ORDINANCE NO. 20, 2016

APPROVING THE CONSTRUCTION OF A RETAINING WALL 209
HARVEY COURT ON VILLAGE PROPERTY BY THE OWNER,
BIAGIO LAMASSA, REQUIRING EXECUTION AND RECORDING
OF AN INDEMNITY AGREEMENT, AND DECLARING AN
EMERGENCY.

WHEREAS, Biagio Lamassa has built a retaining wall in the front yard of his property
located at 209 Harvey Court within the Village of St. Bernard; and

WHEREAS, The wall was built along the sidewalk in front of their property; and

WHEREAS, the Village of St. Bernard owns the streets, sidewalks and adjacent lands
beyond the sidewalk called Village right-of-ways; and

WHEREAS, the Village seeks to limit all liability of the wall by executing an indemnity
agreement with the adjacent land owners and recording the agreement to run with the
land and bind both present and future land owners of the adjacent property; and

WHEREAS, Biagio Lamassa agrees to sign the indemnity agreement and thereby agree to
hold the Village harmless from all liabilities arising from the existence of the retaining wall;
now therefore,

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF ST. BERNARD, STATE OF
OHIO:

Section 1. The Village of St. Bernard hereby approves the retaining wall, as defined
pursuant to as built on Village property located on the side of 209 Harvey Court, by land
owners, Biagio Lamassa.

Section 2. That such approval, as set forth in Section 1 of this ordinance, is hereby
conditioned on the proper execution of an indemnity agreement, as attached hereto, by
property owners, and where such agreement shall be recorded with the Hamilton County
Recorder’s Office and shall be binding upon all future land owners of the property located
at 209 Harvey Court.

Section 3. This Ordinance is hereby declared to be an emergency measure necessary to
the immediate preservation of the public peace, health and safety. Therefore, this
Ordinance shall take effect immediately by and upon its passage, and the approval of
two-thirds of the members of said Council. However, this Ordinance shall take effect on
the earliest date provided by law if approved by no more than the majority of the members
of Council and in that event the emergency provisions herein are set at naught.

Passed this 20th day of October, 2016.

ATTEST:
M. SUE KATHMAN
Clerk of Council

Approved this 20th day of October, 2016.

JOHN R. ESTEP
Mayor

I, M. SUE KATHMAN, CLERK OF COUNCIL, VILLAGE OF ST. BERNARD, STATE OF
OHIO, DO HEREBY testify that the publication of Ordinance No. 20, 2016, was made by
posting true copies of the same in the most public places designated by Council: St.
Bernard Square Bus Stop; Vine Street and Washington Avenue; Bertius Street Park;
Greenlee Avenue and Johnson Alley; Park on Heger Drive; each for a period of fifteen (15)
days or more commencing 10-20-16, 2016.

ATTEST: M. SUE KATHMAN DATE 10-20-16
Clerk of Council

Approved as to form 10-20-16
DIRECTOR OF LAW

DATE 10-20-16, 2016
AGREEMENT

This Agreement entered into this 3rd day of September, 2016 by the Village of St. Bernard, Ohio and Biagio Lamassa.

WHEREAS, The Village of St. Bernard, (the "Village") is the owner of certain public sidewalk that is adjacent to the private property located at 209 Harvey Court, St. Bernard, Hamilton County, Ohio 45217 and more fully described in the legal description attached hereto and incorporated herein as Exhibit "A" (the "Lamassa"); and,

WHEREAS, Biagio Lamassa ("Lamassa") is the owner of the Lamassa Property; and,

WHEREAS, Lamassa desires to construct a Retaining Wall (the "Wall") to improve the Lamassa Property; and,

WHEREAS, Lamassa desires to construct the Wall in such a manner that the completed Wall would extend onto the property owned by the Village; and,

WHEREAS, Lamassa and the Village agree that the construction of the Wall will benefit the public good, Lamassa and the Village hereby agree, covenant, and acknowledge as follows:

Lamassa agrees, covenants, and acknowledges that construction of the Wall will be completed in a good and workmanlike manner according to local and state law and according to industry specifications and practices; and,

Lamassa agrees, covenants, and acknowledges that the Wall will be constructed in strict compliance with the plans and specifications detailing the construction of the Wall attached hereto and incorporated herein as Exhibit "B"; and,

Lamassa agrees, covenants, and acknowledges that Lamassa will maintain the Wall as well as any and all land enclosed by the Wall in a good and workmanlike manner according to local and state law and according to industry specifications and practices; and,

Lamassa agrees, covenants, and acknowledges that they will defend and hold harmless and indemnify the Village forever for any claims or actions of any nature whatsoever that may arise from the construction, existence, maintenance, and/or destruction, either intended or unintended, of the Wall; and,

Lamassa agrees, covenants, and acknowledges that this agreement shall be recorded in the Official Record of the Recorder of Hamilton County, Ohio; and,

Lamassa agrees, covenants, and acknowledges that this agreement shall be binding upon any and all future transfers of the Property; and,

Lamassa agrees, covenants, and acknowledges that no additional property rights whatsoever shall accrue in favor of Lamassa and/or any future transferees of the property or any other persons or entities by operation of law or equity, including, but not limited to, adverse possession or prescriptive easement by the construction, existence, maintenance, and/or destruction, either intended or unintended, of the Wall; and,

Lamassa agrees, covenants, and acknowledges that the Village shall not relinquish any ownership interest in the certain public sidewalk by the construction, existence, maintenance, and/or destruction, either intended or unintended, of the Wall; and

Lamassa agrees, covenants, and acknowledges that, in the event that the Village finds it necessary at any time after the execution of this agreement to utilize any or all of its property encroached upon by the Wall, Lamassa, at Lamassa’s expense, shall, immediately upon request of the Village, remove the Wall in a good and workmanlike manner according to local and state law and according to industry specifications and practices.
In return for the above agreements, covenants, and acknowledgements by Lamassa, the Village agrees as follows:

The agrees, covenants, and acknowledges that Lamassa is permitted to construct the Wall pursuant to the above agreements, covenants, and acknowledges that Lamassa is permitted to construct the Wall pursuant to the above agreements, covenants, and acknowledgements made herein by Lamassa.

Approved as to form by:

Mike Peck  
Law Director  
Village of St. Bernard, Ohio

Village of St. Bernard, Ohio by:

Thomas J. Paul  
Service Director  
Village of St. Bernard, Ohio

STATE OF OHIO  
)  
COUNTY OF HAMILTON  
)
Sworn and subscribed to before me this 24th day of September, 2016 by Thomas J. Paul

Biagio Lamassa

STATE OF OHIO  
)  
SS.  
COUNTY OF HAMILTON  
)
Sworn and subscribed to before me this 24th day of September, 2016 by Biagio Lamassa.