

**RESOLUTION NO. R22-09**

**A RESOLUTION BY THE TROTWOOD CITY COUNCIL AUTHORIZING THE GRANTING OF A PERPETUAL, NON-EXCLUSIVE RIGHT OF WAY AND EASEMENT ON CITY-OWNED PROPERTY TO TROTWOOD SENIOR LOFTS, LLC, AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A SANITARY SEWER EASEMENT AGREEMENT WITH TROTWOOD SENIOR LOFTS LLC FOR PROPERTY LOCATED AT 702 EAST MAIN STREET, TROTWOOD, OHIO 45426, PARCEL ID NO. H33 00217 003.**

**WHEREAS**, Trotwood Senior Lofts, LLC (“TSL”), in concert with its property developer and manager, MVAH Partners/MVAH Holding, LLC (“MVAH”), is constructing an affordable, senior living community of residential units situated in the City of Trotwood; and

**WHEREAS**, it is necessary for the City of Trotwood to grant a perpetual, non-exclusive right of way and easement on its City-owned property located at 702 E. Main Street, Parcel ID No. H33-00217-003, for sanitary sewer purposes (the “Sewer Easement”) to facilitate the installation and maintenance of sanitary sewer lines for the new residential senior living community being constructed by TSL; and

**WHEREAS**, the City Manager recommends City Council authorize him, on behalf of the City, to grant the perpetual, non-exclusive right of way and easement to TSL and to execute a Sanitary Sewer Easement Agreement on the City’s behalf.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROTWOOD, STATE OF OHIO:**

**SECTION I:** Trotwood City Council hereby authorizes the granting of a perpetual, non-exclusive right of way and Sewer Easement on City-owned property located at 702 East Main Street, Trotwood, Ohio 45426, Parcel ID No. H33 00217 008.

**SECTION II:** Trotwood City Council further authorizes the City Manager to enter into a Sanitary Sewer Easement Agreement, which is in substantial conformance with the Sanitary Sewer Easement attached hereto and incorporated herein as Exhibit “1”, with Trotwood Senior Lofts.

**SECTION III:** It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements,

TROTWOOD, OHIO 45426

3035 OLIVE ROAD

CITY OF TROTWOOD

including but not limited to Section 121.22 of the Ohio Revised Code.

**SECTION IV:**

This Resolution shall take effect and be in force from and after the date of its passage.

Passed this 7th day of February, 2022.

ATTEST:

APPROVED:

Kara B. Landis  
KARA B. LANDIS  
CLERK OF COUNCIL

Mary A. McDonald  
MARY A. MCDONALD  
MAYOR

Yvonne F. Page  
YVETTE F. PAGE  
VICE-MAYOR

**CERTIFICATE OF RECORDING OFFICER**

I, the undersigned, hereby certify that the foregoing is a true and correct copy of Resolution No. **R22-09** adopted by the Trotwood City Council at a regular scheduled meeting held on the **7th** day of **February, 2022**, and that I am duly authorized to execute this certificate.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
KARA B. LANDIS  
CLERK OF COUNCIL

**SANITARY SEWER EASEMENT**

This **SANITARY SEWER EASEMENT AGREEMENT** (the "Easement Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Trotwood, an Ohio municipal corporation, whose address is 3035 Olive Road, Trotwood, OH 45426 ("Grantor") and Trotwood Senior Lofts LLC , an Ohio limited liability company, whose address is 9100 Centre Pointe Drive, Suite 210, West Chester, OH 45069 ("Grantee"). Grantor and Grantee hereby agree as follows:

**RECITALS:**

A. Grantor is the owner of certain real property known as Montgomery County, Ohio Parcel Number H33-00217-0003 located at 702 E. Main Street, Trotwood, OH 45426 (the "Grantor Property").

B. Grantee is the owner of certain real property known as Montgomery County, Ohio Parcel No. H33-00217-0008 containing 4.75 acres more or less and being located immediately adjacent to the Grantor Property along its Southern boundary line (the "Grantee Property").

C. Grantor and Grantee desire to establish a perpetual, non-exclusive right of way and easement for sanitary sewer purposes (the "Sewer Easement") within the area described in Exhibit "A" and illustrated in Exhibit "B" each attached hereto and incorporated herein by reference (the "Sewer Easement Area").

**NOW, THEREFORE**, in consideration of One Dollar (\$1.00) and other good and valuable consideration paid to Grantor by Grantee, Grantor hereby creates, declares and establishes, and the parties hereto do hereby agree as follows:

1. **Sanitary Sewer Easement.** Grantor hereby grants and conveys to Grantee and its successors and assigns forever, a non-exclusive right of way and easement for sanitary sewer purposes, and the right to lay, construct, operate, inspect, maintain, repair, reconstruct and remove a subsurface sanitary sewer line and appurtenances thereto, including, but not limited to, such manhole(s) or other similar structure(s) as Grantee may deem necessary, along, through, under, across and upon the real estate described in Exhibit "A" and depicted in Exhibit "B", each attached hereto and made a part hereof.

Together with the right to use such additional land on either side of the above described strip of land as may be required during the time the sanitary sewer is being constructed, repaired or reconstructed; and the right of ingress and egress in and over existing ways and lanes to the extent suitable and other reasonable routes to and upon and along said strip of land at such time and at such points as may reasonably be necessary for the construction, maintenance and/or reconstruction of said sanitary sewer line and related facilities and appurtenances; and the right of the Grantee to remove, clear and keep cleared, any and all trees, roots, brush or other obstructions on or in the above described property/real estate within the limits of this right of way and easement,

which may endanger the safety of, or interfere with the construction, operation, maintenance, repair and/or reconstruction of said sanitary sewer line and any and all appurtenances thereto.

2. **Grantor Surface Rights.** The Grantor shall have the right to use the surface of the land over said easement for any purpose provided same does not in any way interfere with Grantee's full and free use of the easement granted herein, and provided further that no building or other structure shall be erected upon, across, over or through said strip of land granted herein, and the Grantor shall not excavate or fill within said right of way and easement or immediately adjacent thereto. It is the obligation of the Grantor not to erode or lay waste the land on or in which the sanitary sewer line and appurtenances thereto are located, or otherwise adversely affect the operation or maintenance of said sanitary sewer line or appurtenances. Before taking any action which might affect said sanitary sewer line or appurtenances, the Grantor agrees (a) to give notice of such action in writing to Grantee at least fifteen (15) days before such action; and (b) obtain written approval of such action from Grantee, which approval shall not be unreasonably withheld.

3. **Maintenance of Sanitary Sewer Easement.** The Grantee, and its successors and assigns, agrees to maintain and restore, at its sole cost and expense, any and all areas of the Grantor's property which are or may be disturbed or eroded due to such installation, repair, reconstruction or maintenance of said sanitary sewer line and any and all appurtenances thereto to the condition they were in immediately prior to the commencement of such installation, repairs, reconstruction or maintenance, including but not limited to, compaction of the soils and gravel, if any, replaced in the excavation areas, as well as repavement of any driveway, parking or sidewalk areas, if any. Grantee shall be solely responsible to at all times pay for the cost of construction, repair, replacement and maintenance of said sewer line and appurtenances.

4. **Indemnification and Insurance.**

(a) **Indemnification.** Grantee, and Grantee's successors and assigns, shall indemnify, defend and hold harmless Grantor, its successors and assigns, from and against any and all losses, liabilities (including strict liability), claims, causes of action, damages, injuries, liens (including mechanic's liens and materialman's liens), expenses and costs, including without limitation reasonable attorney's fees of any settlement, judgment or claims of any and every kind whatsoever paid, incurred or suffered, in connection with or as the result of the use, occupancy and enjoyment of the easements granted herein by Grantor, and it/their agents, contractors, employees, invitees and guests, or property, excepting such liability as may result from the sole negligence or willful misconduct of the Grantor or Grantor's agents, contractors, employees, invitees, or guests.

(b) **Insurance.** Grantee further agrees that Grantee shall, at all times during the duration of this Agreement, maintain and pay for comprehensive general liability insurance affording protection to Grantor and Grantee, and naming Grantor, as an additional insured on the policy or policies for a combined bodily injury and property damage limit of liability not less than \$1,000,000.00 for each occurrence. Grantee further agrees, upon request, to deliver to Grantor a certificate or certificates from Grantee's insurance company evidencing the existence of such insurance.

5. **Subject to Matters of Record.** The easement and right of way conveyed herein is conveyed subject to covenants, conditions, limitations and easements of record.

6. **Grantor's Consent.** Grantor warrants that it is the Owner of the Sewer Easement Area in fee simple, subject to matters of record, and that Grantor has all requisite power and authority to grant the Sewer Easement and bind itself to the terms and conditions hereof, which grant is made with general warranty of title.

7. **Binding on Successors and Assigns.** The grant of the Sewer Easement is binding upon Grantor and its respective heirs, successors and assigns, and same shall run with the land.

8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. If any provision, or portion thereof, of this Agreement or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision, or portion thereof, to any person or circumstances shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable laws.

9. **Severability.** The invalidity of any covenant, restriction, condition, limitation, or any other provision of this Agreement, or any part thereof, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Agreement.

10. **Counterparts.** This Agreement may be executed in one or more counterparts, all parties need not be signatories to the same documents, and all counterpart signed documents shall be deemed to be an original and one (1) instrument.

**TO HAVE AND TO HOLD**, the Sewer Easement and rights of way herein granted unto the said Trotwood Senior Lofts LLC, an Ohio limited liability company, and its successors and assigns, forever. The Grantor herein hereby releases all right, title and interest in and to said easement and right of way, and covenants that the title to said easement and right of way is free, clear and unencumbered, and **WARRANTS GENERALLY** the said title.

[SIGNATURE PAGE FOLLOWS]



GRANTEE:

TROTWOOD SENIOR LOFTS LLC,  
an Ohio limited liability company

By: MVAH HOLDING LLC,  
a Georgia limited liability company  
Its: Manager

By: \_\_\_\_\_  
Printed Name:  
Its:

STATE OF \_\_\_\_\_ )  
  ) SS  
COUNTY OF \_\_\_\_\_ )

*This is an acknowledgement certificate. No oath or affirmation was administered with respect to this notarial act.*

Before me, a notary public in and for said County and State, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of MVAH Holding LLC, a Georgia limited liability company, the Manager of Trotwood Senior Lofts LLC, an Ohio limited liability company, who acknowledged that he/she did sign the foregoing instrument and that the same is his/her and its free and voluntary act and deed.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires: \_\_\_\_\_

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

BEING A SANITARY SEWER EASEMENT OVER, THROUGH, AND ACROSS A PART OF A TRACT OF LAND OWNED BY THE VILLAGE OF TROTWOOD AS DESCRIBED IN OFFICIAL RECORD 859, PAGE 384, SITUATE IN SECTION 15, TOWN 4, RANGE 5 E, CITY OF TROTWOOD, MONTGOMERY COUNTY, OHIO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commencing for reference at a mag nail at the northeast corner of a tract of land owned by the City of Trotwood Community Improvement Corporation as described in IR Deed 2015-009621 and being the northwest corner of a tract of land owned by Beeber Limited as described in IR Deed 2003-133801 and being at the center of East Main Street;

thence, South 00°44'09" West, 499.28 feet, along the east line of said City of Trotwood Community Improvement Corporation tract, and being the west line of said Beeber Limited tract to an iron pin found, at the southeast corner of said City of Trotwood Community Improvement Corporation tract and being the southwest corner of said Beeber Limited tract;

thence, South 89°54'59" West, 27.50 feet, along the south line of a tract of land owned by the City of Trotwood Community Improvement Corporation to a point and being the principal place of beginning of the easement herein described;

thence, South 00°44'09" West, 21.70 feet, to a point;

thence, North 89°15'51" West, 15.00 feet, to a point;

thence, North 00°44'09" East, 21.48 feet, to a point on the south line of said City of Trotwood Community Improvement Corporation tract;

thence, North 89°54'59" East, 21.48 feet, along the south line of said City of Trotwood Community Improvement Corporation tract to the principal place of beginning.

Containing 0.007 acres more or less and all being subject to any legal highways 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, based on a field survey performed under his direct supervision and dated November 17, 2021.

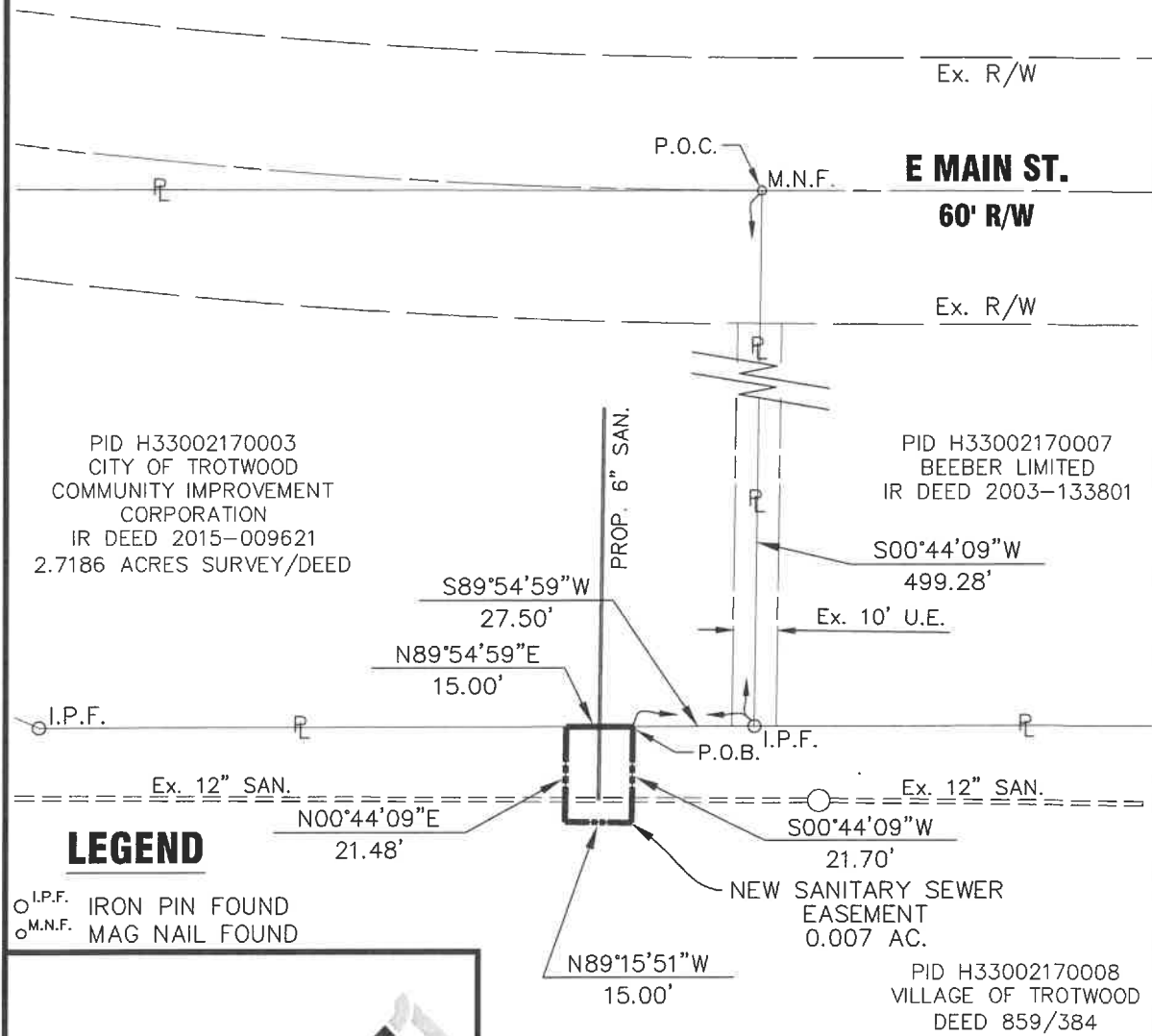
Allen J. Bertke  
Allen J. Bertke, PS #8629



11/17/2021  
Date

# EXHIBIT "B"

BEING A SANITARY SEWER EASEMENT  
SITUATED IN SECTION 15, T 4, R 5 E,  
CITY OF TROTWOOD, MONTGOMERY COUNTY, OHIO



## LEGEND

- I.P.F. IRON PIN FOUND
- M.N.F. MAG NAIL FOUND

**ChoiceOne**  
Engineering

SIDNEY, OHIO 937.497.0200  
LOVELAND, OHIO 513.239.8554

www.CHOICEONEENGINEERING.com

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

