VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2014-13

A RESOLUTION APPROVING AND AUTHORIZING MAYOR AND FISCAL OFFICER TO EXECUTE AN EASEMENT & AGREEMENT FOR A 10 FT. PERPETUAL EASEMENT ON THE PROPERTY LOCATED AT 230 PIKE STREET OWNED BY BARBARAH WILSON NEEDED FOR THE EAST-WEST PIKE STREET WATERLINE REPLACEMENT PROJECT, AND FURTHER AUTHORIZING PAYMENT OF STATED CONSIDERATION AND APPROVAL OF IN-KIND CONSIDERATION, AND DECLARING AN EMERGENCY

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

WHEREAS, the Council passed Resolution Number 2013-22 to enter into a OPWC Project Grant Agreement for the East-West Pike Street Waterline Replacement Project, and the Village contracted with Choice One Engineering for the design, bidding and administration service for the said Project; and,

WHEREAS, Choice One Engineering determined it is necessary to obtain a 10 ft. perpetual waterline easement on a part of the property located at 230 Pike Street to facilitate the installation of the new eight (8) inch waterline at this location; and,

WHEREAS, the owner of the property located at 230 Pike Street, namely Barbarah Wilson, desires to grant the Village a 10 ft. perpetual Waterline 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 owners are willing to accept.

WHEREAS, immediate action is required to assure compliance with the OPWC's completion deadline, and such action is necessary in order to preserve the public peace, health, safety or welfare of the Village.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of South Lebanon, Ohio, at least a majority 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. Authorizing the Fiscal Officer upon receipt of the Easement & Agreement properly and completely executed to pay the consideration provided for therein.

Section 3. Approving the in-kind consideration recited in the Easement & Agreement, subject to receipt of the Easement & Agreement properly and completely executed.

Section 4. That the Council is acting in its administrative capacity in adopting this Resolution.

Section 5. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

Section 6. 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 this Resolution shall be in full force and effective immediately upon its passage.

Section 7. That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were passed in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 19th day of June, 2014.

Attest: Sharon Louallen Lionel H. Lawhorn

Sharon Louallen, Fiscal Officer/Clerk Lionel Harold Lawhorn, Mayor

Rules Suspended: (if applicable) Effective Date – 6-19-14

Vote - 6 Yeas
____ Nays

First Reading – / /2014
Second Reading – / /2014
Third Reading – / /2014

Effective Date – 6/19/2014

Vote - 6 Yeas
____ Nays

Prepared by and approved as to form:

BRUCE A. McGARY
VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

By: Bruce A McGary
Date: 6/18/14

CERTIFICATE OF POSTING

I, Sharon Louallen, Fiscal Officer of the Village of South Lebanon, Ohio do hereby certify I posted a true and accurate copy of this ordinance or resolution, summary of ordinance or resolution, or statement, order, proclamation, notice or report at five public places within the Village as authorized by Section 731.25 of the Ohio Revised Code and Ordinance 98-08 of Village of South Lebanon, Ohio.

6-26-14
Date

Sharon Louallen
Fiscal Officer
Village of South Lebanon, Ohio

Owner(s): Barbarah Wilson
Property Address: 230 Pike Street
South Lebanon, OH 45065
Parcel No. Pt. 12-01-226-006-1
Auditor's Acct No. 6803865

EASEMENT AND AGREEMENT

(Water Line, Apparatus and Appurtenances)

Barbarah Wilson, unmarried, of 1172 W. Fosters-Maineville Road, Maineville, OH 45039 ("Grantor"), for FIVE THOUSAND THREE HUNDRED FIFTY AND 00/100 DOLLARS ($5,350.00) and other good and valuable consideration recited herein paid by the **VILLAGE OF SOUTH LEBANON,** acting by and through its duly elected **Village Council,** an Ohio political subdivision operating under Title 7, et. seq. of the Ohio Revised Code, **99 High Street, South Lebanon, Ohio 45065** ("Grantee"), the receipt and sufficiency of which are hereby stipulated, do hereby grant to Grantee, its successors and assigns forever, an exclusive perpetual 10 ft. wide 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 water utility lines, apparatus and appurtenances thereto (the "Improvements") as a part of the East-West Pike Street Waterline Replacement Project, the public purpose and necessity of which was established by Village Council in Resolution Number 2013-22, passed on July 15, 2013.

All terms and conditions contained herein shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

1. Grantee, at its expense, shall install/construct the Improvements within the Easement Area. The Improvements shall be installed/constructed in accordance

and/or replaced by Grantee as necessity requires, as determined in the sole discretion of Grantee. Grantors shall have the right to repurchase the permanent Easement interest for its fair market value at the time of repurchase as may be required by Ohio Rev. Code § 163.211, but only in such event Grantee decides not to use the property for the purpose stated herein, however, such right of repurchase shall be extinguished if any one of the following occur, to-wit: (i) the Grantors decline to repurchase; (ii) the Grantors fail to repurchase within sixty (60) days after the Grantee offers the Easement interest for repurchase; (iii) a plan, contract, or arrangement is authorized that commences an urban renewal project that includes the property; (iv) the Grantee grants or transfers the property to another; or, (v) upon the expiration of 5 years from the date of the execution of this Easement & Agreement. The Grantors' right of repurchase is not assignable, nor does it run with the land.

3. After Grantee's approval and acceptance of the 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 Grantors' property within the Easement Area to its former condition as nearly as is reasonably practicable. Grantors understand and agrees that restoration of Grantors' property within the Easement Area shall not include repair or replacement of any structures, improvements, fixtures of other tangible items in the Easement Area.

4. The perpetual easement rights granted herein are "exclusive" as to all except the Grantors and any previously granted rights of record. Grantors retain the right to use the subject real 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. Grantors shall not cause or allow any permanent or temporary building, structure, facility, or improvement to be constructed in or upon the Easement Area, except utility service lines, paved parking, driveways, landscaping and sidewalks. If Grantors make permanent or temporary improvements in or upon the Easement Area, other than those stated above, then Grantors 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.

5. Grantors hereby covenant with Grantee to be the true and lawful owners 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. Grantors further covenant and warrant to Grantee that this Easement is not subordinate to any liens and encumbrances.

8. Any reference in this instrument to Grantee shall also include its agents, contractors, employees, officials and insurers. 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.

GRANTORS

Grantor, Barbarah Wilson, unmarried, has set her hand hereto on the date stated below.

SIGNATURE: _____

NAME: Barbarah Wilson

DATE: 16 June 2014

STATE OF OHIO, COUNTY OF WARREN, ss.

On this 16 day of June, 2014, *before me*, a Notary Public, in and for said County, *personally came* an individual known or proven to me to be **Barbarah Wilson**, the Grantor in the foregoing instrument, and acknowledged the signing thereof and that the same was her free and voluntary act and deed.

Witness my official signature and seal on the day last above mentioned.

NOTARY PUBLIC: _____

[Seal]

MY COMMISSION EXPIRES: 04.19.16

CONSENT AND SUBORDINATION OF GRANTORS' LIENHOLDER

James VanDeGrift whose mailing address is Lebanon, OH 45036 (hereinafter "Mortgagee"), for valuable consideration paid, the receipt and sufficiency of which are hereby stipulated, waives and subordinates the priority of his mortgages granted by Barbarah Wilson, unmarried, to Mortgagee, to-wit: a mortgage dated April 4, 2014 and recorded on April 21, 2014, at 3:59 PM in Document # 2014-009702 of the Warren County, Ohio Recorder's Office, which is a lien upon the real estate described in the attached Exhibit "A" and illustrated in Exhibit "B, in the same manner and with the same effect as though the easement being granted herein had been executed and recorded prior to filing of record of the said mortgage, but without otherwise affecting the lien or priority of the said mortgage.

IN EXECUTION WHEREOF, James VanDeGrift, Mortgagee, has set his hand hereto, on the date stated below.

MORTGAGEE,

SIGNATURE: _____

PRINTED NAME: James VanDeGrift

DATE: _____

STATE OF OHIO, COUNTY OF WARREN, ss.

BE IT REMEMBERED, on this _____ day of _____, 20___ before me, the subscriber, a Notary Public in and for said state, personally came James VanDeGrift, the Mortgage and did acknowledge the signing of this instrument to be his voluntary act and deed.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed my seal on this day and year aforesaid.

(SEAL)

Notary Public: _____

My commission expires: _____

GRANTEE:

IN EXECUTION WHEREOF, the Village of South Lebanon, Ohio, acting through its Village Council, has caused this instrument to be executed by Lionel Harold Lawhorn, its Mayor, and Sharon Louallen, its Fiscal Officer, on the date stated below, pursuant to Resolution Number 14-2014-12 dated 6-19-14.

VILLAGE OF SOUTH LEBANON, OHIO

SIGNATURE: Lionel Lawhorn

NAME: Lionel Harold Lawhorn

TITLE: Mayor

DATE: 06/24/14

SIGNATURE: Sharon Louallen

NAME: Sharon Louallen

TITLE: Fiscal Officer

DATE: 6-24-14

STATE OF OHIO, COUNTY OF WARREN, ss.

BE IT REMEMBERED, on this 24 day of June, 2014, before me, the subscriber, a Notary Public in and for said state, personally came an individual or individuals known or proven to be **Lionel Harold Lawhorn, Mayor** and **Sharon Louallen, 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 14-2014-12, dated 6/19/14, and while acting in their official capacity, did acknowledge the signing thereof to be their voluntary act and deed.

Witness my official signature and seal on the day last above mentioned.

Notary Public: [signature]

My Commission Expires: 04-19-16

[SEAL]

THIS PREPARED AND APPROVED AS TO FORM BY:

VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

SIGNATURE: Bruce A McGary

NAME: Bruce A. McGary

TITLE: Village Solicitor

DATE: 6/25/14

EXHIBIT A

[Metes & Bounds Legal Description]

Pt. 12-01-226-006-1

BEING A 10.00-FOOT WIDE WATERLINE EASEMENT IN, ON, OVER, UNDER, ACROSS AND THROUGH **A PART OF LOT 126** OF THE ORIGINAL PLAT OF SOUTH LEBANON OWNED BY BARBARA WILSON BEING PARTICULARLY DESCRIBED AS FOLLOWS:

Situated in the Village of South Lebanon, in the County of Warren, and State of Ohio, a part of Section 31, Town 5E, Range 3N.

Beginning at the southeast corner Lot 126 of the original plat of the Village of South Lebanon and being on the north right-of-way line of Pike Street;

thence, North 83°-30'-45" West, 91.60 feet, along the north right-of-way line of Pike Street to a point;

thence, North 06°-29'-15" East, 10.00 feet, to a point;

thence, South 83°-30'-45" East, 91.60 feet, parallel to the north right-of-way line of Pike Street to a point on the Grantor's east line;

thence, South 06°-29'-15" West, 10.00 feet, along the Grantor's east line to the place of beginning.

Containing 0.021 acres more or less with all being subject to any legal highway and easements of record.

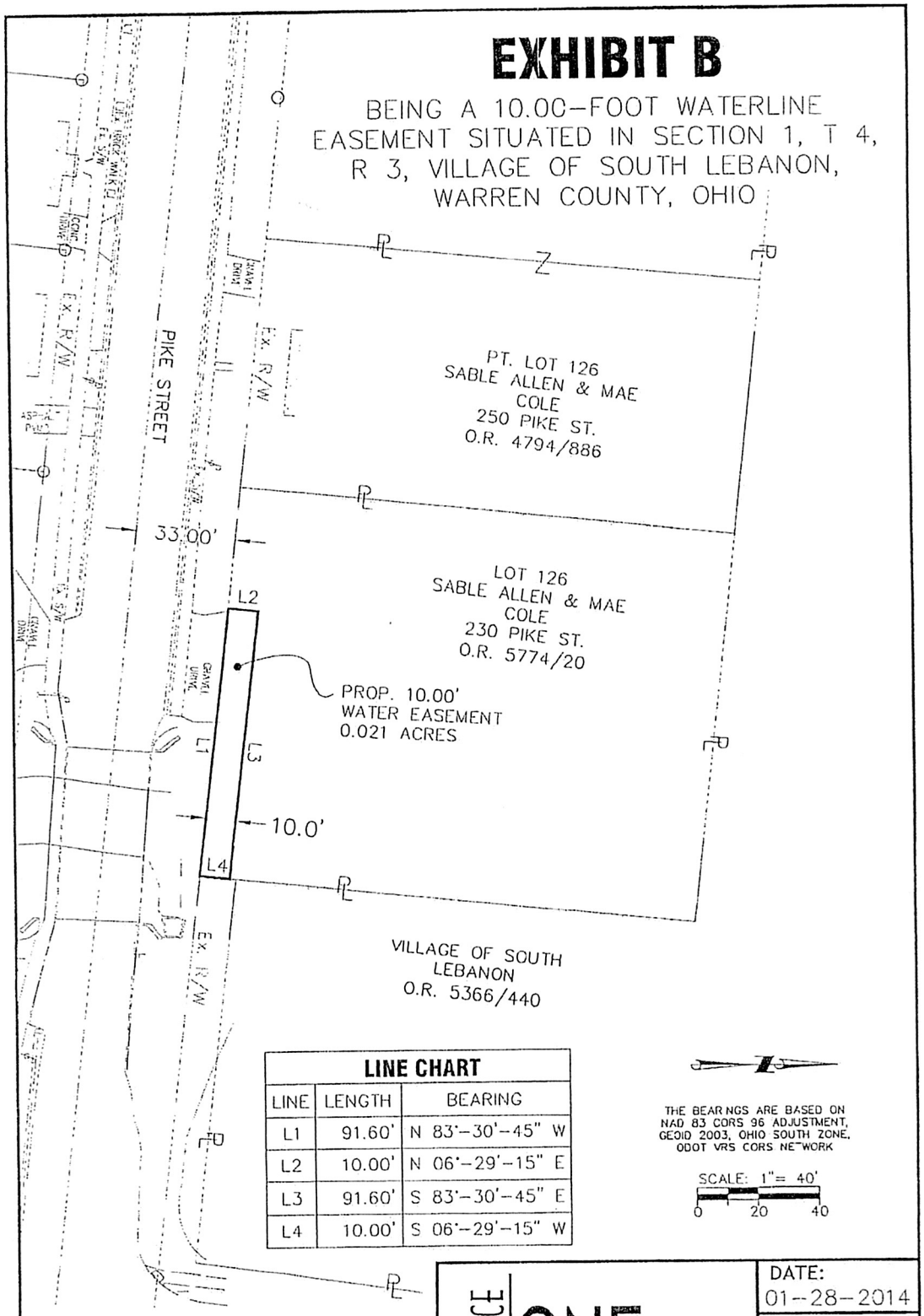
The bearings are based on NAD 83 CORS 96 Adjustment, Ohio South Zone, ODOT VRS CORS Network.

The above description was prepared by Wesley D. Goubeaux, Ohio Professional Surveyor Number 8254, based on a survey performed under his direction and dated January 28, 2014. For a pictorial example, see attached Exhibit "B".

DEED REFERENCE: Official Record Volume 4794, Page 886 in the office of the Warren County, Ohio Recorder.

EXHIBIT B

BEING A 10.00-FOOT WATERLINE EASEMENT SITUATED IN SECTION 1, T 4, R 3, VILLAGE OF SOUTH LEBANON, WARREN COUNTY, OHIO



LINE CHART		
LINE	LENGTH	BEARING
L1	91.60'	N 83°-30'-45" W
L2	10.00'	N 06°-29'-15" E
L3	91.60'	S 83°-30'-45" E
L4	10.00'	S 06°-29'-15" W

THE BEARINGS ARE BASED ON NAD 83 CORS 96 ADJUSTMENT, GEOID 2003, OHIO SOUTH ZONE, ODOT VRS CORS NETWORK

SCALE: 1"= 40'

0 20 40

LEGEND

O IRON PIN FOUND

CHOICE ONE ENGINEERING

440 E. HOEWISHER ROAD
SIDNEY, OHIO 45365
(937) 497-0200

203 W. LOVELAND AVENUE
LOVELAND, OHIO 45140
(513) 239-8554

www.choiceoneengineering.com

DATE:	01-28-2014
DRAWN BY:	AJB
JOB NUMBER:	WARSLE1301
SHEET NUMBER	1 OF 1

LEGAL DESCRIPTION
EXHIBIT A

BEING A 10.00-FOOT WIDE WATERLINE EASEMENT OVER, THROUGH, AND ACROSS LOT 126 OF THE ORIGINAL PLAT OF SOUTH LEBANON OWNED BY SABLE ALLEN AND MAE COLE AS DESCRIBED IN OFFICIAL RECORD 5774, PAGE 20 OF THE WARREN COUNTY DEED RECORDS, SITUATE IN SECTION 1, TOWN 4, RANGE 3, VILLAGE OF SOUTH LEBANON, WARREN COUNTY, OHIO AND BEING MORE FULLY DESCRIBED AS FOLLOWS:

Beginning at the southeast corner Lot 116 of the original plat of the Village of South Lebanon and being on the north right-of-way line of Pike Street;

thence, North 83°-30'-45" West, 91.60 feet, along the north right-of-way line of Pike Street to a point;

thence, North 06°-29'-15" East, 10.00 feet, to a point;

thence, South 83°-30'-45" East, 91.60 feet, parallel to the north right-of-way line of Pike Street to a point on the Grantor's east line;

thence, South 06°-29'-15" West, 10.00 feet, along the Grantor's east line to the place of beginning.

Containing 0.021 acres more or less with all being subject to any legal highway and easements of record.

The bearings are based on NAD 83 CORS 96 Adjustment, Ohio South Zone, ODOT VRS CORS Network.

The above description was prepared by Wesley D. Goubeaux, Ohio Professional Surveyor Number 8254, based on a survey performed under his direction and dated January 28, 2014. For a pictorial example, see attached Exhibit "B".

