

TEMPORARY ORDINANCE NO. 33-17

PERMANENT ORDINANCE NO. 33-17

AN ORDINANCE TO ACCEPT AN EASEMENT NECESSARY TO CONSTRUCT, REPAIR, MAINTAIN, OPERATE, INSPECT, REPLACE, OR REMOVE A GAS LINE AND APPURTENANCES

WHEREAS, there exists a real and present need to accept said easement for the construction, repair, maintenance, operation, inspection, replacement, and/or removal of a gas line;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO:

SECTION 1. The following easement be granted under terms and conditions substantially similar to Exhibit A attached hereto:

<u>PROPERTY OWNER</u>	<u>PERMANENT EASEMENT</u>	<u>EXHIBIT</u>
Mithoff Companies, LTD	1,065 Square Feet	A

SECTION 2. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: 11/13/17 after 3rd reading. Vote: Yeas 9 Nays 0

Approved: 11/13/17

Clerk: Teresa Lee Sandy

[Signature]
President of Council

Offered by: [Signature]

[Signature]
Mayor

Second by: [Signature]

Requested by Law Committee

I, Teresa Lee Sandy, Clerk of Council do hereby certify that on _____, 2017 the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

Clerk of Council

**DEED OF PERMANENT EASEMENT
GENERAL UTILITY UNDERGROUND FACILITIES EASEMENT**

The **Mithoff Companies, LTD**, having a mailing address of 4805 Scooby Lane, Carroll, Ohio 43112 ("Grantor"), for good and valuable consideration received, does hereby grant, bargain, sell and convey to the **City of Lancaster**, an Ohio municipal corporation, having a mailing address of 104 East Main Street, Lancaster, Ohio 43130, its successors and assigns ("Grantee"), a **permanent General Utility Underground Facilities Easement** ("Easement"), together with appurtenant rights in, under, along, over, across, and upon the real property (or a portion of the real property) owned by Grantor, located in the State of Ohio, County of Fairfield, City of Lancaster, and more fully described as in the Congress Lands East of the Scioto River Section 12, Township 14N, Range 19W and being a part of Lot 37 (new numbering) and a vacated alley of Carpenter's Addition, Plat Book 1, Page 2, Parcel No. 0535095700, Lancaster, Ohio 43130, and being 0.17 acres ("Real Property"). The exact location of the Easement consists of a One Thousand Sixty-Five (1,065) Square Feet portion of the Real Property more specifically described in the legal description and illustration attached as Exhibit "A" hereto and incorporated herein by reference ("Easement Premises").

By acceptance of this Easement, the parties mutually agree that it is in their best interest for the Grantor to grant and the Grantee to accept the following conditions and covenants to do the following:

1. Grantor hereby grants and conveys to Grantee a permanent Easement to survey, construct, operate, maintain, remove, replace and control General Utility Underground Facilities, subject to the terms and conditions hereinafter set forth, in, under, along, over, across, and upon the Easement Premises, together with all reasonable rights of ingress and egress across the Real Property owned by Grantor necessary for the exercise of the rights herein granted.
2. Grantor shall permit Grantee's employees, agents, and contractors to enter upon the Real Property for the purposes of constructing, maintaining, operating, and replacing the General Utility Underground Facilities and associated equipment and appurtenances thereto over and across the Easement Premises, and shall not interfere with Grantee's use, access, ingress and egress to the Easement Premises. Grantee shall be permitted to construct roadways, signage, barriers, fencing, and landscaping as Grantee determines is necessary. The right to use the Easement Premises shall belong to the Grantee and its agents, employees, designees, contractors, guests, invitees, successors and assigns, and all those acting by or on behalf of it for the purposes of establishing, laying, constructing, reconstruction, installing, realigning, modifying, replacing, improving, adding, altering, substituting, operating, maintaining, accessing, inspecting, patrolling, protecting, repairing, changing the size of, or relocating the General Utility Underground Facilities and associated equipment and appurtenances thereto within the Easement Premises.
3. All improvements on the Easement Premises shall be at the sole cost of the Grantee.



4. Grantee agrees to comply in all material respects, at its sole cost, with all applicable federal, state and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including without limitation, the construction, use, operation, maintenance, repair and service of the General Utility Underground Facilities and associated equipment and appurtenances thereto.
5. Grantee will, insofar as reasonably practicable, level, re-grade, and reseed the ground disturbed by Grantee's use of the Easement Premises and will maintain the Easement Premises clean of all litter and trash during periods of construction, operation, maintenance, repair or removal. All construction debris shall be cleaned up and removed from Grantor's lands upon completion of installation and construction of the General Utility Underground Facilities and associated equipment and appurtenances thereto.
6. Grantee shall have the right to prohibit public access to the Easement Premises.
7. Grantor may not erect new or additional power and transmission lines, water, sewer, or other utility lines, or wells within the Easement Premises, and Grantor may not grant any additional easement(s) within the Easement Premises.
8. No buildings or other structures shall be constructed in the Easement Premises by Grantor, nor shall Grantor cause any excavating or filling to be done which, in the reasonable judgment of Grantee, would impair Grantee's exercise of the rights granted hereunder or its ability to maintain its Easement.
9. Grantee has the right (1) to mow the Easement Premises, (2) to trim, cut down or eliminate trees or shrubbery that, in the sole judgment of Grantee, interfere with the operation of the General Utility Underground Facilities, (3) to remove possible hazards to the General Utility Underground Facilities, and (4) to remove or prevent the construction of any and all buildings, structures, reservoirs or other obstructions on the Easement Premises which, in the sole judgment of the Grantee, may endanger or interfere with the efficiency, safety, or convenient operation of the General Utility Underground Facilities. All trees, brush and other debris caused by construction shall be burned and/or chipped and spread on the Easement Premises or removed to an authorized disposal site. The method of disposal shall be selected by Grantee.
10. Grantor reserves the right to use the Easement Premises in any manner that will not prevent or interfere with the exercise by the Grantee of the rights granted hereunder; provided, however, that Grantor shall not obstruct, or permit to be obstructed, the Easement Premises without the express prior written consent of Grantee.
11. Grantee shall have the right to periodically inspect the Easement Premises for violations of the covenants and restrictions set forth herein. If Grantor or its successors and assigns violate any of these covenants and restrictions Grantor shall cure the violation(s) within sixty (60) days of receipt of notice thereof from Grantee. If Grantor fails to adequately cure or eliminate the violation(s) within the sixty (60) day time period, Grantee may cause the cure of the violation(s), and Grantor shall immediately reimburse Grantee for all

costs and expenses incurred in curing the violation(s). Grantee shall also have the right to obtain injunctive relief for the enforcement of the covenants and restrictions from a court of competent jurisdiction.

12. Grantee shall have the right to post and/or mark the boundaries of the Easement Premises.
13. Grantee shall have exclusive possession of the Easement Premises at all times.
14. This Easement, its terms and conditions contained herein and all rights, title and privileges herein granted, including all benefits and burdens, shall run with the land and shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors, assigns and legal representatives.
15. Grantor agrees that Grantee may assign the rights granted to it hereunder to any assignee who demonstrates sufficient competence and gives adequate assurances that any work to be performed pursuant to such assignment shall be done in a skillful manner.
16. Said Easement may not be sold or transferred without Grantor's specific written authority regardless of whether such action is deemed to result in any additional burden or damage to Grantor's property.
17. If any damage to Grantor's Real Property is caused by Grantee's exercise of its rights hereunder, Grantee shall promptly restore any disturbed areas as nearly as possible to the condition existing prior to the occurrence of the damage.
18. Grantor covenants with Grantee that it is the true and lawful owner of the Real Property inclusive of the Easement Premises, and is lawfully seized of the same in fee simple and has good right and full power to grant this Easement. Grantor represents and warrants that he/she/it is the sole free owner(s) of the property herein described and the he/she/it has the authority to convey said rights and interests to the Grantee. Grantor represents and warrants that, except for easements, conditions, agreements, restrictions, reservations and covenants of record prior to the date of this Agreement, there are no liens, encumbrances or mortgages affecting the land underlying the Easements except: NONE.
19. Grantor agrees to defend, indemnify and hold harmless Grantee from any and all claims disputing Grantor's legal right to convey the Easement to Grantee, as well as all claims for payment or restitution made by a third party. Grantor agrees to reimburse Grantee for its costs, including attorney's fees, in asserting or defending all claims made which dispute Grantor's legal right(s) to convey the Easement.
20. This Easement shall be interpreted, enforcement and governed under the laws of the State of Ohio. If the Easement covers property located in more than one county, venue shall be in the county where the majority of the property geographically exists.
21. This Easement embodies the entire agreement between the parties hereto with respect to the Easements and supersedes any and all agreements representations, warranties, or

statements which may have been made between the parties prior to the date hereof, whether express, implied, written, or verbal, concerning the subject matter hereof, and this Easement shall not be modified or amended except by written instrument executed by each party hereto.

IN WITNESS WHEREOF, the parties have executed or have caused this instrument to be executed by their proper officers duly authorized to do so on this ____ day of _____, 2017.

GRANTOR:

Mithoff Companies, LTD

Brad Hutchinson
President

State of Ohio :
County of Fairfield : ss

BEFORE ME, a Notary Public in and for said county and state, did personally appear the above-named **Brad Hutchinson**, who acknowledged that he/she did sign the foregoing instrument and that the same was his/her free act and deed.

IN TESTIMONY WHEREOF, I have set my hand and official seal, at Lancaster, Ohio, this ____ day of _____, 2017.

Notary Public, State of Ohio

State of Ohio :
County of Fairfield : ss

BEFORE ME, a Notary Public in and for said county and state, did personally appear the above-named **Paul D. Martin**, who acknowledged that he did sign the foregoing instrument and that the same was his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Lancaster, Ohio, this ____ day of _____, 2017.

Notary Public, State of Ohio

This instrument prepared by:
Randall T. Ullom
Law Director & City Prosecutor's Office
City of Lancaster, Ohio
P.O. Box 1008
Lancaster, Ohio 43130

**Legal Description
City of Lancaster, Fairfield County, Ohio
Section 12, Township 14N, Range 19W
1065 Square Feet – Easement**

Situated in the City of Lancaster, County of Fairfield, and State of Ohio and in the Congress Lands East of the Scioto River Section 12, Township 14N, Range 19W being more particularly bounded and described as follows:

Being a part of Lot 37 (new numbering) and a vacated alley of Carpenter's Addition, Plat Book 1, Page 2, in the Fairfield County Recorder's Office;

Beginning at a Rail Road Spike Found at the north west corner of said Lot 37, also being at a bend in the south line of Front Street, being the **TRUE POINT OF BEGINNING**;

Thence with the south line of front street $S72^{\circ}28'11''E$ (passing a $\frac{3}{4}$ " Pipe Found at 106.69 feet) 110.17 feet to a point;

Thence on a new line $S47^{\circ}59'52''W$ 11.60 feet to a point;

Thence continuing on a new line $N72^{\circ}28'11''W$ 102.83 feet to a point in the west line of said Lot 37;

Thence with the west line of Lot 37 $N09^{\circ}15'09''E$ 10.11 feet to the **TRUE POINT OF BEGINNING**;

Containing 1065 Square Feet, more or less.

Subject to all existing rights-of-way and easements of record.

Bearings are based on the west line of South Columbus Street as determined by GPS observation based on ODOT CORS using VRS on the NAD83(11) datum, being $S42^{\circ}37'38''E$.

This description was prepared for the purpose of identifying the location and position of the proposed easement. It is based on the noted documents of record found in the Fairfield County Recorder's Office. This Drawing does not represent a plat or boundary survey as prescribed by Ohio Administrative Cod 4733-37.


Craig E. Stevenson P.S. 8592
Harral and Stevenson



July 14, 2017
Date

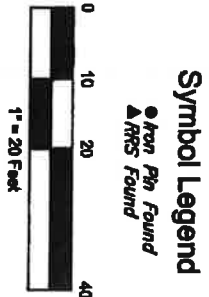
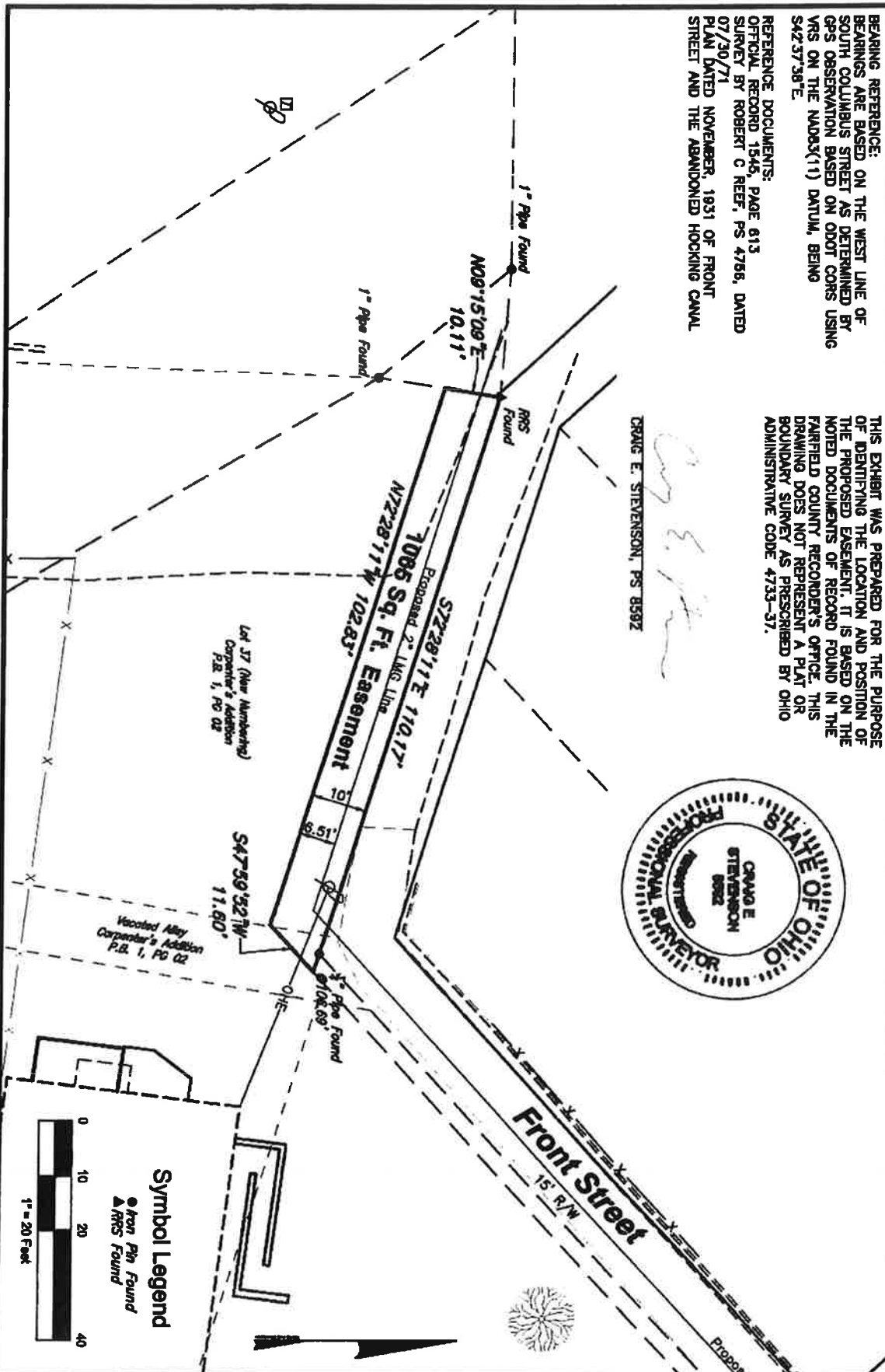


BEARING REFERENCE:
 BEARINGS ARE BASED ON THE WEST LINE OF
 SOUTH COLUMBUS STREET AS DETERMINED BY
 GPS OBSERVATION BASED ON ODOT CORNS USING
 VNS ON THE NAD83(1) DATUM, BEING
 S42°37'38"E

REFERENCE DOCUMENTS:
 OFFICIAL RECORD 1545, PAGE 813
 SURVEY BY ROBERT C REEF, PS 4766, DATED
 07/30/71
 PLAN DATED NOVEMBER, 1931 OF FRONT
 STREET AND THE ABANDONED HOOKING CANAL

THIS EXHIBIT WAS PREPARED FOR THE PURPOSE
 OF IDENTIFYING THE LOCATION AND POSITION OF
 THE PROPOSED EASEMENT. IT IS BASED ON THE
 NOTED DOCUMENTS OF RECORD FOUND IN THE
 FAIRFIELD COUNTY RECORDER'S OFFICE. THIS
 DRAWING DOES NOT REPRESENT A PLAT OR
 BOUNDARY SURVEY AS PRESCRIBED BY OHIO
 ADMINISTRATIVE CODE 4733-37.

CRAGG E. STEVENSON, PS 8592



	Harral and Stevenson Engineering - Surveying - Planning 120 E. Main Street, Suite A Circleville, Ohio 43113 Ph: 740.497.4432 www.harralstevenson.com	Date: 07/14/17 Scale: 1"=20' Drawn By: IMJ Project: S0193 Client: Hutchison	CITY OF LANCASTER, FAIRFIELD COUNTY, OH SECTION 12, TOWNSHIP 14N, RANGE 19W EASEMENT EXHIBIT 1066 SQUARE FEET - EASEMENT
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