

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN EASEMENT AGREEMENT WITH THE CLEVELAND ELECTRIC ILLUMINATING COMPANY [CEI] FOR AN EASEMENT OF THE REAL ESTATE AND APPURTENANCES KNOWN AS A PORTION OF PERMANENT PARCEL NUMBER 473-34-011 WHICH IS LOCATED ON PEARL ROAD AND ADJACENT TO MANDALAY DRIVE AND DECLARING AN EMERGENCY

WHEREAS, CEI Company has offered provide an easement to the City of Parma Heights for a certain portion of real estate and appurtenances known as permanent parcel number 473-34-011 which is located on Pearl Road and adjacent to Mandalay Drive; and

WHEREAS, the Mayor the Director of Economic Development have deemed it to be in the best interest of the City to accept the easement from CEI and develop it into a pocket park; and

WHEREAS, this Council referred the matter of the proposed easement of a portion of this parcel of real estate to the Planning Commission for a report and recommendation; and

WHEREAS, the Planning Commission has reviewed this matter and has recommended to the Council to proceed with the acceptance of the easement of a portion of this parcel of real estate; and

WHEREAS, this Council accepts the recommendation of the Planning Commission and wishes to proceed with the easement of a portion of this parcel of real estate.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PARMA HEIGHTS, STATE OF OHIO, THAT:

Section 1. The Mayor is authorized to enter into an Easement Agreement with CEI for the easement of certain real estate and appurtenances known as a portion of permanent parcel number 473-34-011 which is located on Pearl Road and adjacent to Mandalay Drive, as set forth in Exhibit A.

Section 2. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this ordinance were taken in an open meeting of this Council and that any of its committees comprised or a majority of the members of the Council that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 3. This ordinance is declared to be an emergency measure necessary for the public peace, health and safety of the Municipality and for the further reason that it is necessary to obtain an easement to develop a pocket park; wherefore it shall be in full force and effect immediately after its passage by Council and approval by the Mayor.

PASSED: 10-13-2020



President of Council

ATTEST: Florence A. Bohdan

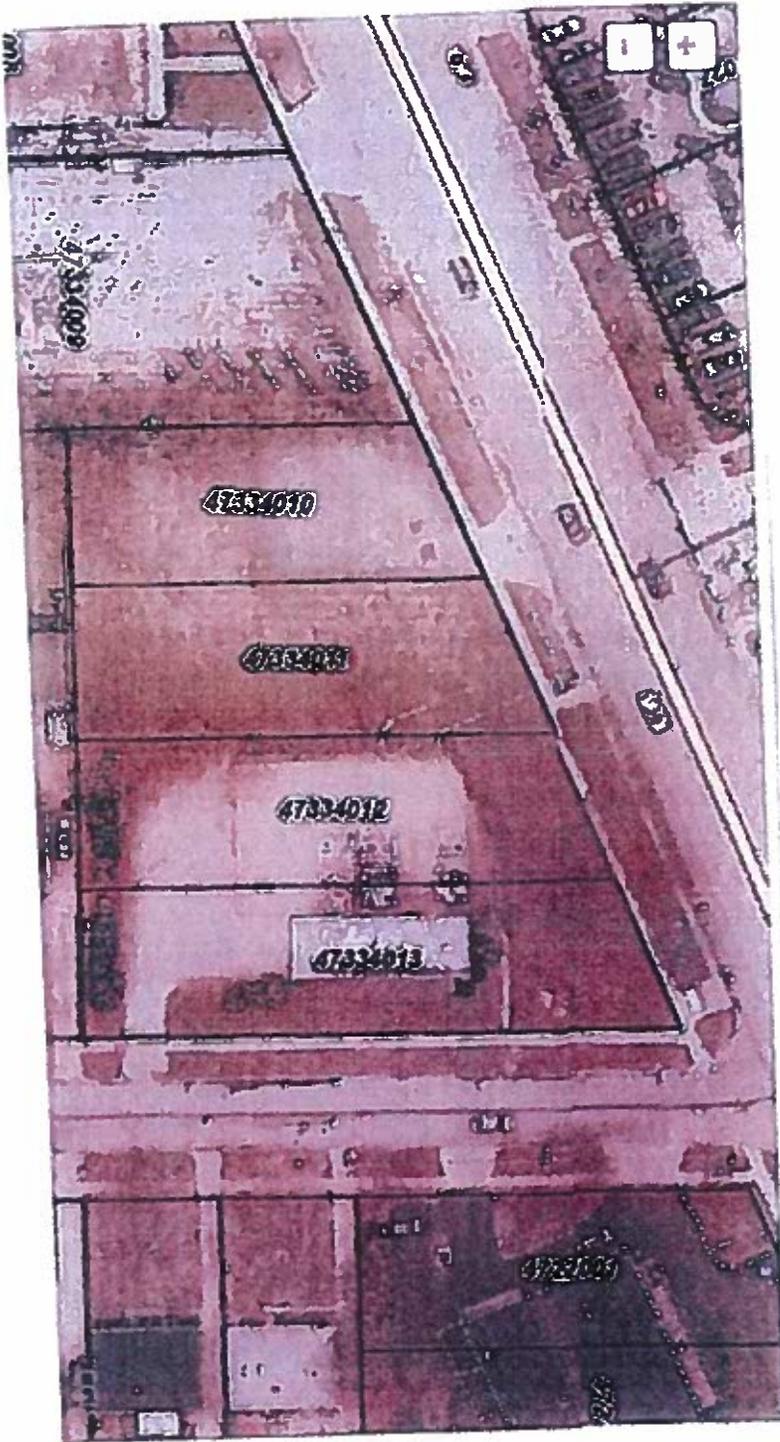
10-13-2020

APPROVED

FILED WITH
THE MAYOR: 10-13-2020



Mayor



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PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____

APPROVED

FILED WITH
THE MAYOR: _____

MAYOR

PEARL ROAD POCKET PARK EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") made as of the _____ day of _____, 2020, between the CLEVELAND ELECTRIC ILLUMINATING COMPANY, ("CEI") (collectively, "Grantor") and the CITY OF PARMA HEIGHTS, municipal corporation ("Parma Heights") (collectively, "Grantee"),

WITNESSETH THAT:

WHEREAS, Grantor herein is the fee title owner of certain real property located in Parma Heights, Cuyahoga County, Ohio; and

WHEREAS, Grantor is willing to provide to the Grantee a permanent, non-exclusive easement in, on, over, across, under, and through a certain portion of the above-described property as shown on Exhibit A attached hereto and made a part hereof for the purpose of constructing, reconstructing, modifying, supplementing and maintaining a pocket park, including, but not limited to, concrete pads, protective bollards, marker posts and signs, and other related or useful equipment, including below ground foundations and other related or useful equipment, fixtures, and appurtenances, and to provide service to such facilities and the right to ingress and egress across the Easement Area for the purpose of access to and use of the Easement (as hereinafter described) granted upon the terms and conditions hereinafter set forth

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties agree as follows:

1. Grant of Easement Upon the terms and conditions hereinafter set forth, Grantor grants to Grantee a permanent, non-exclusive easement (the "Easement"), in, on, over, across, under, and through certain property more particularly described in Exhibit B attached hereto and made a part hereof (the "Easement Area") for the purpose, at Grantee's sole cost and expense, of constructing, reconstructing, modifying, supplementing and maintaining a pocket park, including, but not limited to, concrete pads, protective bollards, marker posts and signs, and other related or useful equipment, including below-ground foundations, and other related or useful equipment, fixtures, appurtenances, and above-ground and below-ground facilities (collectively, the Improvements"), together with right to have electrical services extended to the Easement Area to provide service to such facilities and the right to ingress and egress across the Easement Area for the purpose of access to and use of the easement granted herein

This easement shall be deemed to run with the land.

2. Ownership and Maintenance.

(a) The Improvements shall be and shall remain the property of the Grantee, and the Grantee shall be and shall remain solely responsible for the Improvements; provided, however, that it is expressly agreed that the within grant of the Easement is a grant of an easement only and that fee simple title to the Easement Area shall and does remain in Grantor.

(b) The Grantee shall construct and at all times shall keep and maintain the defined easement property and Improvements in a safe and sound condition and in compliance with all applicable local laws, ordinances, rules, and regulations.

Nothing contained herein shall create any obligation of the Grantee to maintain any other portions of the property that are not in the defined easement area.

3 Conditions of Work.

(a) Prior to commencing any work on the Improvements in any instance, the Grantee shall submit to Grantor plans and specifications therefor. No work shall begin on the Improvements unless and until Grantor has given to the Grantee its written approval of the plans and specifications.

The Grantee shall construct the Improvements in accordance with the plans and specifications approved by Grantor unless a modification thereof is approved in writing by Grantor; provided, however, that Grantor in no event shall assume responsibility for any aspect of such plans and specifications.

(b) Prior to commencing any work on the Improvements, the Grantee shall have obtained any and all necessary permits, authorizations, and other consents from any and all governmental authorities with jurisdiction.

4. Use of Easement Area

(a) Grantee shall not store any materials or equipment on the Easement Area without the prior written approval of Grantor.

(b) The Grantee shall not remove any trees, shrubbery, or other landscaping features from the Easement Area unless such removal is part of the plans and specifications that have been approved in writing by Grantor or unless Grantee has obtained prior written approval for such removal from Grantor.

(c) At the Grantee's sole cost and expense, Grantee shall restore the Easement Area not encumbered by the Improvements to the condition existing in each instance prior to any construction, maintenance, repair, or replacement, including without limitation, replacement of trees, shrubbery, lawn grass, and other landscaping features.

(d) The Grantee will not impede the growth or development of any naturally occurring vegetative cover on the Easement Area unless it has obtained the prior written approval of Grantor,

5. Insurance. The Grantee shall maintain and pay for, or cause to be maintained and paid for, (i) commercial general liability insurance, and (ii) commercial automobile liability insurance for owned, hired, and non-owned automobiles. Such insurance (A) shall insure against claims for bodily injury (including death) and property damage, with each policy having a combined single

limit of not less than \$1,000,000 per occurrence, (B) shall be primary to any insurance maintained by Grantor, and (C) shall name CEI as an additional insured.

Certificates of insurance evidencing the aforementioned coverage(s) shall be provided to Grantor upon execution of this Agreement and the Grantor reserves the right to request a full and complete copy of all insurance policies. Grantee's coverage may not be cancelled or materially changed until at least ten (10) days after written notice to Grantor.

Grantor shall maintain and pay for, or cause to be maintained and paid for, (i) commercial general liability insurance and (ii) commercial automobile liability insurance for owned, hired, and non-owned automobiles. Such insurance (A) shall insure against claims for bodily injury (including death) and property damage, with each policy having a combined single limit of not less than \$1,000,000 per occurrence, (B) shall be secondary to any insurance maintained by Parma Heights, and (C) shall name the City of Parma Heights as an additional insured.

Certificates of insurance evidencing the aforementioned coverage(s) shall be provided to Parma Heights upon execution of this Agreement and Parma Heights reserves the right to request a full and complete copy of all insurance policies. Grantor's coverage may not be cancelled or materially changed until at least ten (10) days after written notice to Grantee.

6. Payment of Taxes. The Grantee shall have no obligation to pay any taxes, assessments or other charges or fees applicable or chargeable to the defined easement property or to the Grantor.

7. Reversion to Grantor. If at any time the Easement ceases to be used by Grantee for the purpose specified herein, the rights granted automatically shall terminate and the Easement shall revert to Grantor, provided that Grantor shall be entitled to retain all rights and remedies that previously may have accrued against Grantee with respect to the Easement.

8. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect thereto.

9. Modification. No modification of this Agreement shall be binding upon Grantor or Grantee unless set forth in writing and executed by Grantor and Grantee.

10. Severability. If any provision of this Agreement shall be or become invalid or unenforceable, then this Agreement shall be divisible as to such provision, and the remainder of this Agreement shall be and remain valid and binding as though such provision were not included herein.

11. Third Party Rights. Nothing herein expressed or implied is intended or shall be construed to confer upon any other entity, other than as set forth, any rights or remedies under, or by reason of, this Agreement.

12. Successors and Heirs. The rights and obligations of the parties set forth herein shall be binding upon, and inure to the benefit of, each of them, and their respective successors and assigns.

13. Notices. Whenever one party is required or permitted to give notice to the other pursuant to this Agreement, such notice shall be deemed given when delivered by hand or via regular U.S. mail and addressed as follows;

TO THE CLEVELAND ELECTRIC ILLUMINATING COMPANY:

TO THE CITY OF PARMA HEIGHTS:

Michael P. Byrne
Mayor
6281 Pearl Road
Parma Heights, Ohio 44130

Any party may from time to time change its designated recipient address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which such new recipient address will become effective.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which counterparts together shall constitute one agreement with the same effect as if the parties had signed the same signature page.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed this Agreement as of the day and year first above written.

FOR THE CLEVELAND ELECTRIC ILLUMINATING COMPANY:

Approved as to legal form:

Date: _____

FOR THE CITY OF PARMA HEIGHTS:

Approved as to legal form:

Michael P. Byrne
Mayor

Date: _____

STATE OF OHIO
COUNTY OF CUYAHOGA

BEFORE ME , a Notary Public in and for said County and State, came CEI, by _____, its _____, who acknowledged he did sign the foregoing instrument, and that the same is the free act and deed of CEI and the free act and deed of him personally.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal at _____, Ohio, this ____ day of _____, 2020.

NOTARY PUBLIC

STATE OF OHIO
COUNTY OF CUYAHOGA

BEFORE ME, a Notary Public in and for said County and State, came Michael P. Byrne, the Mayor of the City of Parma Heights, Ohio, who acknowledged he did sign the foregoing instrument, and that the same is the free act and deed of the City of Parma Heights and his free act and deed in his official capacity as Mayor.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal at _____, Ohio, this ____ day of _____, 2020.

NOTARY PUBLIC

EXHIBIT A

Depiction of Easement Area

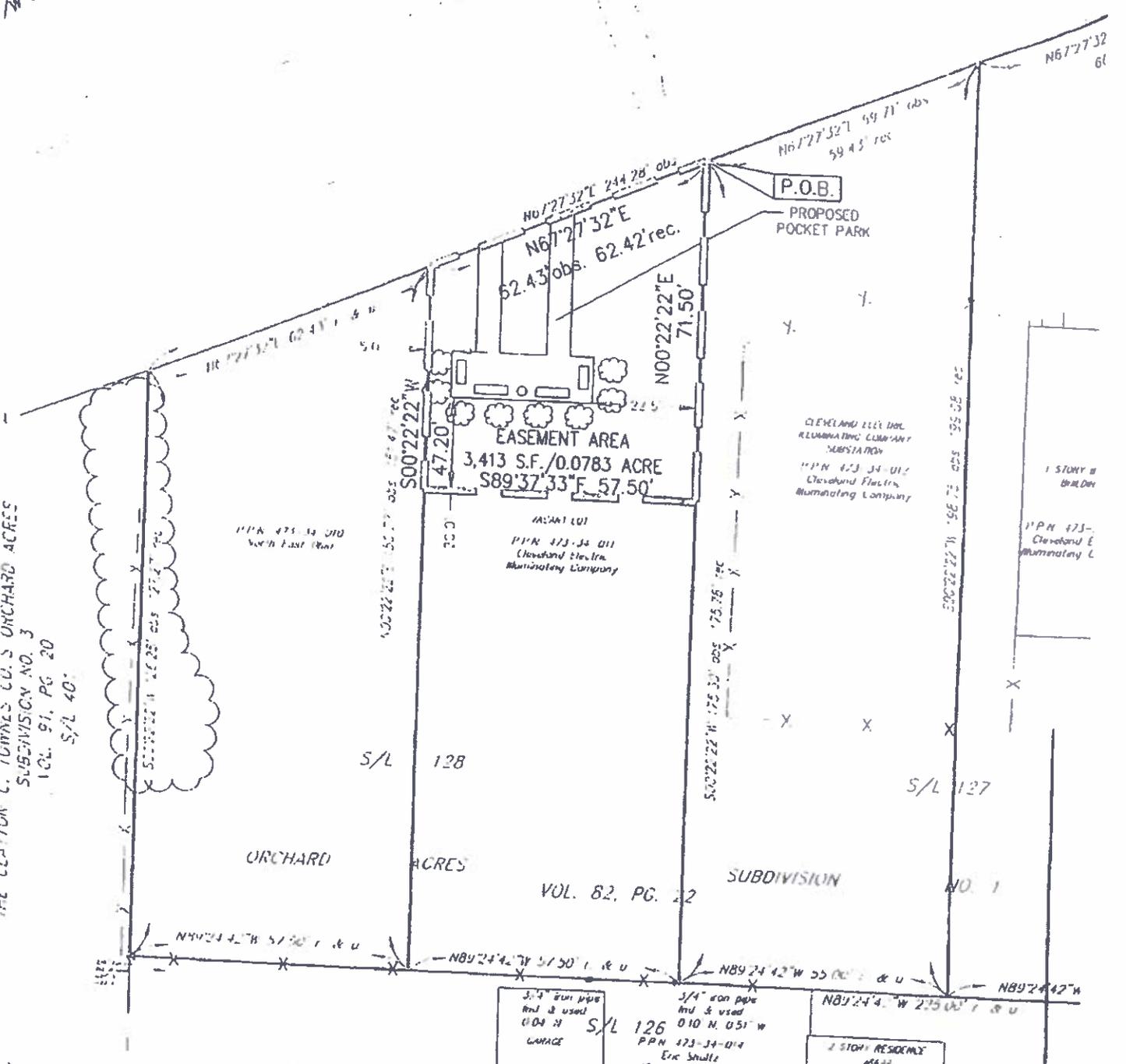
EXHIBIT A

RTA EUS
SHELTER

MANDALAY
DRIVE 60'

PEARL ROAD 80' (S.R. 42)
(FKA WOOSTER PIKE ROAD)

SEE SECTION C, TOWN OF C.U.S. ORCHARD ACRES
SUBDIVISION NO. 3
VOL. 91, PG. 20
S/L 40



NEFF & ASSOCIATES
6495 York Road Parma, Ohio 44130
440.884.2101 440.884.3104



GRAPHIC SCALE
0 15 30
1 INCH = 30 FT
(FULL SIZE DRAWINGS ONLY)

CITY OF PARMA HEIGHTS
7-13-18 JOB # 13335
EXHIBIT FOR EASEMENT
C.E.I. - P.H. POCKET PARK

EXHIBIT B

Legal Description of Easement Area



EXHIBIT B

Legal Description
Cleveland Electric Illuminating Company
Parma Heights Pocket Park Easement
November 2, 2018
File No. 13335-LD 001
Page 1 of 1

Situated in the City of Parma Heights, County of Cuyahoga, State of Ohio and known as being part of Sublot No. 128 in the Orchard Acres Subdivision No. 1 as shown by the recorded plat in Volume 82 of Maps, Page 22 in Cuyahoga County Records and is further bounded and described as follows:

Beginning at the Northeasterly corner of said Sublot No. 128 and said point being on the Southerly right of way of Pearl Road (State Route 42) (80 Feet Wide) of the land herein described;

- Course 1 Thence South 67°27'32" West, along the Southerly right of way of said Pearl Road, a distance of 62.43 feet;
- Course 2 Thence South 00°22'22" West, a distance of 47.20 feet;
- Course 3 Thence South 89°37'33" East, a distance of 57.50 feet;
- Course 4 Thence North 00°22'22" East, a distance of 71.50 feet to the place of beginning. Said easement containing 0.0783 Acre (3,413 Square Feet) of land.

Be the same more or less, but subject to all legal highways and easements of record.