

**VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2018-62**

**A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR AND FISCAL
OFFICER TO EXECUTE AN EASEMENT AGREEMENT FOR PROPERTY OWNED
BY OEDER & SONS GARAGE, INC. ON TURTLECREEK ROAD, AND
DECLARING AN EMERGENCY**

WHEREAS, providing utilities is one of the functions of local municipal government; and,

WHEREAS, in order to provide sanitary sewer service along Turtlecreek Road it is necessary for the sanitary sewer line to be extended from Mason-Morrow-Millgrove Road to 3980 Turtlecreek Road across lands owned by Oeder & Sons Garage, Inc.; and,

WHEREAS, Oeder & Sons Garage, Inc. desire to grant the Village a 25 ft. Sanitary Sewer Easement for just consideration, and the Village has determined that the consideration recited in the attached Easement & Agreement is just compensation which the said property owner is willing to accept; and,

WHEREAS, immediate action is required for the Village to acquire said easement to maintain the construction schedule for the sanitary sewer extension; and,

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of South Lebanon, at least two-thirds of all members elected thereto concurring:

Section 1. That the Council approves and authorizes the Mayor and Fiscal Officer to execute the Easement & Agreement, a copy of which is attached hereto.

Section 2. Approving the in-kind consideration recited in the Easement & Agreement, subject to receipt of the Easement & Agreement property and completely executed.

Section 3. That the Council is acting in its administrative capacity in adopting this Resolution.

Section 4. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

Section 5. That this Resolution is hereby declared to be an emergency measure in accordance with Ohio Rev. Code § 731.30 for the immediate preservation of the public peace, health, safety, and general welfare.

Section 6. That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 18th day of October, 2018.

Attest: Nicole Armstrong
Nicole Armstrong, Fiscal Officer/Clerk

James D. Smith
James D. Smith Mayor

Rules Suspended: <u>10/18</u> /2018 (if applicable)	Effective Date – / /
/2018	
Vote - <u>5</u> Yeas	
___ Nays	
First Reading – / /2018	Effective Date – / /2018
Second Reading – / /2018	
Third Reading – / /2018	
Vote - ___ Yeas	
___ Nays	

Prepared by and approved as to form:

PAUL R. REVELSON
VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

By: [Signature]
Date: 10/18/18

EASEMENT AND AGREEMENT
(Sanitary Sewer Line and Appurtenances)

Oeder & Sons Garage, Inc., an Ohio Corporation, with an address of _____ ("Grantor"), for One Dollar and other good and valuable consideration recited herein paid by the **VILLAGE OF SOUTH LEBANON, an Ohio municipal corporation**, acting by and through its duly elected **Village Council**, an Ohio political subdivision operating under Title 7, et. seq. of the Ohio Revised Code, with an address of **99 High Street, South Lebanon, Ohio 45065** ("Grantee"), the receipt and sufficiency of which are hereby stipulated, does hereby grant to Grantee, its successors and assigns forever, a non-exclusive easement in, on, over, under, across and through the real property particularly described in Exhibit "A" and illustrated in Exhibit "B" (the "Easement Area"), both of which are attached hereto and incorporated by reference herein, for the purposes of constructing, installing, reconstructing, replacing, removing, repairing, maintaining and operating sanitary sewer utility lines, apparatus and appurtenances thereto (the "Improvements"), for the public purpose and necessity of extending a sanitary sewer line.

The said permanent easement shall be subject to the following:

1. Grantee shall be entitled to survey, construct, use, operate, inspect, maintain and keep in repair thereon, replace and remove, the sanitary sewer utility lines, apparatus and appurtenances within the Easement Area, including without limitation the activities customarily associated therewith and the right to remove or abate any obstructions or items that may endanger the safety of or interfere with Grantee's rights herein. The said improvements shall be constructed or reconstructed in accordance with Project construction plans and specifications, a copy of which will be maintained on file in the Office of the South Lebanon Village Administrator and available to Grantor at all times. Grantee shall, at its expense, return the surface of the Easement Area to its former condition as nearly as is reasonably practicable subject to the rights in this Easement.

2. After Grantee's approval and acceptance of the said improvements, Grantee agrees that upon subsequent entry by Grantee for the purpose of construction, installation, reconstruction, replacement, removal, repair, maintenance and operation of the Improvements, it will restore the surface of Grantor's property within the Easement Area to its former condition as nearly as is reasonably practicable. Grantor understands and agrees that restoration of Grantor's property within the Easement Area shall not include repair or replacement of any structures, improvements, fixtures of other tangible items in the Easement Area.

3. The perpetual easement rights granted herein are "non-exclusive". Grantor retains the right to use Grantor's property for all purposes which do not in any manner impair Grantee's use or interfere with the construction, operation, maintenance, repair,

removal, replacement or reconstruction of the Improvements or access thereto. Grantor shall not cause or allow any permanent or temporary building, structure, facility, or other improvement to be constructed in or upon the Easement Area, except utility service lines, paved parking, driveways, landscaping and sidewalks. If Grantor makes permanent or temporary improvements in or upon the Easement Area, other than those stated above, then Grantor shall assume full responsibility for any damage or destruction of such improvements by Grantee, and Grantee, its employees, agents, representatives and contractors, shall not be liable for any damage or destruction of such improvements during the good faith exercise of the rights granted herein.

4. Grantor hereby covenants with Grantee to be the true and lawful owner of the above-described real property and lawfully seized of the same in fee simple and having good right and full power to grant this Easement and will not convey or transfer fee simple ownership of the described real property prior to this instrument being recorded, and any subsequent transfers shall be subject to Grantee's rights established herein. Grantor further covenants and warrants to Grantee that this Easement is not subordinate to any liens or encumbrances.

5. Any reference in this instrument to Grantee shall also include its agents, contractors, employees, officials and insurers. All terms and conditions contained herein shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. This Agreement contains the entire agreement between the parties and supersedes all prior written or oral agreements between the parties. No representations, promises, understandings, agreements, or otherwise, not herein contained shall be of any force or effect. No modifications or amendment of any provisions of this Agreement shall be effective unless made by a written instrument executed by all parties. This Agreement shall be construed in accordance with, and the legal relations between the parties shall be governed by, the laws of the State of Ohio as applicable to contracts executed and partially or fully performed in the State of Ohio. The parties further stipulate that the venue for any litigation arising out of this Agreement shall exclusively be the Warren County Court of Common Pleas, and do further knowingly waive any right to initiate or remove any such litigation to any other county, state or federal court.

[signature pages follow]

GRANTOR

Oeder & Sons Garage, Inc., an Ohio Corporation, the Grantor herein, has caused its name to be affixed hereto by DAVID OEDER, whose title is Vice President, on the date stated below, pursuant to the authority granted to him to act on the limited liability company's behalf by resolution or consent action.

SIGNATURE: David Oeder
NAME: David Oeder
TITLE: VP
DATE: 10/31/18

STATE OF Ohio, COUNTY OF Warren, ss.

BE IT REMEMBERED, that on the 1 day of November, 2018, before me, the subscriber, a Notary Public, in and for said County and State, personally appeared an individual known or proven to me to be David Oeder, whose title is Vice President of Oeder & Sons Inc, whose name is subscribed hereto, and who acknowledged the signing and execution of said instrument is his free and voluntary act and deed.

Notary Public: R H KH
My Commission Expires: July 31, 2021



RICHARD H. KILBURN
Notary Public, State of Ohio
My Commission Expires July 31, 2021

GRANTEE:

IN EXECUTION WHEREOF, the Village of South Lebanon, Ohio, acting through its Village Council, has caused this instrument to be executed by James D. Smith, its Mayor, and Nicole Armstrong, its Fiscal Officer, on the date stated below, pursuant to Resolution Number 18- 102 dated October 18th.

VILLAGE OF SOUTH LEBANON,
OHIO

SIGNATURE: James D. Smith

NAME: James D. Smith

TITLE: Mayor

DATE: 10/18/18

SIGNATURE: Nicole Armstrong

NAME: Nicole Armstrong

TITLE: Fiscal Officer

DATE: 10/18/18

STATE OF OHIO, COUNTY OF WARREN, ss.

BE IT REMEMBERED, on this 18 day of October, 2018, before me, the subscriber, a Notary Public in and for said state, personally came an individual or individuals known or proven to be **James D. Smith, Mayor** and **Nicole Armstrong, Fiscal Officer**, of the Village of South Lebanon, Ohio, and pursuant to the authority granted to them to act on its behalf pursuant to Resolution Number 18- , dated , and while acting in their official capacity, did acknowledge the signing thereof to be their voluntary act and deed.

Notary Public: Brianne Yachaud-Koutaf
My Commission Expires: 9/15/2021

[SEAL]

THIS PREPARED AND
APPROVED AS TO FORM BY:

VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

SIGNATURE: [Signature]

NAME: Paul R. Revelson

TITLE: Village Solicitor

DATE: 10/18/18

EXHIBIT A

**LEGAL DESCRIPTION
EASEMENT**

BEING A 25-FOOT WIDE SANITARY SEWER EASEMENT OVER, THROUGH, AND ACROSS A TRACT OF LAND OWNED BY OEDERS AND SONS GARAGE, INC AS DESCRIBED IN OFFICIAL RECORD 434, PAGE 613 OF THE WARREN COUNTY DEED RECORDS, SITUATE IN SECTION 1, TOWN 4 EAST, RANGE 3 NORTH, VILLAGE OF SOUTH LEBANON, WARREN COUNTY, OHIO AND BEING MORE FULLY DESCRIBED AS FOLLOWS:

Commencing for reference at a railroad spike found at the intersection of the centerline of Turtlecreek Road and the centerline of Mason-Morrow-Millgrove Road;

thence, North 22°-42'-55" West, 41.37 feet, along the centerline of Turtlecreek Road to a point on the Grantor's southerly line;

thence, North 71°-06'-20" East, 33.06 feet, along the Grantor's south line to a point on the east right-of-way line of Turtlecreek Road and the north right-of-way line of Mason-Morrow-Millgrove Road and being the principal place of beginning of the easement herein conveyed;

thence, North 22°-42'-55" West, 558.49 feet, along the east right-of-way line of Turtlecreek Road to a point;

thence, North 33°-20'-11" West, 170.55 feet, along the east right-of-way line of Turtlecreek Road to a point on the south line of a tract of land owned by the Village of South Lebanon as described in Deed 2018-001349;

thence, North 56°-39'-10" East, 25.00 feet, along the south line of said Village of South Lebanon tract to a point;

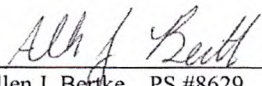
thence, South 33°-20'-11" East, 172.88 feet, to a point;

thence, South 22°-42'-55" East, 562.48 feet, to a point on the north right-of-way line of Mason-Morrow-Millgrove Road;

thence, South 71°-06'-20" West, 25.06 feet, along the on the north right-of-way line of Mason-Morrow-Millgrove Road to the principal place of beginning.

Containing 0.420 acres more or less with all being subject to any legal highway and easements of record. The bearings are based on NAD 83 CORS 2011 Adjustment, Ohio South Zone, ODOT VRS CORS Network.

The above description was prepared by Allen J. Bertke, Ohio Professional Surveyor Number 8629, and dated July 17, 2018. For a pictorial representation, see attached Exhibit "B".


Allen J. Bertke, PS #8629

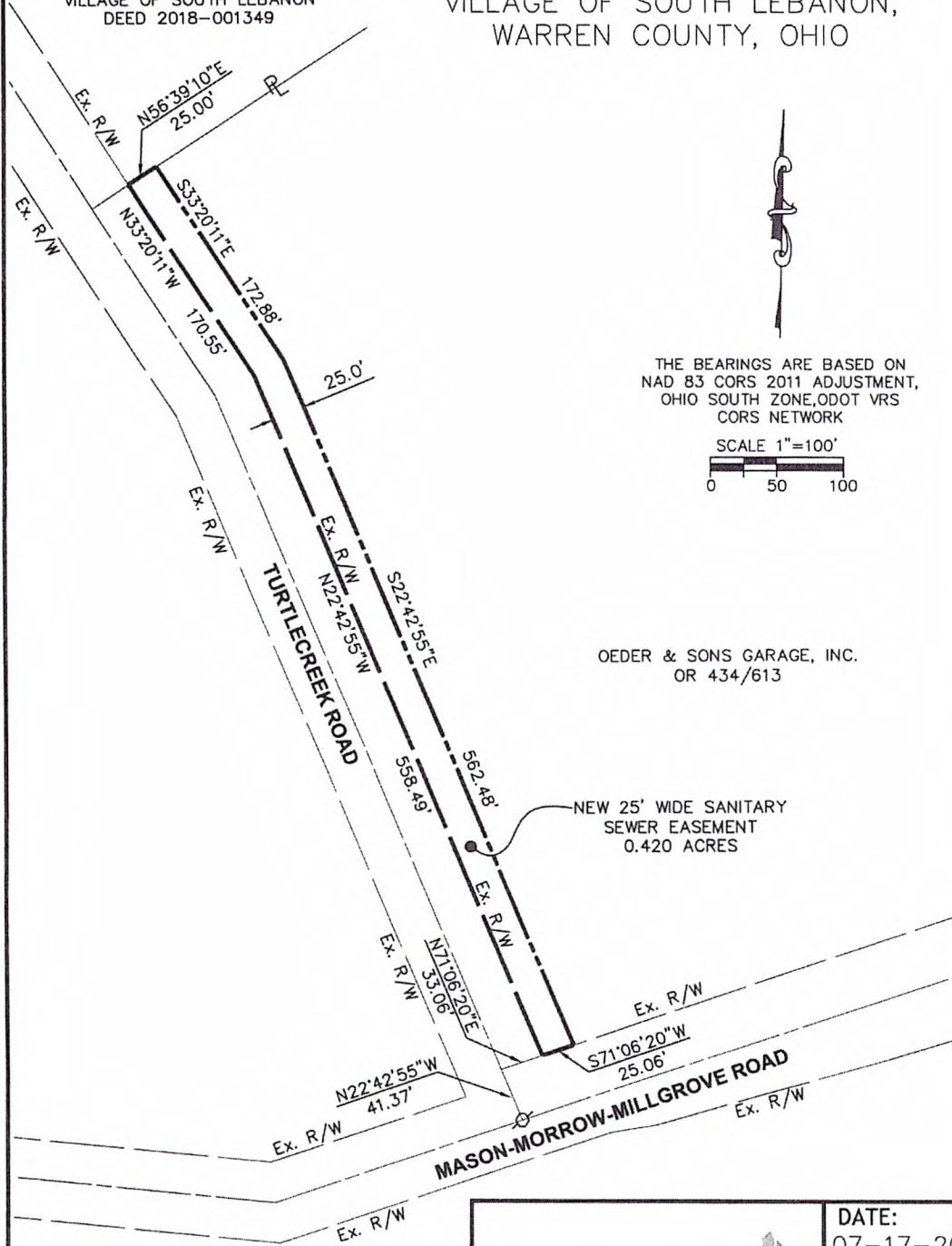


7-18-18
Date

EXHIBIT B

BEING A 25-FOOT WIDE
SANITARY SEWER EASEMENT
SITUATED IN SECTION 1, T 4 E, R 3 N,
VILLAGE OF SOUTH LEBANON,
WARREN COUNTY, OHIO

VILLAGE OF SOUTH LEBANON
DEED 2018-001349



THE BEARINGS ARE BASED ON
NAD 83 CORS 2011 ADJUSTMENT,
OHIO SOUTH ZONE, ODOT VRS
CORS NETWORK

SCALE 1"=100'
0 50 100

OEDER & SONS GARAGE, INC.
OR 434/613

NEW 25' WIDE SANITARY
SEWER EASEMENT
0.420 ACRES

LEGEND

⊗ RAILROAD SPIKE FOUND

ChoiceOne
Engineering

SIDNEY, OHIO 937.497.0200
LOVELAND, OHIO 513.239.8554
PORTLAND, INDIANA 260.766.2500
www.CHOICEONEENGINEERING.com

DATE:
07-17-2018

DRAWN BY:
RMF

JOB NUMBER:
WARSLE1711

SHEET NUMBER

1 OF 1