

RESOLUTION NO.: 63 -2010
INTRODUCED BY: Alexander

**A RESOLUTION ACCEPTING AN EASEMENT FOR ACCESS AND
WORK FOR THE INSTALLATION AND MAINTENANCE OF A PUBLIC
WATER MAIN ON HILLTOP ROAD; MODIFYING RESOLUTION NO.
54-2010 OF THIS COUNCIL; AND DECLARING AN EMERGENCY.**

WHEREAS, for appropriate consideration, Walter J. and Jean T. Smrekar, the owners of certain property located at 2539 Hilltop Road within the City of Richmond Heights have agreed to grant a certain easement upon their properties on Hilltop Road to this City and to the City of Cleveland for purposes of access to and work for the installation and maintenance of a public water main; and

WHEREAS, pursuant to Resolution No. 54-2010, adopted on August 10, 2010, this Council authorized the acceptance of an easement for a water main from these same grantors but due to changes in the plans for the placement of the water main, the easement that was accepted by said Resolution needs to be revised.

NOW, THEREFORE, Be It Resolved by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1: This Council accepts the grant of easements by Walter J. and Jean T. Smrekar over Permanent Parcel Nos. 662-03-005 and -006 for access to and work area to install and maintain public water main facilities pursuant to the terms as generally set forth in the easement document attached hereto and incorporated herein by reference as "Exhibit A".

Section 2: Resolution No. 54-2010 is hereby modified by withdrawing this Council's acceptance of the water main easement set forth therein.

Section 3: It is 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 all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4: This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, safety and welfare of the citizens of the City for the reasons that it is necessary to provide for the legal ability to install a public water main and to maintain it for properties on Hilltop Road in the City of Richmond Heights, including properties owned or to be owned by the City, to meet contingencies and deadlines for

property transfers on Hilltop Road, and to timely carry out a contract for the water main project; and, therefore, this Resolution shall take effect and be in force immediately upon its passage and approval by the Mayor.

PASSED: _____

Daniel J. Ursu, Mayor

APPROVED: _____

ATTEST: _____

Betsy Traben
Clerk of Council

David H. Roche
President of Council

EXHIBIT A

ACCESS AND WORK EASEMENT FOR THE INSTALLATION AND MAINTENANCE OF A WATER MAIN FOR THE PURPOSE OF SUPPLYING WATER SERVICE

We, **Walter J. Smrekar** and **Jean T. Smrekar**, husband and wife, collectively the "Grantor" herein, for valuable consideration received and to be received to our full satisfaction, do hereby grant and convey to the City of Richmond Heights, and to the City of Cleveland, political subdivisions of the State of Ohio, the "Grantees" herein, the perpetual right-of-way and easement for the purposes hereinafter mentioned over a portion of the following described lands:

- (1) Situated in the City of Richmond Heights, County of Cuyahoga and State of Ohio, and known as Sublot No. 7 in the Highland Subdivision of part of the Original Euclid Township Lots Nos. 25, 26, 58 and 59 in Tract No. 11. (Permanent Parcel No. 662-03-005); and
- (2) Situated in the City of Richmond Heights, County of Cuyahoga and State of Ohio, and known as Sublot No. 4 in the Highland Subdivision of part of the Original Euclid Township Lots Nos. 25, 26, 58 and 59 in Tract No. 11. (Permanent Parcel No. 662-03-006), and as specifically bounded and described over the following premises (the "Premises"):

A copy of the legal description of the Premises is attached hereto as "Exhibits A", and a graphic description of the Premises is attached hereto as "Exhibit B." Both Exhibits made a part hereof as if fully written herein.

Grantor and Grantees agree that all references to any party in this instrument shall include that party and that party's heirs, administrators, successors and/or assignees.

In consideration of the mutual covenants contained herein, the Grantor hereby grants and conveys unto the Grantees the right and easement to enter upon the Premises for access purposes to lay, install and maintain a water main and appurtenances, including service connections and pipes, within the public right-of-way that is adjacent to the Premises. Grantor further grants to

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Grantees the right and easement to enter upon the Premises for access purposes to set all water meters and make all repairs to said water mains, service meters and appurtenances which the Grantees deem to be necessary or advisable from time to time; to turn off water to any service connection or water main; or to do any other thing which the Grantees deem to be necessary or advisable in order to operate or maintain said mains, meters, connections, pipes and appurtenances in accordance with the ordinances, rules and regulations of the Grantees which are now in effect or may be adopted hereafter.

Grantee City of Richmond Heights agrees to pay the cost of installing a water main and appurtenances within the public right-of-way adjacent to the Premises. The water main and appurtenances, including valves and hydrants, shall upon completion, and approval by the Grantees, become and remain the property of the Grantee City of Richmond Heights, and shall be a distribution water main of said Grantee within the purview and subject to the terms of any Water Service Agreement between said Grantee and Grantee, the City of Cleveland, now or hereafter in effect.

All service connections shall be installed in accordance with the ordinances, rules and regulations of the Grantees at the expense of owners of the abutting properties or others who seek water service thereby. Service connections shall be assigned to specific street mailing addresses by Grantee, City of Cleveland, when said Grantee receives the official designation of such addresses from Grantee, City of Richmond Heights.

All water meters shall be furnished and set by Grantee, City of Cleveland, at the expense of the owners of abutting properties or others who seek water service from the subject water main, except Grantee City of Richmond Heights shall assume the expense of the initial furnishing and setting of Grantor's water meter at 2539 Hilltop Road, Richmond Heights, Ohio. All water shall be supplied by Grantee, City of Cleveland, in the same manner and to the same extent that the Grantee supplies water to properties abutting on public streets in the City of Cleveland.

The Grantor hereby restricts the Premises against the construction thereon of any temporary or permanent structures, except that Grantor may install or cause to be installed sidewalks or pavements, or tunnels, railroad switch tracks, sewers, ducts, pipes or pole lines on the Premises which do not affect access to, or the integrity of, the water main and appurtenance, including service connections and pipes. The Grantor agrees to keep the Premises free of materials, equipment, vehicles, trees, shrubbery, and any other obstructions which would interfere with Grantees' access to or maintenance of water mains and appurtenances.

If the Grantor desires to alter the Premises in any way other than is expressly permitted herein, he/she must obtain the prior written approval of the Grantees.

If the Grantor violates any of the provisions of this easement, the Grantees, either jointly or separately and at the expense of the Grantor, may enter upon the Premises and discontinue water service or make such alterations as are necessary to bring the Premises into compliance with the provisions of this easement.

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Whenever maintenance or work of any kind is performed to the water main or appurtenances within the public right-of-way and the Premises is used for access purposes to perform the maintenance or work by the Grantees pursuant to the terms of this easement and subject to the terms of the Water Service Agreement between said Grantees, now or hereafter in effect, Grantee, City of Cleveland, shall bear no responsibility for restoration of the Premises or their environs to their original topographical condition, but the Grantee, City of Richmond Heights, shall be responsible for said restoration.

The Grantor indemnifies and holds harmless the Grantees from any and all expense incurred and damage to the water main and appurtenances caused by, related to or resulting from the Grantor's construction or maintenance of any paving, walks, switch tracks, tunnels, sewers, ducts, pipes or pole line within or upon the Premises or from any other use of the Premises by the Grantor.

The Grantor hereby reserves the right to use the Premises for the passage or transportation of personnel, materials or equipment, and to make such other use of the Premises as is not expressly prohibited by or inconsistent with the terms of this easement.

The Grantor and the Grantees mutually agree that neither the recording of this instrument nor its acceptance by the Grantees shall be construed as a dedication of the Premises or an agreement by the Grantees to accept the Premises for dedication for public use as a street.

The Grantor covenants to the Grantees that it is well seized of the Premises as a good and indefeasible estate in fee simple and has the right to grant and convey the Premises in the manner and form above written.

[The remainder of this page has been intentionally left blank]

TO HAVE AND TO HOLD the above granted easement, for the purposes above mentioned, unto the Grantees forever.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands at
Richmond Hts. this 3rd day of
September, 2010.

GRANTOR:

Walter J. Smrek
WALTER J. SMREKAR

GRANTOR:

Jean T. Smrek
JEAN T. SMREKAR

STATE OF OHIO

)

) SS:

COUNTY OF CUYAHOGA

)

Before me, a Notary Public in and for said County and State, personally appeared the above-named **WALTER J. SMREKAR**, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at
Richmond Hts. this 3 day of Sept,
2010.



F. ERIC JOCHUM, Attorney at Law
Notary Public - State of Ohio
My Commission has no expiration date.
Sec. 147.03 R.C.

NOTARY

STATE OF OHIO

)

) SS:

COUNTY OF CUYAHOGA

)

Before me, a Notary Public in and for said County and State, personally appeared the above-named **JEAN T. SMREKAR**, who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at
Richmond Hts. this 3 day of Sept,
2010.



F. ERIC JOCHUM, Attorney at Law
Notary Public - State of Ohio
My Commission has no expiration date.
Sec. 147.03 R.C.

NOTARY

The legal form and correctness
of the within instrument is
hereby approved:

R. Todd Hunt, Director of Law
City of Richmond Heights

(Date)

Accepted by the Council of the City of Richmond Heights by

(Resolution/Ordinance) No. _____

Passed _____, 20____.

Clerk or Assistant

(Date)

The City of Cleveland, by and through its Director of Public Utilities, does hereby accept the within easement and all the terms and conditions thereof this _____ day of _____, 20____, as authorized by Section 129.20 of the Codified Ordinances of Cleveland, Ohio, 1976, passed by the Council of the City of Cleveland on June 17, 1991.

CITY OF CLEVELAND

By: _____
Director of Public Utilities

The legal form and correctness
of the within instrument is
hereby approved:

Director of Law

By: _____
Assistant Director of Law

Date: _____

THIS INSTRUMENT PREPARED BY:

R. Todd Hunt
Director of Law for the City of Richmond Heights, Ohio
Walter & Haverfield LLP
1301 East 9th Street, Suite 3500
Cleveland, Ohio 44114-1821

EXHIBIT A
LEGAL DESCRIPTION OF PREMISES



THE C.W. COURTNEY COMPANY

700 Beta Drive, Suite 200
Mayfield Village, OH 44143

www.cwcourtney.com

L.G. Courtney, PE, PS
C.J. Courtney, PE, PS, CPSWQ, CPESC
D.G. Courtney, PE

EXHIBIT A
LEGAL DESCRIPTION OF A WATER MAIN
EASEMENT THROUGH FPN 662 03 006
RICHMOND HEIGHTS, OHIO
JUNE 30, 2010

Situated in the City of Richmond Heights, County of Cuyahoga and State of Ohio and known as being part of Sublot No. 4 (FPN 662 03 006) in the Highland Subdivision (Non Recorded) of part of Original Euclid Township Lot No. 25, 26, 58 and 59, Tract No. 11 and being further bounded and described as follows:

Beginning at the northwesterly corner of Sublot 9A (FPN 662 03 003) as shown on the Map of Lot Split recorded in Volume 300 Page 19 of Cuyahoga County Map Records;

Thence N 03° 09' 50" E, along the easterly line of Hilltop Road (60 feet wide) a distance of 362.94 feet to the northwesterly corner of Sublot No. 7 (FPN 662 03 005) in said Highland Subdivision and the Principal Point of Beginning of the easement herein intended to be described;

Course No. 1 - Thence N 03° 09' 50" E, continuing along said easterly line of Hilltop Road, a distance of 253.03 feet to a point of curved turnout between said Hilltop Road and Georgetown Road (formerly Highland Road);

Course No. 2 - Thence along the arc of said curved turnout, deflecting to the right, 20.55 feet, said curve having a radius of 20.00 feet and a chord which bears N 33° 10' 36" E, a distance of 20.01 feet to a point;

Course No. 3 - Thence S 03° 09' 50" W, parallel to and 10.00 feet by rectangular measurement from said easterly line of Hilltop Road, a distance of 276.41 feet to a point on the northerly line of said Sublot No. 7;

Course No. 4 - Thence N 55° 38' 59" W, along said northerly line of Sublot No. 7, a distance of 11.69 feet to the principal point of beginning and containing 0.0616 acres (2684 sq. ft.) of land as calculated and described by L. G. Courtney, Registered Surveyor No. 5609, of the C.W. Courtney Company in June, 2010 be the same more or less but subject to all legal highways and easements of record.

440.449.4005 • 440.449.0883 fax

01/14/10 10:30 AM Attachment Legend View 3/24/14 4:40

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**EXHIBIT A
LEGAL DESCRIPTION OF PREMISES**



THE C.W. COURTNEY COMPANY

700 Beta Drive, Suite 200
Mayfield Village, OH 44143

www.cwcourtney.com

L.G. Courtney, PE, PS
C.L. Courtney, PE, PS, CPSWQ, CPESC
D.G. Courtney, PE

**EXHIBIT A
LEGAL DESCRIPTION OF A WATER MAIN
EASEMENT THROUGH FPN 662 03 005
RICHMOND HEIGHTS, OHIO
JUNE 30, 2010**

Situated in the City of Richmond Heights, County of Cuyahoga and State of Ohio and known as being part of Sublot No. 7 (PPN 662 03 005) in the Highland Subdivision (Non Recorded) of part of Original Euclid Township Lot No. 25, 26, 58 and 59, Tract No. 11 and being further bounded and described as follows:

Beginning at the northwesterly corner of Sublot 9A (PPN 662 03 003) as shown on the Map of Lot Split recorded in Volume 300 Page 19 of Cuyahoga County Map Records;

Thence N 03° 09' 50" E, along the easterly line of Hilltop Road (60 feet wide) a distance of 177.67 feet to the northwesterly corner of Sublot No. 8 (PPN 662 03 011) in said Highland Subdivision and the Principal Point of Beginning of the easement herein intended to be described;

Course No. 1 - Thence N 03° 09' 50" E, continuing along said easterly line of Hilltop Road, a distance of 185.27 feet to the southwesterly corner of Sublot No. 4 (PPN 662 03 006) in said Highland Subdivision;

Course No. 2 - Thence S 55° 38' 59" E, along the southerly line of said Sublot No. 4, a distance of 11.69 feet to a point;

Course No. 3 - Thence S 03° 09' 50" W, parallel to and 10.00 feet by rectangular measurement from said easterly line of Hilltop Road, a distance of 179.22 feet to a point on the northerly line of said Sublot No. 8;

Course No. 4 - Thence N 86° 50' 10" W, along said northerly line of Sublot No. 8, a distance of 10.00 feet to the principal point of beginning and containing 0.0418 acres (1822 sq. ft.) of land as calculated and described by L. G. Courtney, Registered Surveyor No. 5609, of the C.W. Courtney Company in June, 2010 be the same more or less but subject to all legal highways and easements of record.

440.449.4005 • 440.449.0883 fax

GA1701-12112010 Legal Description Exhibit A Water Main Easement

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SKETCH TO ACCOMPANY EASEMENT
LEGAL DESCRIPTIONS FOR
P.P.N'S 662 03 005 & 006

GEORGETOWN ROAD 60.0'
(FORMERLY HIGHLAND ROAD)

HILLTOP ROAD 60'

Sublot 1
P.P.# 662 03 008

Sublot 2
P.P.# 662 03 007

Sublot 3
P.P.# 662 03 006

Sublot 4
P.P.# 662 03 005

Sublot 5
P.P.# 662 03 004

Sublot 6
P.P.# 662 03 003

Sublot 7
P.P.# 662 03 002

Sublot 8
P.P.# 662 03 001

PROB - 10' WATER
PPN 662 03 008

PROB - 10' WATER
PPN 662 03 005

PROB - 20' SANITARY
PPN 662 03 006

PROB - 20' SANITARY
PPN 662 03 005

North Arrow

Survey Data:

- Sublot 1: S 03°09'50" E 160.00', S 03°09'50" E 246.63', S 72°08'35" E 87.56', S 03°09'50" W 20.68', N 03°09'50" E 21.12', 20.00'
- Sublot 2: S 03°09'50" E 246.63', S 72°08'35" E 87.56', S 03°09'50" W 20.68', N 03°09'50" E 21.12', 20.00'
- Sublot 3: S 03°09'50" E 246.63', S 72°08'35" E 87.56', S 03°09'50" W 20.68', N 03°09'50" E 21.12', 20.00'
- Sublot 4: S 03°09'50" E 246.63', S 72°08'35" E 87.56', S 03°09'50" W 20.68', N 03°09'50" E 21.12', 20.00'
- Sublot 5: S 03°09'50" E 246.63', S 72°08'35" E 87.56', S 03°09'50" W 20.68', N 03°09'50" E 21.12', 20.00'
- Sublot 6: S 03°09'50" E 246.63', S 72°08'35" E 87.56', S 03°09'50" W 20.68', N 03°09'50" E 21.12', 20.00'
- Sublot 7: S 03°09'50" E 246.63', S 72°08'35" E 87.56', S 03°09'50" W 20.68', N 03°09'50" E 21.12', 20.00'
- Sublot 8: S 03°09'50" E 246.63', S 72°08'35" E 87.56', S 03°09'50" W 20.68', N 03°09'50" E 21.12', 20.00'

