed on behalf of said limited liability company as duly authorized..

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year first above written.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

STATE OF OHIO )  
 )SS:  
COUNTY OF WARREN )

BE IT REMEMBERED that on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the subscriber, a Notary Public in and for said County and State, personally came

Eric Hansen, the City Manager of the City of Mason, Ohio, who acknowledged that he did sign said instrument as such officer on behalf of said City and by authority of the City Council; that said instrument was signed as his free act and deed individually, and the free act and deed of said municipal corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name affixed my notarial seal on the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Auditor's Parcel ID # 16-30-127-017

**DEED/GRANT OF EASEMENT**

KNOW ALL MEN BY THESE PRESENTS, that **Green Valley Apartments, LLC, an Ohio limited liability company and JRM Ventures, LLC, an Ohio limited liability company**, (collectively, Grantor), the Fee Simple owner of the real estate (the Property), located within the boundaries of the property located at 4800 Route 42, within the City of Mason, Ohio, identified in Official Record Book 4390, Page 684 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, does hereby grant and convey to the **City of Mason, Ohio**, an Ohio municipal corporation, (**Grantee**), and to their agents, employees, successors and assigns forever, **a non-exclusive, permanent access and ingress/egress easement for construction, maintenance and emergency access for both a bike path and sanitary sewer**, on and through that portion of the aforementioned Property marked and as illustrated upon Exhibit A (the Easement Area), 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, has full power to convey said easement.

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

Executed by \_\_\_\_\_ as \_\_\_\_\_ member of Green Valley Apartments, LLC, and by \_\_\_\_\_ as \_\_\_\_\_ member of JRM Ventures, LLC, and the City of Mason, Ohio on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Green Valley Apartments, LLC

By \_\_\_\_\_

JRM Ventures, LLC

By \_\_\_\_\_

STATE OF OHIO )

)SS:

COUNTY OF WARREN )

BE IT REMEMBERED that on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the subscriber, a Notary Public in and for said county and state, personally came



6900 Tylersville Road, Suite A  
 Mason, Ohio 45040  
 P 513.336.6600  
 F 513.336.9365  
[www.bayerbecker.com](http://www.bayerbecker.com)

**DESCRIPTION:**

January 23, 2008

Four Seasons  
 City of Mason  
 44' Permanent Easement

**LOCATION:**

City of Mason,  
 Warren County, Ohio

Situated in Section 30, Town 4, Range 2, City of Mason, Warren County, Ohio, and being a 44' Permanent Easement further described as follows:

Begin at a point found by measuring from a found stone on the northwest corner of Lot 17 of Timberbrook Estates, Section Two, as recorded in Plat Book 19, Page 13, and the southerly line of City of Mason land, as recorded in Official Record 3316, Page 264; thence, departing said Timberbrook Estates, with said City of Mason, the following two courses: North 88°05'16" West, 260.93 feet; thence, North 34°09'33" West, 239.73 feet to the southeast corner of Beverley Teague, as recorded in Official Record 1555, Page 43; thence, departing said City of Mason land, with said Teague, the following two course: South 55°50'27" West, 27.00 feet; thence, North 34°09'33" West, 168.37 feet to the southerly right of way of US Route 42; thence, departing said Teague, with said right of way, South 56°08'52" West, 173.95 feet, to the true point of beginning;

|        |   |
|--------|---|
| thence | from the true point of beginning thus found, departing said right of way, South 34°07'02" East, 1098.72 feet; |
| thence | South 01°36'44" West, 75.35 feet;   |
| thence | North 34°07'02" West, 1160.08 feet to said right of way;  |
| thence | with said right of way, North 56°08'52" East, 44.00 feet to the true point of beginning;                      |

The above description was prepared from a survey prepared by Bayer Becker, Jeffrey O. Lambert, Registered Surveyor #7568 in the State of Ohio, January 23, 2008.

The Plat of which is recorded in Volume \_\_\_\_, Page \_\_\_\_, of the Warren County Engineer's Records.



\_\_\_\_\_ as \_\_\_\_\_ member of Green Valley Apartments, LLC, and acknowledged the signing of the foregoing instrument, and that the same is \_\_\_ voluntary act and deed, on behalf of said limited liability company as duly authorized.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year first above written.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

STATE OF OHIO            )  
                                  )SS:  
COUNTY OF WARREN    )

BE IT REMEMBERED that on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the subscriber, a Notary Public in and for said county and state, personally came \_\_\_\_\_ as \_\_\_\_\_ member of JRM Ventures, LLC and acknowledged the signing of the foregoing instrument, and that the same is \_\_\_ voluntary act and deed on behalf of said limited liability company as duly authorized..

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year first above written.

\_\_\_\_\_  
Notary Public

**CITY OF MASON, OHIO:**

By \_\_\_\_\_  
Eric Hansen, City Manager  
My commission expires: \_\_\_\_\_

STATE OF OHIO            )  
                                  )SS:  
COUNTY OF WARREN    )

BE IT REMEMBERED that on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the subscriber, a Notary Public in and for said County and State, personally came Eric Hansen, the City Manager of the City of Mason, Ohio, who acknowledged that he did sign said instrument as such officer on behalf of said City and by authority of the City Council; that said instrument was signed as his free act and deed individually, and the free act and deed of said municipal corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name affixed my notarial seal on the day and year first above written.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Law Director

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