

RESOLUTION NO.: 64-2010
INTRODUCED BY: Alexander

**A RESOLUTION ACCEPTING EASEMENTS FOR ACCESS AND WORK
FOR THE INSTALLATION AND MAINTENANCE OF A WATER MAIN
ON HILLTOP ROAD FROM ABUTTING PROPERTY OWNERS; AND
DECLARING AN EMERGENCY.**

WHEREAS, it is necessary to obtain from abutting property owners standard easements for access to and a work area for the installation and maintenance of a water main for purposes of supplying water service to properties on Hilltop Road in the City of Richmond Heights and for the benefit of the City of Richmond Heights who will install and own the water main and for the City of Cleveland to provide the water service and to maintain the water main;

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

Section 1: This Council accepts easements for access to and to perform work for the installation and maintenance of a water main for the purpose of supplying water service granted by Eric J. Uchbar and Evenhuis Properties, LLC at 2541, 2543, 2545, and 2547 Hilltop Road (Permanent Parcel Nos. 662-03-011, -004, -003 and -012 respectively) to the City of Cleveland and to this City in a form as set forth in Exhibit 1 attached hereto and incorporated herein.

Section 2: 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 3: 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 1

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

_____, the “Grantor” herein, for valuable consideration received and to be received to my full satisfaction, does 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 land:

Situating in [INSERT], 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 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.

Subject to an agreed-upon special assessment to Grantor or upon Grantor's land by the Grantee City of Richmond Heights, 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. 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 appurtenances, 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.

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 _____ this _____ day of _____, 20____.

GRANTOR:

By: _____

Print Name: _____

Its: _____

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared the above-named _____, by _____, its _____ who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed individually and on behalf of Evenhuis Properties, L.L.C.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at _____, this _____ day of _____, 20____.

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: _____

EXHIBIT A
LEGAL DESCRIPTION OF PREMISES

EXHIBIT B
GRAPHIC DEPICTION OF PREMISES