

DATE: JANUARY 20, 2015

CLERK: DIANE ROLLAND

MASSILLON CITY COUNCIL  
CITY OF MASSILLON, OHIO  
TONY M. TOWNSEND, PRESIDENT

COUNCIL CHAMBERS

LEGISLATIVE DEPARTMENT

ORDINANCE NO. 5 – 2015

BY: PARKS AND RECREATION COMMITTEE

TITLE: AN ORDINANCE authorizing the Mayor of the City of Massillon, Ohio to enter into a Railway Easement Agreement on behalf of the City of Massillon, as Grantor, with the Stark County Park District, an Ohio Political Subdivision, in Canton, Ohio, as Grantee, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The Council of the City of Massillon, Ohio, hereby finds that it is necessary for the Mayor of the City of Massillon, Ohio, to enter into a Railway Easement Agreement on behalf of the City of Massillon, as Grantor, with the Stark County Park District, an Ohio Political Subdivision, in Canton, Ohio, as Grantee.

Section 2:

This Railway Easement Agreement is for an area referred to as the Wheeling and Lake Erie Railroad area north of Warmington Road. The Railway Easement Agreement covers numerous acres, parcels and lots across Massillon where the City of Massillon is owner and identified and detailed in the Railway Easement Agreement and attached exhibits.

Section 3:

This Railway Easement Agreement is for an area referred to as the Sippo Valley area. The Railway Easement Agreement covers numerous acres, parcels and lots across Massillon where the city of Massillon is owner and identified and detailed in the Railway Easement Agreement and attached exhibits.

Section 4:

This Railway Easement Agreement is for an area referred to as the Wheeling and Lake Erie Railroad area south of Warmington Road to Wooster Road. The Railway Easement Agreement covers numerous acres, parcels and lots across Massillon where the City of Massillon is owner and identified and detailed in the Railway Easement Agreement and attached exhibits.

Section 5:

The Grantor and Grantee declares their intent to establish a permanent easement on the location and maintenance of an existing hike and bike path and across the Grantor's property. The Easement Agreement is in consideration of one dollar (\$1.00).

Section 6:

The Clerk of Council is authorized to correct any typographical errors discovered herein during or after the pendency or passage of this ordinance. The Clerk of Council is further authorized, in conjunction with the Law Department and the Council President to correct any ministerial or de minimis errors that do not substantially alter the intended results or numerical total sums of this ordinance, during or after the pendency or passage of this ordinance. Corrected copies are to be sent to all official recipients.

Section 7:

This Ordinance is hereby declared to be an emergency measure, the reason for the emergency being that said amendment is necessary for the preservation of the public health, safety and welfare of the community. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015

ATTEST: \_\_\_\_\_  
DIANE ROLLAND, CLERK OF COUNCIL

\_\_\_\_\_  
TONY TOWNSEND, PRESIDENT

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
KATHY CATAZARO-PERRY, MAYOR

REQUEST FOR LEGISLATION TO:

PARKS AND RECREATION COMMITTEE

REQUEST LEGISLATION FOR:

1/12/2015

DEPARTMENT REQUESTING LEGISLATION:

Parks and Recreation Department

MAYOR'S APPROVAL:



\_\_\_\_\_  
Mayor

Date:

1-7-15


AVAILABILITY OF FINANCES:

\_\_\_\_\_  
Auditor

Date:

SUBJECT OF REQUESTED LEGISLATION:

City of Massillon is requesting legislation to authorize Mayor to enter into a Trailway Easement Agreement on behalf of the City of Massillon, as Grantor, with the Stark County Park District, an Ohio Political Subdivision, in Canton, Ohio as Grantee. This Trailway Easement Agreement is for an area referred to as the Wheeling and Lake Erie Railroad area north of Warmington Road. The Trailway Easement Agreement covers numerous acres, parcels and lots across Massillon where the City of Massillon is owner and identified and detailed in the Trailway Easement Agreement and exhibits. The Grantor and Grantee declares their intent to establish a permanent easement on the location and maintenance of an existing hike and bike path and across the Grantor's Property. The Easement Agreement is in consideration of One Dollar.



Date Given to Auditor: 1-7-15

Date Given to Council Clerk: \_\_\_\_\_

 1-12-15

 1-12-15

 #5

Warning Labels

Eric MacBroom

# North of

Warminster Road

- Easement

[Space Above This Line for Recording Data]

## TRAILWAY EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT, ("Agreement"), is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between CITY OF MASSILLON, an Ohio Municipal Corporation, (the "Grantor"), and STARK COUNTY PARK DISTRICT, an Ohio Political Subdivision, (the "Grantee").

### RECITALS

WHEREAS, the Grantor is the owner of a certain 4.58 acres of land known as and being Outlot 877 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 68, Page 110 of the Stark County Records, being Stark County Auditor's Parcel No. 580014, and claims title through instrument recorded at Stark County Official Records Imaging No. 199906300050784; and

WHEREAS, the Grantor is the owner of a certain \_\_\_\_\_ acres of land known as and being a part of Outlot 680 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 59, Page 47 of the Stark County Records, being Stark County Auditor's Parcel No. \_\_\_\_\_, and claims title through instrument recorded at Stark County Official Records Imaging No. 199906300050784; and

WHEREAS, the Grantor is the owner of a certain 22.45 acres of land known as and being part of Outlot 681 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 59, Page 47 of the Stark County Records, being Stark County Auditor's Parcel No. 580019, and claims title through instrument recorded at Stark County Official Records Imaging No. 199906300050784; and

WHEREAS, the Grantor is the owner of a certain 27.04 acres of land known as and being Outlot 537 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book \_\_\_\_\_, Page \_\_\_\_\_ of the Stark County Records, being Stark County Auditor's Parcel No. 680673, and claims title through instrument recorded at Stark County Official Records Imaging No. \_\_\_\_\_; and

WHEREAS, the Grantor is the owner of a certain 20.50 acres of land known as and being Outlot 681 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book \_\_\_\_\_, Page \_\_\_\_\_ of the Stark County Records, being Stark County Auditor's Parcel No. 681148, and claims title through instrument recorded at Stark County Official Records Imaging No. 199906300050784; and

WHEREAS, the Grantor is the owner of a certain 7.81 acres of land known as and being parts of Outlots 134, 296, and 297 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book \_\_\_\_\_, Page \_\_\_\_\_ of the Stark County Records, being Stark County Auditor's Parcel No. 681020, and claims title through instrument recorded at Stark County Official Records Imaging No. 199906300050784; and

WHEREAS, the Grantor is the owner of a certain parcel of real estate known as and being Massillon City Lot Nos. 13479, Stark County, Ohio, as set forth in Plat Book \_\_\_\_\_, Page \_\_\_\_\_ of the Stark County Records, being Stark County Auditor's Parcel No. 681021, and claims title through instrument recorded at Stark County Official Records Imaging No. 199906300050784; and

WHEREAS, the Grantor is the owner of a certain 1.786 acre parcel of real estate known as and being within Massillon City Lot Nos. 1685, 1789, 1800, 12400 and 12404 Stark County, Ohio, as set forth in Plat Book \_\_\_\_\_, Page \_\_\_\_\_ of the Stark County Records, and a 0.254 acre parcel situated within the Southeast Quarter of Section 7, Township of Perry, Stark County, being Stark County Auditor's Parcel No. 681019, and claims title through instrument recorded at Stark County Official Records Imaging No. 199906300050784; and

WHEREAS, the Grantor and Grantee have declared their intent to establish a permanent easement for the location and maintenance of a trail, over and across the Grantor's Property in the location set forth in "Exhibit A" attached hereto, (the "Easement Area") known formerly as a portion of the Wheeling & Lake Erie Railroad,

NOW THEREFORE, in consideration of the forgoing, and for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## AGREEMENT

1. Grant of Easement. Grantor hereby gives, grants, conveys, extends and confers unto the Grantee, its successors and assigns, the right, privilege and easement, for a permanent twenty-five foot (25') easement for the location and maintenance of a twelve foot (12') wide walking and biking trail over and across the Grantor's Property (being the former Wheeling & Lake Erie Railroad property) in the location of the Easement Area (as set forth in Exhibit "A" attached hereto).

2. Use Restrictions and Performance Covenants. Grantor hereby restricts the use of the Easement Area to be used only as open space; provided, however, that Grantee, or its respective nominee(s), shall maintain said trail with related landscaping and additional improvements appropriate thereto, including by way of example; benches, pedestrian roadway crossings & signals, and signage, all of which shall be maintained by Grantee in good condition. The Easement Area shall be used exclusively for the purpose of the operation, repair, maintenance, re-building, replacing, and relocating, and appurtenances thereto, all of which shall be the Grantee's responsibility.

3. Adjacent Property. The rights of the Grantee and its agents, employees, invitees, successors and/or assigns are limited to the Easement Area. Grantee shall post signs (i.e. "No Trespassing") within the Easement Area to provide notice that the property adjacent to the Easement Area is private property and to limit use of the walking/biking trails and related park facilities to within the boundaries of the Easement Area.

4. Maintenance/Repair. Grantee shall be responsible for the overall maintenance of Easement Area and shall generally maintain the area for safe usage. If Grantee enters upon Grantor's Property to maintain and/or repair the Easement Area, Grantee shall promptly restore any area affected by such maintenance or repair work at its own expense to its condition immediately prior to such work to the extent compatible with the exercise by Grantee of its easement rights.

5. Indemnification by Grantee. Grantee shall indemnify, save, hold harmless, and defend the Grantor, its agents and employees, from and against any actual or alleged loss, damage, liability, or expense, including reasonable legal fees, because of any injury to person or property, including property owned by Grantor and Grantor's successors and assigns, caused by any act or omission of Grantee, its agents, lessees, employees, invitees, successors, assigns, contractors, or any other person in connection with Grantee's maintenance, repair and/or use of the Easement Area.

6. Agreement Runs with the Land. The provisions of this Agreement shall run with the land and shall inure to the benefit of and be binding upon the Grantee, the Grantor and their respective successors and assigns.

7. Matters of Record. The easement rights granted herein are subject to all existing matters of record.

8. Counterparts. The Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

9. Prevailing Party Legal Fees. In the event that any party hereto institutes legal action to enforce the provisions of this Agreement, the prevailing party therein shall be entitled to be awarded by the court reasonable attorney's fees (including the reasonable cost of in-house and/or staff counsel) incurred in such action.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

CITY OF MASSILLON,  
an Ohio Municipal Corporation – Grantor

By: \_\_\_\_\_  
Kathy Catazaro-Perry, Mayor

STARK COUNTY PARK DISTRICT,  
an Ohio Political Subdivision - Grantee

By: \_\_\_\_\_  
Robert A. Fonte, Director

STATE OF OHIO :  
 :SS:  
COUNTY OF STARK :

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me a Notary Public in and for said County, personally came the above named CITY OF MASSILLON, an Ohio Municipal Corporation, by Kathy Catazaro-Perry, its Mayor, who acknowledged that she did sign the foregoing instrument and the same is the free act and deed of the said CITY OF MASSILLON, and of her personally.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Massillon, Ohio, on this day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

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

STATE OF OHIO :  
 :SS:  
COUNTY OF STARK :

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me a Notary Public in and for said County, personally came the above named STARK COUNTY PARK DISTRICT, an Ohio Political Subdivision, by Robert A. Fonte, its Director, who acknowledged that he did sign the foregoing instrument and the same is the free act and deed of the said STARK COUNTY PARK DISTRICT, and of him personally.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Canton, Ohio, on this day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

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



Approved as to legal form and sufficiency

---

WILLIAM F. MORRIS  
Counsel for the Stark County Park District

This instrument prepared by:

WILLIAM F. MORRIS, ESQ.  
520 East Main Street – Suite 200  
Alliance, Ohio 44601  
(330) 823-3575

EXHIBIT A-1

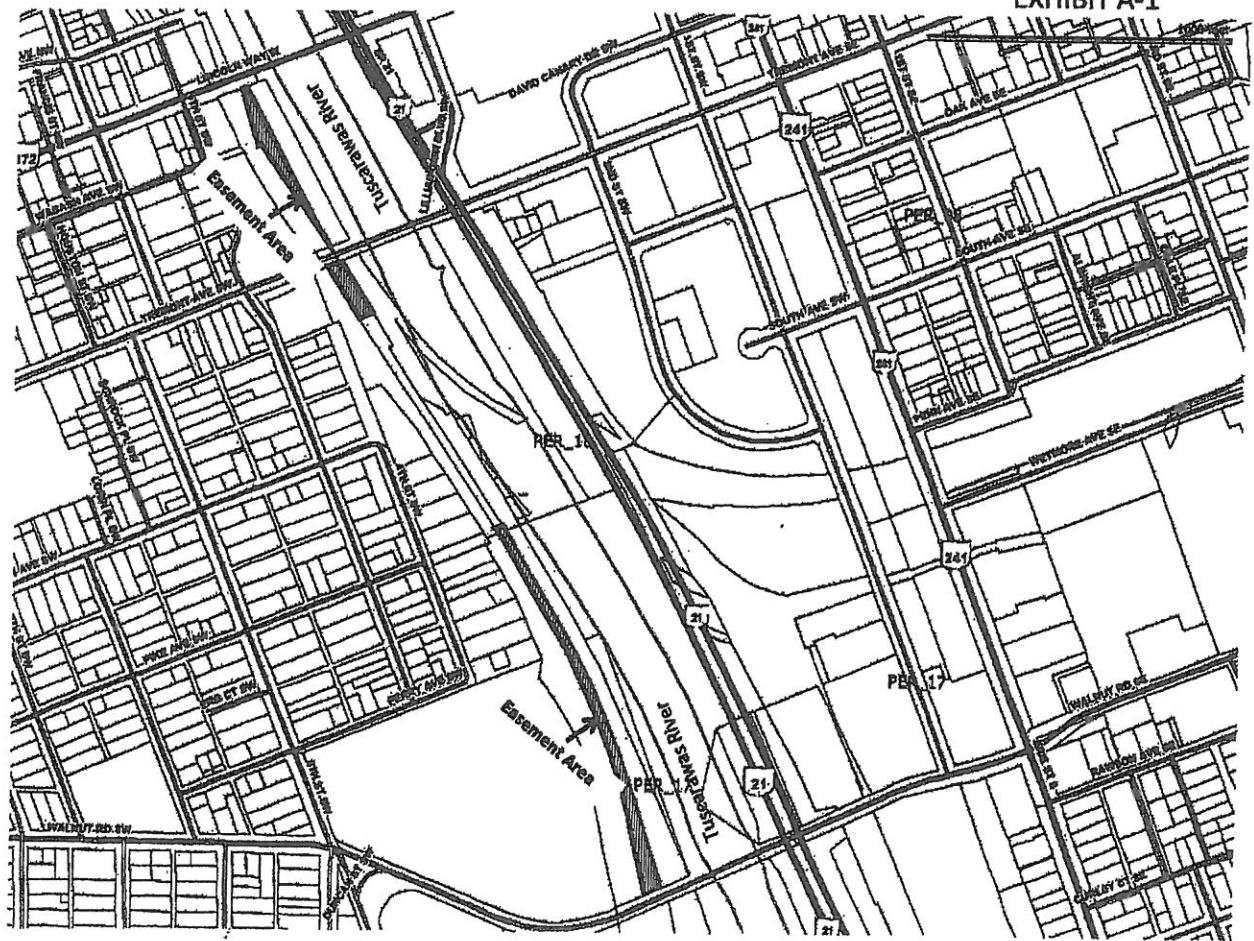
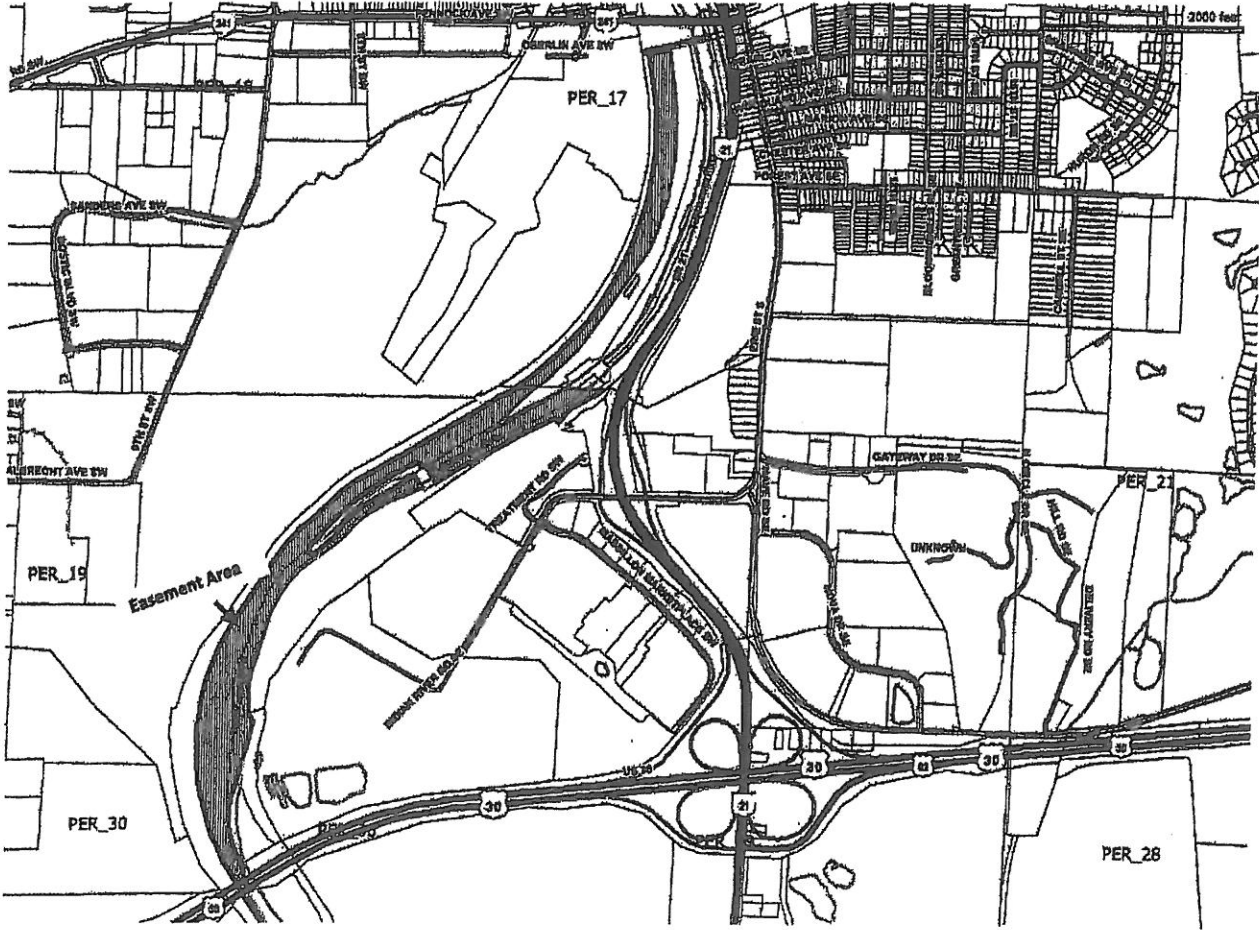


EXHIBIT A-2



EXHIBIT A-3



REQUEST FOR LEGISLATION TO:

PARKS AND RECREATION COMMITTEE

REQUEST LEGISLATION FOR:

1/12/2015

DEPARTMENT REQUESTING LEGISLATION:

Parks and Recreation Department

MAYOR'S APPROVAL:



Mayor

Date:

1-7-15

AVAILABILITY OF FINANCES:

Auditor

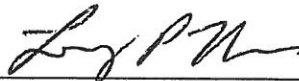
Date:

RECEIVED JAN - 7 2015

SUBJECT OF REQUESTED LEGISLATION:

*Doc*

City of Massillon is requesting legislation to authorize Mayor to enter into a Trailway Easement Agreement on behalf of the City of Massillon, as Grantor, with the Stark County Park District, an Ohio Political Subdivision, in Canton, Ohio as Grantee. This Trailway Easement Agreement is for an area referred to as the Sippo Valley area. The Trailway Easement Agreement covers numerous acres, parcels and lots across Massillon where the City of Massillon is owner and identified and detailed in the Trailway Easement Agreement and exhibits. The Grantor and Grantee declares their intent to establish a permanent easement on the location and maintenance of an existing hike and bike path known as the Sippo Valley Trail over and across the Grantor's Property. The Easement Agreement is in consideration of One Dollar.



Date Given to Auditor:

1-7-15

Date Given to Council Clerk:

*M. DeWitt* 1-12-15

*E. L. ...* 1-12-15

Sippo Valley

Trail

- Easement

[Space Above This Line for Recording Data]

## TRAILWAY EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT, ("Agreement"), is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between CITY OF MASSILLON, an Ohio Political Subdivision, (the "Grantor"), and STARK COUNTY PARK DISTRICT, an Ohio Political Subdivision, (the "Grantee").

### RECITALS

WHEREAS, the Grantor is the owner of a certain 3.81 acres of land known as and being Outlot 27, and part of Lot Nos. 9263 and 9272, and Lot Nos. 9266, 9287, 9810 and 14326 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book \_\_\_\_\_, Page \_\_\_\_\_ of the Stark County Records, being Stark County Auditor's Parcel No. 680931, and claims title through instrument recorded at Stark County Official Records Imaging No. 9511160055122; and

WHEREAS, the Grantor is the owner of a certain 6.19 acres of land known as and being Outlots 803 and 804 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 66, Page 1-4 of the Stark County Records, being Stark County Auditor's Parcel No. 580021, and claims title through instrument recorded at Stark County Official Records Imaging No. 9511160055122; and

WHEREAS, the Grantor is the owner of a certain 4.22 acres of land known as and being Outlot 802 and Lot Nos. 15863 and 15864 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 66, Pages 1-4 of the Stark County Records, being Stark County Auditor's Parcel No. 680965, and claims title through instrument recorded at Stark County Official Records Imaging No. 9511160055122; and

WHEREAS, the Grantor is the owner of a certain 8.40 acres of land known as and being Outlots 800 and 801 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 66, Pages 1-4 of the Stark County Records, being Stark County Auditor's Parcel No. 580003, and claims title through instrument recorded at Stark County Official Records Imaging No. 9511160055122; and

WHEREAS, the Grantor is the owner of a certain 8.43 acres of land known as and being Outlots 798 and 799 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 66, Pages 1-4 of the Stark County Records, being Stark County Auditor's Parcel No. 580005, and claims title through instrument recorded at Stark County Official Records Imaging No. 9511160055122; and

WHEREAS, the Grantor is the owner of a certain 8.13 acres of land known as and being Outlots 904 and 905 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 69, Pages 88-90 of the Stark County Records, being Stark County Auditor's Parcel No. 580011, and claims title through instrument recorded at Stark County Official Records Imaging No. 9511160055122; and

WHEREAS, the Grantor is the owner of a certain 17.69 acres of land known as and being Outlots 906, 907 and 909 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 69, Pages 88-90 of the Stark County Records, being Stark County Auditor's Parcel No. 580012, and claims title through instrument recorded at Stark County Official Records Imaging No. 9511160055122; and

WHEREAS, the Grantor is the owner of a certain 12.46 acres of land known as and being Outlots 908, 910, 911 and 912 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 69, Pages 88-90 of the Stark County Records, being Stark County Auditor's Parcel No. 580013, and claims title through instrument recorded at Stark County Official Records Imaging No. 9511160055122; and

WHEREAS, Fibercorr Mills, LLC is the owner of a certain 28.83 acres of land known as and being Outlot 697 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 81, Page 125 of the Stark County Records, being Stark County Auditor's Parcel No. 617463, and claims title through instrument recorded at Stark County Official Records Imaging No. 200002230009956; and

WHEREAS, the City of Massillon has been granted an easement over said Outlot 697 for "pedestrian and non-motorized vehicle trail and walking path" by predecessor in title, Cleaners Hanger Co., by instrument recorded at Stark County Official Records Imaging No. 199511160055125; and

WHEREAS, the Grantor and Grantee have declared their intent to establish a permanent easement for the location and maintenance of an existing hike and bike path, known as the Sippo Valley Trail, over and across the Grantor's Property in the location set forth in "Exhibit A" attached.

NOW THEREFORE, in consideration of the forgoing, and for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### AGREEMENT

1. Grant of Easement. Grantor hereby gives, grants, conveys, extends and confers unto the Grantee, its successors and assigns, the right, privilege and easement, for a permanent easement for the location and maintenance of the Sippo Valley Trail over and across the Grantor's Property, and does hereby assign its interest in the easement over City of Massillon Outlot 697 recorded at Stark County Official Records Imaging No. 199511160055125), all in the location of the Easement Area (as set forth in Exhibit "A" attached hereto).

2. Use Restrictions and Performance Covenants. Grantor hereby restricts the use of the Easement Area to be used only as open space; provided, however, that Grantee, or its respective nominee(s), shall maintain the Sippo Valley Trail with related landscaping and additional improvements appropriate thereto, including by way of example; benches, pedestrian roadway crossings & signals, and signage, all of which shall be maintained by Grantee in good condition. The Easement Area shall be used exclusively for the purpose of the operation, repair, maintenance, re-building, replacing, and relocating, and appurtenances thereto, all of which shall be the Grantee's responsibility.

3. Adjacent Property. The rights of the Grantee and its agents, employees, invitees, successors and/or assigns are limited to the Easement Area. Grantee shall post signs (i.e. "No Trespassing") within the Easement Area to provide notice that the property adjacent to the Easement Area is private property and to limit use of the walking/biking trails and related park facilities to within the boundaries of the Easement Area.

4. Maintenance/Repair. Grantee shall be responsible for the overall maintenance of Easement Area and shall generally maintain the area for safe usage. If Grantee enters upon Grantor's Property to maintain and/or repair the Easement Area, Grantee shall promptly restore any area affected by such maintenance or repair work at



its own expense to its condition immediately prior to such work to the extent compatible with the exercise by Grantee of its easement rights.

5. Indemnification by Grantee. Grantee shall indemnify, save, hold harmless, and defend the Grantor, its agents and employees, from and against any actual or alleged loss, damage, liability, or expense, including reasonable legal fees, because of any injury to person or property, including property owned by Grantor and Grantor's successors and assigns, caused by any act or omission of Grantee, its agents, lessees, employees, invitees, successors, assigns, contractors, or any other person in connection with Grantee's maintenance, repair and/or use of the Easement Area.

6. Agreement Runs with the Land. The provisions of this Agreement shall run with the land and shall inure to the benefit of and be binding upon the Grantee, the Grantor and their respective successors and assigns.

7. Matters of Record. The easement rights granted herein are subject to all existing matters of record.

8. Counterparts. The Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

9. Prevailing Party Legal Fees. In the event that any party hereto institutes legal action to enforce the provisions of this Agreement, the prevailing party therein shall be entitled to be awarded by the court reasonable attorney's fees (including the reasonable cost of in-house and/or staff counsel) incurred in such action.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

CITY OF MASSILLON,  
an Ohio Political Subdivision – Grantor

By: \_\_\_\_\_  
Kathy Catazaro-Perry, Mayor

STARK COUNTY PARK DISTRICT,  
an Ohio Political Subdivision - Grantee

By: \_\_\_\_\_  
Robert A. Fonte, Director

STATE OF OHIO :  
:SS:  
COUNTY OF STARK :

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me a Notary Public in and for said County, personally came the above named CITY OF MASSILLON, an Ohio Political Subdivision, by Kathy Catazaro-Perry, its Mayor, who acknowledged that she did sign the foregoing instrument and the same is the free act and deed of the said CITY OF MASSILLON, and of her personally.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Massillon, Ohio on this day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

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

STATE OF OHIO :  
:SS:  
COUNTY OF STARK :

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me a Notary Public in and for said County, personally came the above named STARK COUNTY PARK DISTRICT, an Ohio Political Subdivision, by Robert A. Fonte, its Director, who acknowledged that he did sign the foregoing instrument and the same is the

free act and deed of the said STARK COUNTY PARK DISTRICT, and of him personally.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Canton, Ohio on this day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

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

Approved as to legal form and sufficiency

\_\_\_\_\_  
WILLIAM F. MORRIS  
Counsel for the Stark County Park District

This instrument prepared by:

WILLIAM F. MORRIS, ESQ.  
520 East Main Street – Suite 200  
Alliance, Ohio 44601  
(330) 823-3575

EXHIBIT A-1



EXHIBIT A-2

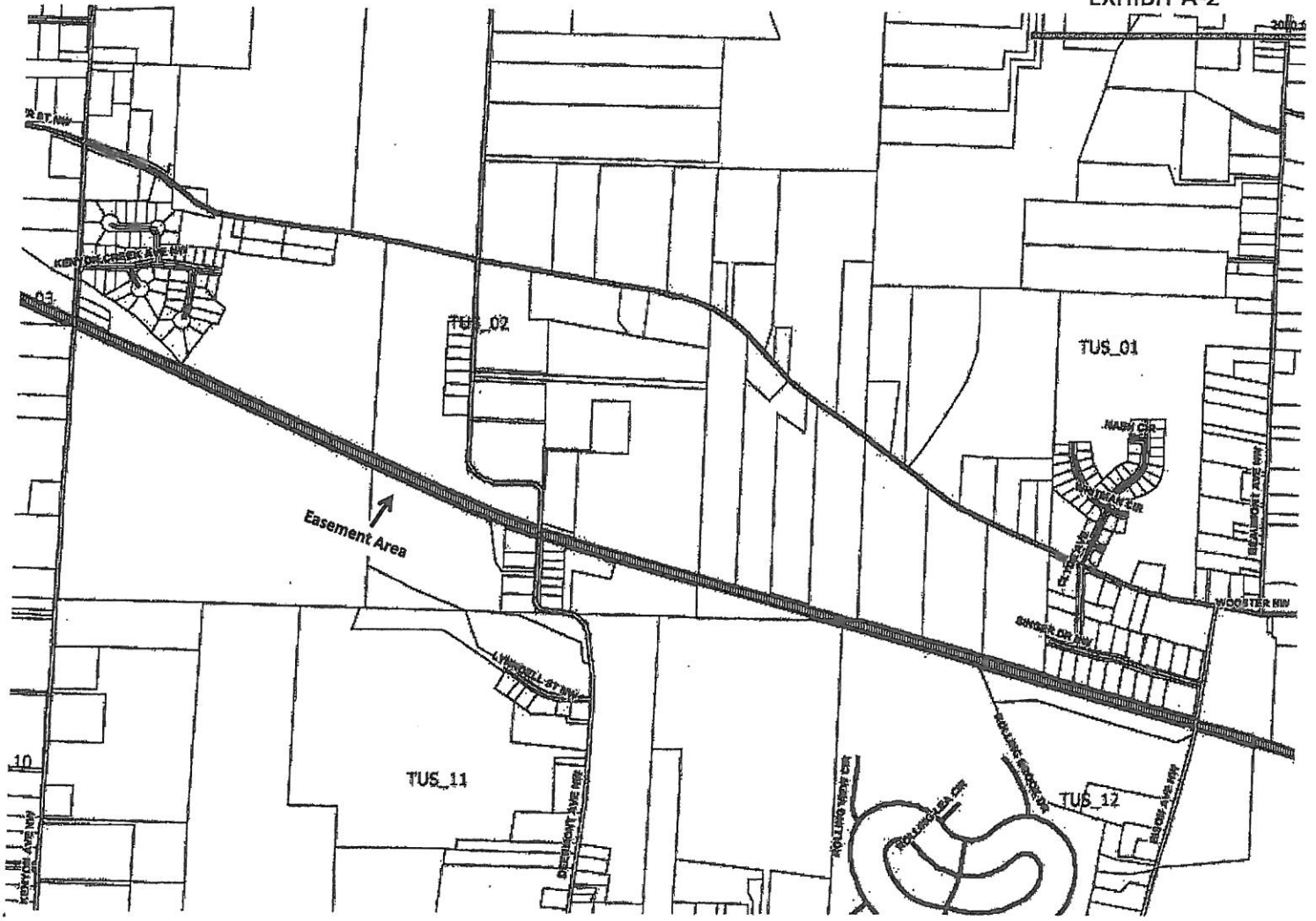


EXHIBIT A-3



EXHIBIT A-4

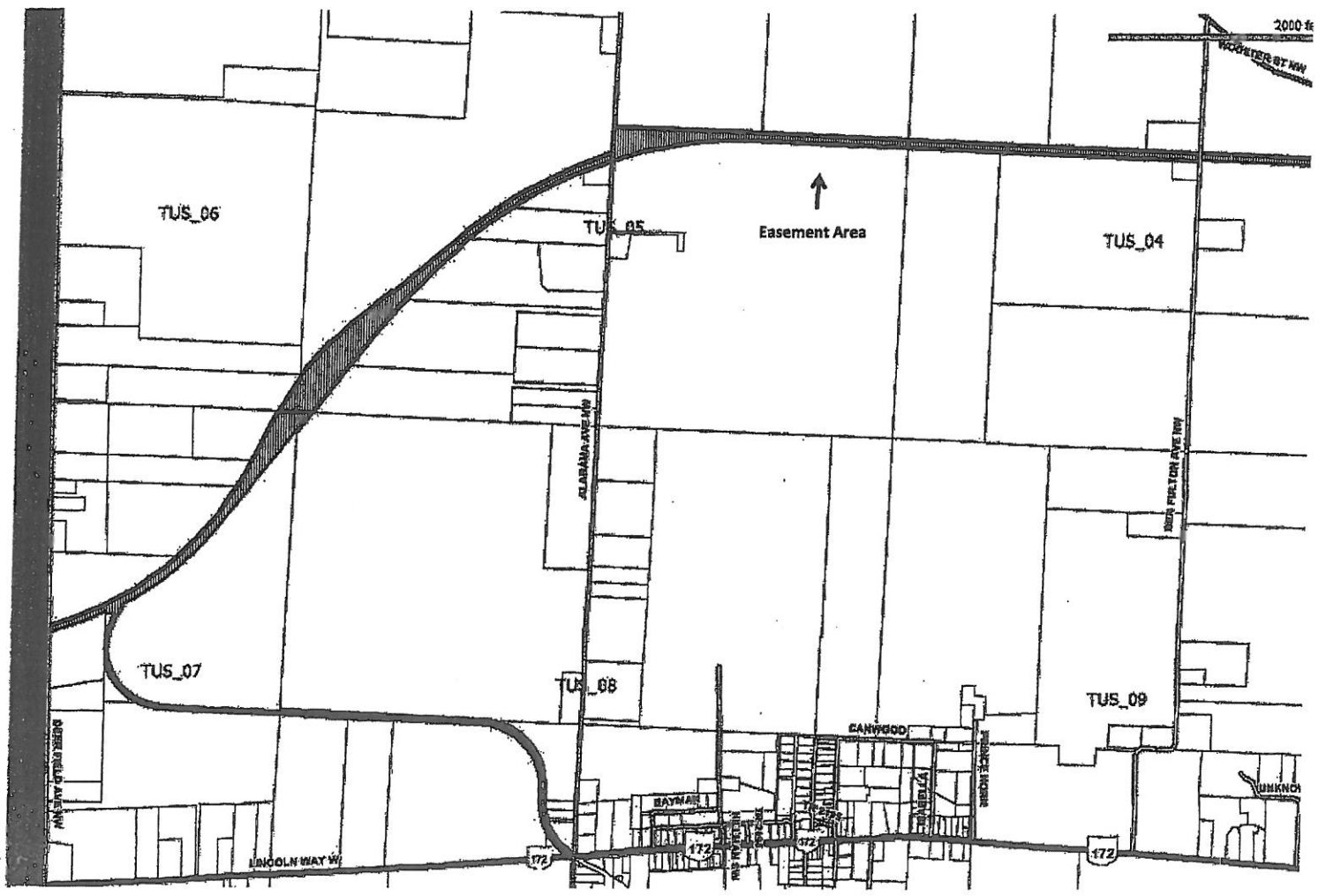
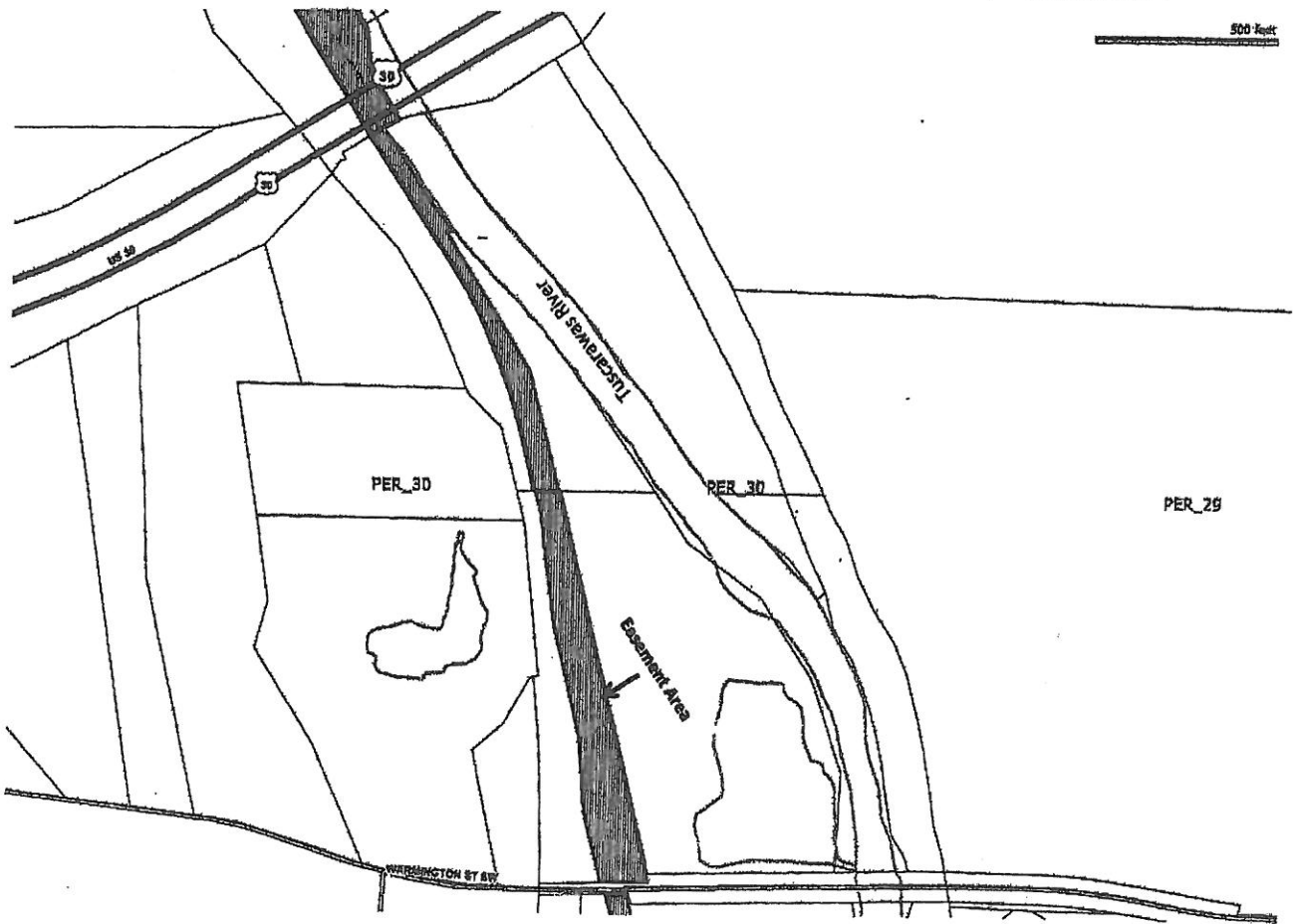


EXHIBIT A-4

500 Feet





REQUEST FOR LEGISLATION TO:

PARKS AND RECREATION COMMITTEE

REQUEST LEGISLATION FOR:

1/12/2015

DEPARTMENT REQUESTING LEGISLATION:

Parks and Recreation Department

Mayor

MAYOR'S APPROVAL:

Date:

1-7-15

AVAILABILITY OF FINANCES:

Auditor

Date:

SUBJECT OF REQUESTED LEGISLATION:

City of Massillon is requesting legislation to authorize Mayor to enter into a Trailway Easement Agreement on behalf of the City of Massillon, as Grantor, with the Stark County Park District, an Ohio Political Subdivision, in Canton, Ohio as Grantee. This Trailway Easement Agreement is for an area referred to as the Wheeling and Lake Erie Railroad area south of Warmington Road to Wooster Road. The Trailway Easement Agreement covers numerous acres, parcels and lots across Massillon where the City of Massillon is owner and identified and detailed in the Trailway Easement Agreement and exhibits. The Grantor and Grantee declares their intent to establish a permanent easement on the location and maintenance of an existing hike and bike path and across the Grantor's Property. The Easement Agreement is in consideration of One Dollar.

Date Given to Auditor:

1-7-15

Date Given to Council Clerk:

1-12-15

1-12-15

Wheeling & Lake Erie  
Railroad  
Wilmington Road  
- South to  
Wooden Street  
Easement

[Space Above This Line for Recording Data]

**TRAILWAY EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT, ("Agreement"), is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between CITY OF MASSILLON, an Ohio Municipal Corporation, (the "Grantor"), and STARK COUNTY PARK DISTRICT, an Ohio Political Subdivision, (the "Grantee").

**RECITALS**

WHEREAS, the Grantor is the owner of a certain 4.58 acres of land known as and being Outlot 877 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 68, Page 110 of the Stark County Records, being Stark County Auditor's Parcel No. 580014, and claims title through instrument recorded at Stark County Official Records Imaging No.199906300050784; and

WHEREAS, the Grantor is the owner of a certain 1.26 acres of land known as and being Outlot 844 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 67, Pages 57-59 of the Stark County Records, being Stark County Auditor's Parcel No. 580018, and claims title through instrument recorded at Stark County Official Records Imaging No. 199906300050784; and

WHEREAS, the Grantor is the owner of a certain 8.22 acres of land known as and being Outlots 845 and 846 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 67, Pages 57-59 of the Stark County Records, being Stark County Auditor's Parcel No. 580020, and claims title through instrument recorded at Stark County Official Records Imaging No.199906300050784; and

WHEREAS, the Grantor is the owner of a certain 2.95 acres of land known as and being Outlot 847 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 67, Pages 57-59 of the Stark County Records, being Stark County Auditor's Parcel No. 980001, and claims title through instrument recorded at Stark County Official Records Imaging No. 199906300050784; and

WHEREAS, the Grantor is the owner of a certain 1.562 acre parcel of real estate situated in the Village of Navarre, Stark County, Ohio, being Stark County Auditor's Parcel No. 61280067, and claims title through instrument recorded at Stark County Official Records Imaging No. 199906300050784; and

WHEREAS, the Grantor is the owner of a certain 1.38 acres of land known as and being Outlot 848 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 67, Pages 57-59 of the Stark County Records, being Stark County Auditor's Parcel No. 980002, and claims title through instrument recorded at Stark County Official Records Imaging No. 199906300050784; and

WHEREAS, the Grantor and Grantee have declared their intent to establish a permanent easement for the location and maintenance of a trail, over and across the Grantor's Property in the location set forth in "Exhibit A" attached hereto, (the "Easement Area") known formerly as a portion of the Wheeling & Lake Erie Railroad.

NOW THEREFORE, in consideration of the forgoing, and for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### AGREEMENT

1. Grant of Easement. Grantor hereby gives, grants, conveys, extends and confers unto the Grantee, its successors and assigns, the right, privilege and easement, for a permanent twenty-five foot (25') easement for the location and maintenance of a twelve foot (12') wide walking and biking trail over and across the Grantor's Property (being the former Wheeling & Lake Erie Railroad property) in the location of the Easement Area (as set forth in Exhibit "A" attached hereto).

2. Use Restrictions and Performance Covenants. Grantor hereby restricts the use of the Easement Area to be used only as open space; provided, however, that Grantee, or its respective nominee(s), shall maintain said trail with related landscaping and additional improvements appropriate thereto, including by way of example; benches, pedestrian roadway crossings & signals, and signage, all of which shall be maintained by Grantee in good condition. The Easement Area shall be used exclusively for the purpose

of the operation, repair, maintenance, re-building, replacing, and relocating, and appurtenances thereto, all of which shall be the Grantee's responsibility.

3. Adjacent Property. The rights of the Grantee and its agents, employees, invitees, successors and/or assigns are limited to the Easement Area. Grantee shall post signs (i.e. "No Trespassing") within the Easement Area to provide notice that the property adjacent to the Easement Area is private property and to limit use of the walking/biking trails and related park facilities to within the boundaries of the Easement Area.

4. Maintenance/Repair. Grantee shall be responsible for the overall maintenance of Easement Area and shall generally maintain the area for safe usage. If Grantee enters upon Grantor's Property to maintain and/or repair the Easement Area, Grantee shall promptly restore any area affected by such maintenance or repair work at its own expense to its condition immediately prior to such work to the extent compatible with the exercise by Grantee of its easement rights.

5. Indemnification by Grantee. Grantee shall indemnify, save, hold harmless, and defend the Grantor, its agents and employees, from and against any actual or alleged loss, damage, liability, or expense, including reasonable legal fees, because of any injury to person or property, including property owned by Grantor and Grantor's successors and assigns, caused by any act or omission of Grantee, its agents, lessees, employees, invitees, successors, assigns, contractors, or any other person in connection with Grantee's maintenance, repair and/or use of the Easement Area.

6. Agreement Runs with the Land. The provisions of this Agreement shall run with the land and shall inure to the benefit of and be binding upon the Grantee, the Grantor and their respective successors and assigns.

7. Matters of Record. The easement rights granted herein are subject to all existing matters of record.

8. Counterparts. The Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

9. Prevailing Party Legal Fees. In the event that any party hereto institutes legal action to enforce the provisions of this Agreement, the prevailing party therein shall be entitled to be awarded by the court reasonable attorney's fees (including the reasonable cost of in-house and/or staff counsel) incurred in such action.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

CITY OF MASSILLON,  
an Ohio Municipal Corporation – Grantor

By: \_\_\_\_\_  
Kathy Catazaro-Perry, Mayor

STARK COUNTY PARK DISTRICT,  
an Ohio Political Subdivision - Grantee

By: \_\_\_\_\_  
Robert A. Fonte, Director

STATE OF OHIO :  
:SS:  
COUNTY OF STARK :

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me a Notary Public in and for said County, personally came the above named CITY OF MASSILLON, an Ohio Municipal Corporation, by Kathy Catazaro-Perry, its Mayor, who acknowledged that she did sign the foregoing instrument and the same is the free act and deed of the said CITY OF MASSILLON, and of her personally.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Massillon, Ohio, on this day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

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

STATE OF OHIO :  
 :SS:  
COUNTY OF STARK :

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me a Notary Public in and for said County, personally came the above named STARK COUNTY PARK DISTRICT, an Ohio Political Subdivision, by Robert A. Fonte, its Director, who acknowledged that he did sign the foregoing instrument and the same is the free act and deed of the said STARK COUNTY PARK DISTRICT, and of him personally.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Canton, Ohio, on this day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

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

Approved as to legal form and sufficiency

\_\_\_\_\_  
WILLIAM F. MORRIS  
Counsel for the Stark County Park District

This instrument prepared by:

WILLIAM F. MORRIS, ESQ.  
520 East Main Street – Suite 200  
Alliance, Ohio 44601  
(330) 823-3575

Wilmington Road

# Former Wheeling & Lake Erie Lands

## Legend

Former W&LE Lands

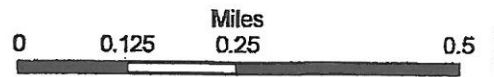
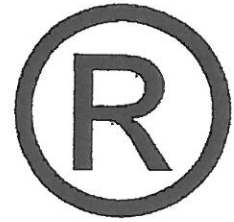


EXHIBIT A



330.477.3552  
[www.StarkParks.com](http://www.StarkParks.com)

KG 12/10/13

Wooster Street