

**IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
SUMMIT COUNTY, OHIO**

CITY OF GREEN,)	CASE NO.: 2021 CV 00141
)	
Plaintiff,)	
)	
vs.)	JUDGE ELINORE MARSH STORMER
)	
ECC GREEN OH LLC, ET AL.,)	
)	
Defendants.)	

AGREED JUDGMENT ENTRY

This matter came before the Court upon and relating to the settlement agreement reached by Plaintiff City of Green ("Plaintiff" or "City of Green") and all Defendants, including ECC Green OH LLC ("ECC Green"), Ohio CVS Stores, LLC ("CVS"), Wells Fargo Trust Company, National Association f/k/a Wells Fargo Bank Northwest, National Association ("Wells Fargo"), and Kristen M. Scalise, Summit County Fiscal Officer ("Fiscal Officer") (collectively, "Defendants").

Based upon the terms and conditions that have been agreed on by the Plaintiff and Defendants, good cause having been shown, the Court hereby enters the following Entry to resolve Plaintiff's Petition for the Appropriation of Property, dated October 15, 2021, which is the subject of this proceeding (the "Petition"), and all claims and defenses that are the subject matter of this case.

The Court **FINDS** that:

1. The right, title, and interest in fee simple in the real property appropriated by the City of Green that is the subject of the Petition (the “Appropriated Property”) is being acquired for municipal purposes to facilitate the construction of the SUM SR 241 Boettler/Franks Ph. 3 Improvement Project (the “Project”), one of the statutory purposes for which the City of Green may acquire property under the Ohio Constitution and the Ohio Revised Code. The Appropriated Property is further described in the attached **Schedule A**.

2. The taking of the temporary easements that also are the subject of the Petition (“Temporary Easements,” together with the Appropriated Property, the “Takings”) constitutes a public necessity and are being acquired for work necessary to (i) reconstruct a bio cell and grade and (ii) construct a storm sewer and grade reconstruction, such public necessity being one of the statutory purposes for which the City of Green may acquire property under the Ohio Constitution and the Ohio Revised Code. The Temporary Easements are further described in the attached **Schedule B**.

3. All of the necessary steps required by law have been taken by the City of Green, all requirements of the Ohio Revised Code have been met, and all of the owners and others having, claiming, or appearing to have an interest in the real property belonging to ECC Green that the Takings will encumber, having a street address of 3761 Massillon Road, Uniontown, Ohio 44685 (the “Property”), have been served and/or have waived service and thus are properly before this Court.

It is, therefore, **ORDERED, ADJUDGED** and **DECREED**, based upon the agreement of Plaintiff and Defendants, that:

1. The total amount of compensation paid by the City of Green shall be One Hundred Seventeen Thousand Dollars (\$117,000.00). This compensation shall constitute full and complete satisfaction of any and all claims or damages, including any claims for damages, pre-judgment interest, post-judgment interest, and/or attorney fees and costs, arising from or relating to the Takings. Any taxes due and owing on the Property shall be paid to the Summit County Fiscal Officer out of the funds that were originally deposited with the Court.

2. The above-referenced settlement amount of One Hundred Seventeen Thousand Dollars (\$117,000.00) (the "Settlement Amount"), shall be paid in the following manner:

(a) Within seven (7) days of the approval and recording of this Entry with the Summit County Fiscal Office, the Clerk shall pay the original deposit of Ninety-Six Thousand Two Hundred Dollars (\$96,200.00) to Wells Fargo Trust Company, National Association, as Trustee, c/o Computershare Corporate Trust Lease, Columbia Mailroom Team, 9062 Old Annapolis Road, Columbia, MD 21045, Attn: Corporate Trust Lease Group.

(b) Within thirty (30) days of the approval and recording of this Entry with the Summit County Fiscal Office, the City of Green shall pay the remaining amount of Twenty Thousand Eight Hundred Dollars (\$20,800.00) to Wells Fargo Trust Company, National Association, as Trustee, c/o Computershare Corporate Trust Lease, Columbia Mailroom Team, 9062 Old Annapolis Road, Columbia, MD 21045, Attn: Corporate Trust Lease Group.

(c) After deducting the amount of \$4,000.00, Wells Fargo will then disburse the Settlement Amount as follows: (i) Thirty-Five Thousand, Five Hundred Dollars (\$35,500.00) shall be paid to ECC Green OH, LLC c/o Barchester, L.P., 3234 Riverview

Lane, Daytona Beach, FL 32118; (ii) Thirty-Five Thousand, Five Hundred (\$35,500.00) shall be paid to Howard Herrick, c/o The Herrick Company, Inc., 2 Ridgedale Avenue, Suite 370, Cedar Knolls, NJ 07927; and (iii) Forty-Two Thousand Dollars (\$42,000.00) shall be paid to CVS, c/o Julie A. Crocker, Esq., 200 Public Square, Suite 3500, Cleveland, Ohio 44114.

3. All right, title, and interest in fee simple in the Appropriated Property that is the subject of the Petition and further described in the attached **Schedule A** shall be, and is hereby, vested in the in the City of Green, and its successors and assigns, free and clear of all claims of the owners of the Property and persons having an interest in the Property and their successors, affiliates or assigns.

4. The Temporary Easements that are the subject of the Petition and further described in the attached **Schedule B** shall be, and are hereby, vested in the City of Green, and its successors and assigns, free and clear of all claims of the owners of the Property and persons having an interest in the Property and their successors, affiliates or assigns, as follows:

(a) Subject to and contingent upon the provisions of this Entry, City of Green, its successors and assigns, shall have and hold a temporary easement over, across and/or upon the real property and improvements described as Parcels T1 and T2 in the attached legal description, which is attached hereto as **Schedule B** and shall be made part hereof, and the duration of the temporary easement granted is twenty four (24) months immediately following the date on which the work described is first commenced by the City of Green, or its duly authorized employees, agents, and contractors for the purpose of establishment, construction, reconstruction, widening, repair or maintenance of a public road and associated improvements.

5. The City of Green shall provide thirty (30) days written notice to CVS before beginning construction to provide CVS with the time needed to cap irrigation and/or otherwise prepare for construction to commence.

6. The City of Green shall in good faith exercise good and workmanlike manner construction practices during construction of the Project, including providing reasonable access at all times to the Property to minimize business disruptions and ensuring that utility connections directly serving the Property ("Property Utilities") remain functional during and after construction of the Project. Any Property Utilities that will require disconnection shall be reconnected as expeditiously as possible to ensure minimal disruption to the Property. The City of Green shall provide twenty-four (24) hours' notice to CVS prior to disconnecting any Property Utilities. Should any unreasonable or unforeseen interruption of the Property Utilities or access to the Property occur, the City of Green shall immediately repair and restore such interruption, with notice of the completed repair or restoration sent to the undersigned counsel for CVS within three (3) business days of any such event.

7. The City of Green shall re-sod all areas impacted by the Takings of Temporary Easements following completion of construction. The City of Green shall notify CVS upon completion of said re-sodding.

8. The City of Green shall cooperate to the greatest extent possible with CVS's installation and relocation of its monument sign (the "CVS Sign"), which CVS Sign is shown, described, and depicted in the attached **Schedule C**. As soon as the re-sodding of the Property is completed, and regardless of whether the Temporary Easements have expired, the City of Green shall allow CVS to install its signs, including the CVS Sign, in the locations shown, described, and

depicted in **Schedule C**. The City of Green shall not issue a permit authorizing an individual, entity, or party to place signage which would obstruct the CVS Sign.

9. The City of Green shall provide a direct construction contact to CVS for CVS to correspond with during construction of the Project.

10. Pursuant to R.C. 163.16, all other court costs relating to this proceeding shall be paid by the City of Green.

11. This Court will retain jurisdiction of this matter with respect to the enforcement and implementation of this Entry and the settlement terms set forth herein.

12. Pursuant to Civ.R. 58(B), the Summit County Probate Court Clerk is hereby directed and ordered to serve notice of this judgment and the date of entry upon the journal to all parties within three (3) days of the judgment entry upon the journal, and note the service in the appearance docket.

IT IS SO ORDERED.

JUDGE ELINORE MARSH STORMER

Approved by:

ROD A. MOORE (0093682)
JAMES M. WHERLEY, JR. (0073932)
MICHAEL J. CLASS (0100010)
Attorney for Plaintiff City of Green

JULIE A. CROCKER (0081231)
Attorney for Defendant ECC Green Ohio LLC

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JULIE A. CROCKER (0081231)
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JENNIFER M. PIATT (0081681)
*Attorney for Defendant Kristen M. Scalise,
Summit County Fiscal Officer*

