

TEMPORARY ORDINANCE NO. 51-21

PERMANENT ORDINANCE NO. _____

AN ORDINANCE TO ACCEPT AN EASEMENT NECESSARY TO SURVEY, CONSTRUCT, OPERATE, MAINTAIN, REMOVE, REPLACE AND CONTROL CITY GAS PIPELINE AND TO DECLARE AN EMERGENCY

WHEREAS, there exists a real and present need to accept said easement for the surveying, construction, operation, maintenance, removal, replacement, and/or control of City gas pipeline;

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

SECTION 1. The Service-Safety Director is hereby authorized to accept the following easement for gas pipeline under terms and conditions substantially similar to Exhibit "A" attached hereto and to execute whatever documents are necessary to record this easement:

<u>PROPERTY OWNER</u>	<u>PERMANENT EASEMENT</u>	<u>EXHIBIT</u>
Lancaster Development Company, LLC	+/- 0.2365 Acres	A

SECTION 2. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare of this City and is required to be immediately effective to ensure economic development in a timely manner, wherefore this Ordinance shall be in full force and effect immediately upon its passage by City Council and approval by the Mayor.

Passed: _____ after _____ reading. Vote: Yeas _____ Nays _____

Approved: _____

President of Council

Clerk: _____

Mayor

Offered by: _____

Second by: _____

Requested by Service Committee



DEED OF PERMANENT GAS PIPELINE EASEMENT

Lancaster Development Company, LLC, an Ohio limited liability company, having a mailing address of 8230 Pittsburg Avenue, N.W., North Canton, Ohio 44720, ("Grantor"), for good and valuable consideration received, does hereby grant, bargain, sell and convey to the **City of Lancaster, Ohio**, an Ohio municipal corporation, having a mailing address of 104 East Main Street, Lancaster, Ohio 43130, its successors and assigns ("Grantee"), a **permanent underground gas pipeline 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 Lot Number 1 in the Timbertop Subdivision (Phase One), recorded in Plat Cabinet 3, Slot 76 of the Fairfield County Records, containing 11.6264 acres of land, Parcel No. 0532327700, located on N. Columbus Road, Lancaster, Ohio 43130, ("Real Property"). The exact location of the Easement consists of a 0.2365 acre portion of the Real Property more specifically described in the legal description and illustration attached as Exhibit "A" and "B" 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 the gas pipeline and its appurtenances, 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 gas pipeline 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 gas pipeline 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 gas pipeline 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 gas pipeline 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 without the Grantee's prior written consent, not to be unreasonably withheld.
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 gas pipeline, (3) to remove possible hazards to the gas pipeline, 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 gas pipeline. 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, subject to the rights of Grantor as specified herein.
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 it is the sole free owner of the property herein described and 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 Easement except:

Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing from Lancaster Development Company, LLC, an Ohio limited liability company, to WesBanco Bank, Inc., dated January 28, 2021 and recorded February 1, 2021 in Instrument Number 202100002884 of the Fairfield County Records, securing a note in the amount of \$4,800,000.00.

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 _____, 2021.

GRANTOR:

Lancaster Development Company, LLC,
an Ohio limited liability company

By: _____
Anthony J. Perez
Manager

GRANTEE:

City of Lancaster, Ohio,
an Ohio municipal corporation

By: _____
Paul D. Martin
Service-Safety Director

STATE OF OHIO)
) ss:
STARK COUNTY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021 by Tony Perez, Manager of **Lancaster Development Company, LLC** an Ohio limited liability company.

Notary Public
This is an acknowledgment clause; no oath or affirmation was administered to signer.

STATE OF OHIO)
) ss:
FAIRFIELD COUNTY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021 by Paul D. Martin, Service-Safety Director of the **City of Lancaster, Ohio**, an Ohio municipal corporation.

Notary Public
This is an acknowledgment clause; no oath or affirmation was administered to signer.

This instrument prepared by:

Jamie R. Minor, Esq.
Winkhart & Minor, LLC
825 S. Main St.
North Canton, Ohio 44720

October 21, 2021

LEGAL DESCRIPTION
Gas Line Easement
0.2365 Acres

Situated in the State of Ohio, County of Fairfield, City of Lancaster, and known as being a part of Section 26 and 35, Township 15, Range 19 in said Fairfield County, further known as being a part of Lot 1 of the Timbertop Subdivision (Phase One) as recorded in Instrument Number 202100005300 of the Fairfield County Records and more fully described as follows:

Beginning at the northeast corner of said Lot 1, thence N 89°22'00" W, along the northerly line of said Lot 1, also being the southerly right-of-way line of Hawthorne Ave. (70' Wide), a distance of 114.00 feet to the True Place of Beginning for the easement to be described in the following eighteen (18) courses;

1. Thence S 00°28'00" W, along a new line of easement, a distance of 255.83 feet to a point;
2. Thence S 23°53'56" E, along a new line of easement, a distance of 91.76 feet to a point;
3. Thence S 01°01'13" W, along a new line of easement, a distance of 276.96 feet to a point;
4. Thence S 45°09'19" W, along a new line of easement, a distance of 108.64 feet to a point;
5. Thence N 88°58'47" W, along a new line of easement, a distance of 101.43 feet to a point;
6. Thence S 75°18'12" W, along a new line of easement, a distance of 44.91 feet to a point;
7. Thence N 88°58'47" W, along a new line of easement, a distance of 43.89 feet to a point;
8. Thence S 48°54'42" W, along a new line of easement, a distance of 110.76 feet to a point;
9. Thence N 46°18'06" W, along the northeasterly right-of-way line of Timbertop Street (80' Wide), a distance of 10.04 feet to a point;
10. Thence N 48°54'42" E, along a new line of easement, a distance of 115.52 feet to a point;
11. Thence S 88°58'47" E, along a new line of easement, a distance of 46.36 feet to a point;
12. Thence N 75°18'12" E, along a new line of easement, a distance of 44.91 feet to a point;
13. Thence S 88°58'47" E, along a new line of easement, a distance of 98.57 feet to a point;
14. Thence N 45°09'19" E, along a new line of easement, a distance of 100.36 feet to a point;
15. Thence N 01°01'13" E, along a new line of easement, a distance of 270.70 feet to a point;
16. Thence N 23°53'56" W, along a new line of easement, a distance of 91.71 feet to a point;
17. Thence N 00°28'00" E, along a new line of easement, a distance of 258.01 feet to a point;

18. Thence S 89°22'00" W, along the southerly right-of-way line of said Hawthorne Ave., a distance of 10.00 feet to The True Place of Beginning and containing 0.2365 Acres of land, more or less, as determined in October, 2021 by Joshua Matejin, Registered Surveyor No. 8787, with GBC Design, Inc., but subject to all legal highways and any restrictions, reservations or easements of record.

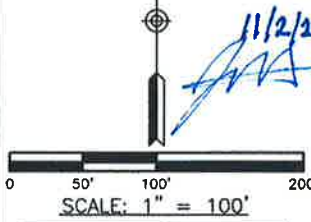
*Basis of Bearing is the Plat of Timbertop Subdivision as recorded in Instrument Number 202100005300 of the Fairfield County Records.


Joshua Matejin, P.S. No. 8787

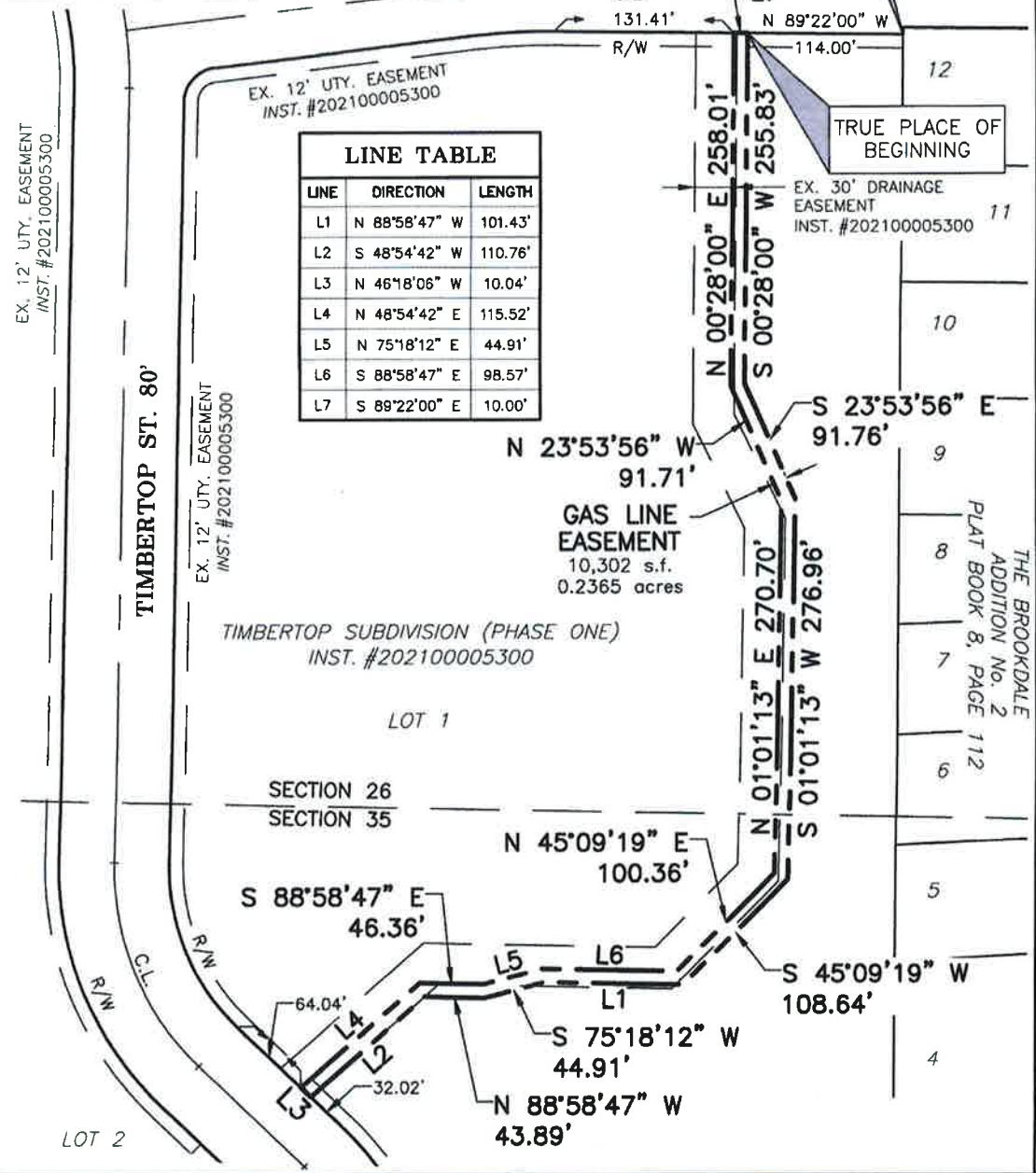


BASIS OF BEARING:
 THE TIMBERTOP SUBDIVISION (PHASE ONE) PLAT AS RECORDED IN INSTRUMENT NUMBER 202100005300, OF THE FAIRFIELD COUNTY RECORDER'S OFFICE.

SITUATED IN THE STATE OF OHIO, COUNTY OF FAIRFIELD, CITY OF LANCASTER, AND KNOWN AS BEING A PART OF SECTION 26 AND 35, TOWNSHIP 15, RANGE 19 KNOWN AS BEING PART OF LOT 1 OF THE TIMBERTOP SUBDIVISION (PHASE ONE) AS RECORDED IN INSTRUMENT NUMBER 202100005300, RECORDER'S OFFICE, FAIRFIELD COUNTY.



LEGEND	
MONUMENTS	
LOO	LINE DATA
C.L.	CENTERLINE
R/W	RIGHT OF WAY



LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N 88°58'47" W	101.43'
L2	S 48°54'42" W	110.76'
L3	N 46°18'06" W	10.04'
L4	N 48°54'42" E	115.52'
L5	N 75°18'12" E	44.91'
L6	S 88°58'47" E	98.57'
L7	S 89°22'00" E	10.00'

10' PUBLIC GAS EASEMENT EXHIBIT
 LANCASTER DEVELOPMENT CO., LLC.
 8230 PITTSBURG AVE. NW
 NORTH CANTON, OHIO 44720

PREPARED BY:
GBC DESIGN, INC.
 666 White Pond Dr. Akron, OH 44320
 Phone 330-836-0228 Fax 330-836-5782

DATE: 10/20/2021
 PROJECT No. 520336