

ORDINANCE NO. 2014 - 25

**AUTHORIZING THE CITY MANAGER TO ENTER INTO A
RECIPROCAL EASEMENT AGREEMENT RELATED TO
DOWNTOWN PARKING**

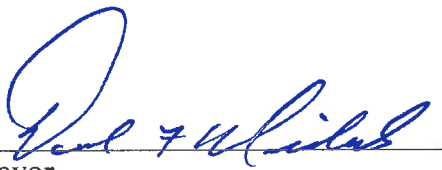
WHEREAS, the City of Mason and other downtown property owners have agreed that a shared public parking arrangement where their respective real properties would be mutually beneficial for all of said parties and their businesses located thereon and for the benefit and convenience and safety of their customers, the general public, by increasing the number of public parking spaces available and improving the ingress and egress of vehicular traffic.

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

Section 1. That the City Manager is hereby authorized to execute a Reciprocal Easement Agreement substantially in the form of the agreement attached hereto as Exhibit "A" and incorporated herein by reference.

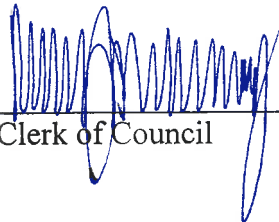
Section 2. That this Ordinance shall be and is effective from and after the earliest period allowed by law.

Passed this 14th day of April, 2014.



Mayor

Attest:



Clerk of Council

RECIPROCAL EASEMENT AGREEMENT

THIS RECIPROCAL EASEMENT AGREEMENT (REA) is made and entered into this ____ day of _____, 2014, by and among CARPENTER REAL ESTATE, INC., a Colorado corporation for profit (hereinafter "Carpenter"), RUSSELL H. HUTCHINS, JR., TRUSTEE OF THE RUSSELL H. HUTCHINS REVOCABLE TRUST (hereinafter "Hutchins"), LIEUT. ROBERT N. MOUNT V.F.W. POST 9622 (hereinafter "V.F.W."), MALHOTRA FAMILY, LLC, an Ohio limited liability company (hereinafter "Malhotra"), PEGGY L. DOWREY (hereinafter "Dowrey"), 123 WEST MAIN STREET PARTNERSHIP, LLC (hereinafter "123 Partnership"), and the CITY OF MASON, OHIO (hereinafter "City"), all of whom are collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, Carpenter is the owner of real property commonly known as 107 West Main Street, Mason, Ohio 45040, and more particularly described in Exhibit A attached hereto and incorporated herein; and,

WHEREAS, Hutchins is the owner of real property commonly known as 113 West Main Street, Mason, Ohio 45040, and more particularly described in Exhibit B attached hereto and incorporated herein; and,

WHEREAS, V.F.W. is the owner of real property commonly known as 119 West Main Street, Mason, Ohio 45040, and more particularly described in Exhibit C attached hereto and incorporated herein; and,

WHEREAS, Malhotra is the owner of real property commonly known as 115 West Main Street and 125 West Main Street, Mason, Ohio 45040, and more particularly described in Exhibit D attached hereto and incorporated herein; and,

WHEREAS, Dowrey is the owner of real property commonly known as 127 West Main Street, Mason, Ohio 45040, and more particularly described in Exhibit E attached hereto and incorporated herein; and,

WHEREAS, the City of Mason, Ohio, is the owner of real property commonly known as 106 South East Street, Mason, Ohio 45040 and more particularly described in Exhibit F attached hereto and incorporated herein; and,

WHEREAS, 123 Partnership is the owner of real property commonly known as 123 West Main Street, Mason, Ohio 45040, and more particularly described in Exhibit G attached hereto and incorporated herein by reference; and,

WHEREAS, the aforesaid Parties do mutually desire and agree that a shared public parking arrangement for their respective real properties would be mutually beneficial for all of said Parties and their businesses located thereon, and for the benefit and convenience of their customers and the general public by increasing the number of public parking spaces available and improving the ingress and egress of vehicular traffic.

NOW, THEREFORE, the Parties, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by all parties hereto, the said Parties hereby agree as follows:

ARTICLE I

Term.

The term of the REA shall be for twenty-five (25) years.

ARTICLE II

Ingress and Egress.

A. The Parties hereby grant to each other and create and reserve unto themselves and to any future owners of any of the above described real properties a non-exclusive easement on, over, and across the portions of the said properties now and hereafter improved with driveways and vehicle parking areas located behind the existing structures on the properties as shown on Exhibit H attached hereto and incorporated herein, for the purpose of using such portions of the properties for vehicular and pedestrian ingress and egress to and from the various parcels of real properties and adjacent public rights of way. The parties hereto understand and acknowledge that the Carpenter property, as described in Exhibit A, is subject to an existing lease agreement that prohibits it from being used as public parking. As such, the easement rights being granted by the Owners of the Carpenter property shall be limited to ingress and egress to and from the various parcels and adjacent rights of way, but such easement rights shall not include common parking.

B. The within Agreement shall be deemed to create easements or other rights for ingress and egress and public parking on any one parcel for the benefit of any other parcel of the real properties.

C. Except as otherwise provided for herein, no owner of any of the parcels of real property set forth above shall take or permit to be taken any action which impedes the free flow of traffic among and across the properties and the adjacent rights of way, except for the following:

1. As necessary for the performance of maintenance, repair and construction obligations imposed hereunder, provided, however, owners may implement site improvement changes to their respective parcels of real property so long as such alterations are in conformance with restrictions imposed under this Agreement and do not affect the driveways and parking areas located thereon; and,

2. Owners of the aforesaid parcels of real properties shall be permitted to allow the erection of tent(s) in their respective parking area for special downtown events provided that each such property owner obtain the written approval of all other parties hereto fourteen (14) days in advance of such event.

D. As used herein, "Owners" shall be deemed to include all fee holders and their heirs, successors, and assigns, as well as agents and invitees of all of them and the easements created herein shall be for the benefit of all of the aforesaid.

ARTICLE III

Curb Cuts.

With the exception of the two existing curb cuts on West Main associated with the Carpenter property, the Parties hereto agree to the closing of their respective curb cuts on West Main Street by the use of permanently installed bollards at the north end of every driveway and positioned evenly with the front edge of the adjacent structures. The existing driveways shall become sidewalks from the rear public parking areas to Main Street. Maintenance access from the rear (south side) of the existing driveways shall be maintained. All curb cuts shall be replaced with curbs and the aprons shall be raised in a manner to be even with the surrounding sidewalk area. The costs associated with the installation of curb and gutter as well as the permanent bollards and sidewalk restoration shall be borne by the City of Mason. All other parties agree to donate any necessary easement for the installation of the permanent bollards.

ARTICLE IV

Maintenance and Repairs.

A. Initially, Hutchins, V.F.W., Malhotra, 123 Partnership, and Dowry shall share equally in the costs of blacktopping and striping for parking spaces for their respective driveways and parking areas and the removal of an existing fence at a total estimated cost of approximately \$10,000.00, and immediately pay their respective equal share. Carpenter has prior to the date of this Agreement completed the blacktopping and striping on its parcel. It is understood and accepted that the City will demolish the structure on its parcel of real property within three (3) years of the effective date of this REA. At such time as the City demolishes the structure on its parcel of real property, it will be responsible for blacktopping and striping thereon in a manner consistent with the surrounding properties. Until such time as the City demolishes the structure on its property, the City will provide the necessary improvements in its property so as to provide a wider turning radius for the point of ingress/egress as shown on Exhibit H.

B. All future maintenance and repair costs to the aforesaid driveways and parking areas shall be shared equally by all the Parties hereto.

C. Notwithstanding any other provision of this REA to the contrary, if any owner, its tenants or their respective agents or employees cause damage to any paved improvements while conducting construction or other extraordinary activities, including, without limitation, any activities related to the installation or repair of utility lines or related facilities, such owner, shall, at its own costs, cause the damaged improvements to be repaired and restored to a condition at least equal in quality to the condition of such improvements prior to such damage.

ARTICLE V

Restrictions.

A. All parties hereto agree that each aforesaid property owner shall maintain a rear setback of at least eighty (80) feet between the rear of any structure located thereon and the back property line free and clear of any obstruction to the driveway and parking area located on each such parcel. Such restriction shall not apply to the existing trash receptacle pad and garage located on the Carpenter property.

B. The restrictions contained in this Agreement shall be enforceable by the owners of the aforesaid real properties, and any modifications or waivers of such restrictions must be approved in writing by all parties hereto.

C. All construction or maintenance activities shall be performed in a good and workmanlike manner in compliance with all applicable laws, rules, regulations, orders, and ordinances.

D. Each owner exercising its rights under this REA on another owner's Parcel agrees to indemnify and hold harmless the other owner from and against any and all costs, expenses, liabilities, dangers or claims including, but not limited to, reasonable attorney's fees and costs arising due to the activities by or at the direction of such indemnifying owner. The Parties understand and agree that the preceding indemnification provision shall not apply to the City as a matter of law. Any owner exercising any construction activity on its Parcel that could affect the use of the Fixed Driveways shall (i) provide reasonable advance notice to the other owner of any of the construction activities which will be conducted and (ii) utilize construction techniques and materials which will

cause the least amount of interference with and disruption to business activities on another owner's Parcel as is reasonably possible under the circumstances.

ARTICLE VI

Remedies.

Any owner shall have the right to seek all legal and equitable remedies available to it as a result of the default by any other owner of its covenants, agreements or obligations under this REA, including the right to such orders of specific performance or injunctive relief as are appropriate. Specifically, if any owner fails to provide the maintenance and repairs to the fixed driveways and parking areas as required under this REA, after being provided sixty (60) days' written notice of such default (except in the event of an emergency, in which event only such notice as is reasonable under this circumstance will be necessary), from the other Parties hereto, then any other owner or all other owners may perform the repair and maintenance to the driveway and parking areas improvements, and in such event, the defaulting owner shall be required to reimburse the curing owner or owners for the defaulting owner's proportionate share of its costs incurred in performing such repairs and maintenance within thirty (30) days after being invoiced for the same. Any sums due from any owner to another owner or owners hereunder which are not paid when due shall bear interest from the date due until paid at an annual interest rate equal to eight percent (8%).

ARTICLE VII

Miscellaneous.

Binding Effect.

Unless specifically stated otherwise, all restrictions and covenants contained herein shall be and shall be construed as covenants running with the land, and all easements granted herein shall be and shall be construed as running with the land to the real property burdened thereby and as being appurtenant to the real property benefited thereby. All of said easements, covenants and restrictions shall be binding upon the Property, as indicated herein, and shall inure to the benefit of, and be enforced by, any owner of any of the Property, each of their respective tenants, and the respective legal representatives, successors and assigns of each of them.

No Partnership.

This REA shall not create an association, partnership, joint venture or a principal and agency relationship between the owners of the property subject to this declaration or their respective tenants or licensees.

No Waiver.

No waiver of any provision hereof shall be deemed to imply or constitute a further waiver thereof or any other provision set forth herein.

Severability.

Should any provision hereof be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by same.

Notices.

All notices and approvals required or permitted under this REA shall be served by hand delivery, by certified mail, return receipt requested, or by any private nationally recognized overnight type of delivery service, to any real property owner at such address as such owner may from time to time designate by written notice to the aforesaid other owners, or if any such owner fails to provide such a notice, at the address as listed as the tax mailing address for the parcel of real property owned by such owner. Date of service of notice or approval shall be the date on which such notice or approval is received by the party to whom the same is sent.

Entire Agreement.

This Agreement, together with the Exhibits attached hereto, contains the entire agreement among the parties and there are no other terms, expressed or implied, except as contained herein or therein. No modification of this Agreement shall be binding upon the Parties unless such modification shall be in writing signed by all Parties hereto.

No Merger.

None of the easements or other rights created by this REA shall be merged or eliminated due to the common ownership of any of the real property subject to this REA.

Ohio Law.

All of the Parties hereto elect that this Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Ohio.

I. Effective Date.

The Effective Date of this Agreement shall be the date of the last party to execute the Agreement.
Executed as of this ____ day of _____, 2014.

Signature pages to follow.

CARPENTER REAL ESTATE, INC.

By: _____

Its: _____

State of Ohio)
):ss
County of Warren)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by
_____ (name), the _____ (title), of Carpenter Real Estate, Inc.

Notary Public
My Commission expires: _

Russell H. Hutchins, Jr., Trustee of the
Russell H. Hutchins Revocable Trust

State of Ohio)
):ss
County of Warren)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by
_____ (name), the _____ (title), of Russell H. Hutchins Revocable Trust.

Notary Public

My Commission expires: _____

LIEUT. ROBERT N. MOUNT V.F.W. POST 9622

By: _____

Its: _____

State of Ohio)
):ss
County of Warren)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by
_____ (name), the _____ (title), of Lieut. Robert N. Mount V.F.W. Post 9622.

Notary Public

My Commission expires: _____

MALHOTRA FAMILY, LLC

By: _____

Its: _____

State of Ohio)
):ss
County of Warren)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by
_____ (name), the _____ (title), of Malhotra Family, LLC.

Notary Public

My Commission expires: _____

State of Ohio)
):ss
County of Warren)

Peggy L. Dowrey

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by
Peggy L. Dowrey.

Notary Public

My Commission expires: _____

123 WEST MAIN STREET PARTNERSHIP, LLC

By: _____

Its: _____

State of Ohio)
) :ss
County of Warren)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by
_____ (name), the _____ (title), of 123 West Main Street Partnership, LLC.

Notary Public

My Commission expires: _____

CITY OF MASON, OHIO

By: _____

Its: City Manager

State of Ohio)
) :ss
County of Warren)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by
Eric Hansen, the City Manager, of City of Mason, Ohio.

Notary Public

My Commission expires: _____

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