

RESOLUTION NO.: 59-2010
INTRODUCED BY: Alexander

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A DEVELOPMENT AGREEMENT WITH PROPERTY OWNERS ON HILLTOP ROAD TO INSTALL A PUBLIC SANITARY SEWER AND WATER LINE TO SERVICE PROPERTIES ON HILLTOP ROAD; AND DECLARING AN EMERGENCY.

WHEREAS, for several years the City has attempted to work with property owners on Hilltop Road in the City to bring public sanitary sewer and water services to properties on Hilltop Road in the City of Richmond Heights, but has been unable to do so due to certain financial constraints and the inability to obtain easements on private property to accomplish the same; and

WHEREAS, through the City's participation in the Neighborhood Stabilization Program, a federally-funded grant program through the Cuyahoga County Department of Development, along with the financial participation of benefiting property owners, the City has the funding available to install the public sanitary sewer and water utilities, for the benefit of properties on Hilltop Road in the City of Richmond Heights; and

WHEREAS, the City administration has negotiated a Development Agreement with the two benefiting property owners, Eric Uchbar and Evenhuis Investco, LLC, to accomplish the necessary utility projects;

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

Section 1: The Mayor be, and he is hereby, authorized to execute a development agreement between the City of Richmond Heights, Eric Uchbar and Evenhuis Investco, LLC pursuant to the terms and conditions set forth in the "Hilltop Road Utilities Development Agreement", attached hereto and incorporated herein as Exhibit "A".

Section 2: This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or any of its committees, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 3: This Resolution is hereby determined to be an emergency measure immediately necessary for the preservation of the public health, safety and welfare of the citizens of the City of Richmond Heights by reason of the need to authorize the aforesaid Development Agreement at the earliest time possible in order to meet the closing deadlines for acquisitions and sales of properties on Hilltop Road and to timely finalize the contract pursuant to a public bid for the sanitary sewer and water project to serve Hilltop Road, and to bring sanitary sewer, water service, and provide for storm water drainage for properties on Hilltop Road at the earliest time possible; and therefore, shall take effect and be in force immediately upon the passage and approval by the Mayor.

PASSED: _____, 2010

Daniel J. Ursu, Mayor

APPROVED: _____, 2010

ATTEST: _____

Betsy Traben
Clerk of Council

David H. Roche
President of Council

EXHIBIT A

**HILLTOP ROAD UTILITIES
DEVELOPMENT AGREEMENT**

by and between

City of Richmond Heights, Ohio

and

Eric Uchbar,
(Owner of Perm. Parcel No.662-03-004)

and

**Evenhuis Properties, L.L.C.,
A Florida limited liability company**
(Owner of Perm. Parcel No.662-03-003)

and

**Evenhuis Investco, LLC,
A Florida limited liability company**
(Owner of Perm. Parcel No.662-03-002)

Dated as of _____, 2010

HILLTOP ROAD UTILITIES
DEVELOPMENT AGREEMENT

THIS HILLTOP ROAD UTILITIES DEVELOPMENT AGREEMENT (“Agreement”) is entered into as of the ____ day of _____, 2010 by and between the **City of Richmond Heights, Ohio**, 26789 Highland Road, Richmond Heights, Ohio 44143 (“City”), **Eric Uchbar** (“Uchbar”), with mailing address of _____, **Evenhuis Properties, L.L.C.**, a Florida limited liability company (“Evenhuis Properties”), with mailing address of 6950 Hunters Road, Naples, Florida 34109 (Uchbar and Evenhuis Properties are hereinafter referred to collectively as “Owners”) and **Evenhuis Investco, LLC** (“Evenhuis Investco”), with mailing address of 6950 Hunters Road, Naples, Florida 34109 (the City, Owners, and Evenhuis Investco are hereinafter collectively referred to as the “Parties”).

WITNESSETH:

WHEREAS, Evenhuis Properties owns a parcel of real estate containing a partially constructed home, located at 2545 Hilltop Road, Richmond Heights, Ohio 44143, which is known as Permanent Parcel No. 662-03-003 (the “Evenhuis Properties Property”);

WHEREAS, Uchbar owns a parcel of real estate containing a partially constructed home, located at 2543 Hilltop Road, Richmond Heights, Ohio 44143, which is known as Permanent Parcel No. 662-03-004 (the “Uchbar Property”);

WHEREAS, the Evenhuis Properties Property and the Uchbar Property (hereinafter each referred to individually as a “Subject Property” and collectively as “Subject Properties”) are not currently served by water service and sanitary sewer service facilities and may have inadequate storm water drainage;

WHEREAS, Evenhuis Investco owns a vacant parcel of real estate located on Hilltop Road, which is known as Permanent Parcel No. 662-03-002 (“Evenhuis Investco Property”);

WHEREAS, the City desires to ensure that the Subject Properties and certain other properties on Hilltop Road are served by these necessary public utilities by constructing utility facilities for water and sanitary sewer and for storm water drainage, if necessary;

WHEREAS, the Owners agree to contribute to the City’s total cost of constructing the facilities for water and sanitary sewer services as set forth in this Agreement;

WHEREAS, the Owners further agree to grant a perpetual easement to the City and the City of Cleveland for water utility facilities and to grant to the City a perpetual easement for sanitary sewer and storm water drainage facilities on and over the Subject Properties;

WHEREAS, Evenhuis Investco agrees to grant to the City a perpetual easement for sanitary sewer and storm water drainage facilities on and over a portion of the Evenhuis Investco Property along its northerly property line; and

WHEREAS, the Parties wish to memorialize their agreement as to the rights, duties, and responsibilities with respect to construction, installation, and maintenance of the water and sanitary sewer and storm water drainage facilities extending to, through, and past the Subject Properties.

NOW, THEREFORE, IT IS HEREBY AGREED by and between the Parties as follows:

1. **Project.** The City has awarded a public bid for the construction of the water main, and sanitary sewer and storm water facilities from Georgetown Road south generally over and across certain parcels of property along Hilltop Road, in the City of Richmond Heights, including the Subject Properties (the “Project”). The water main will be constructed along the western property line of Permanent Parcel Nos. 662-03-006, 662-03-005, 662-03-011, 662-03-004, 662-03-003, and 662-03-012. The sanitary sewer will be constructed on the eastern property line of Permanent Parcel Nos. 662-03-008, 662-03-005, 662-03-011, 662-03-004, 662-03-003, 662-03-012. The Owners shall have the right to connect to the Project’s water main and sanitary sewer facilities pursuant to the terms of this Agreement.

2. **Division of Project Costs.** The bid for the Project that was accepted by the City for labor and materials for construction and installation of the Project is One Hundred Forty-Five Thousand Three Hundred Seventy Four Dollars (\$145,374.00). Owners agree to each pay to the City as a contribution to the total Project costs, which shall also include engineering and legal costs, the lesser of the following: Forty Thousand Dollars (\$40,000.00) or one-fourth (1/4th) of the final total Project costs (“Subject Property Cost”), payable as follows:

a. The Subject Property Cost shall be certified to the Cuyahoga County Auditor, or its successor entity, as a voluntary special assessment on the county tax duplicate for each Subject Property, together with any costs assessed by Cuyahoga County for the administration of the special assessment, to be collected in equal installments over a five (5) year period with no interest in accordance with the tax collection policies of Cuyahoga County; and

b. Owners shall execute a petition agreeing to the voluntary special assessment of the Subject Property Cost and Cuyahoga County administrative cost in the form set forth in the petition attached hereto as “Exhibit A” and incorporated herein; and

c. In the event a Subject Property is being connected to either the water main or the sanitary sewer prior to the five-year special assessment installment payments all being made, the balance of the assessment, or the balance of the amounts to be assessed on that Subject Property, shall be due and paid in full at the time of the connection.

3. **Grant of Easements.** Owners and Evenhuis Investco each agree to grant perpetual easements (“Easements”) to the City and the City of Cleveland for water facilities and to the City for sanitary sewer and storm water facilities purposes, in, under, over, and across portions of the Subject Properties and the Evenhuis Investco Property, as follows:

- a. Owners shall each grant a perpetual easement to the City and the City of Cleveland in, under, over, and across a ten-foot (10') wide tract of land adjacent to the entire westerly property line of the Subject Properties, abutting Hilltop Road, together with the right to construct, operate, maintain, repair, replace and/or remove any facilities that may be necessary for water service.
- b. Owners shall each grant a perpetual easement to the City in, under, over, and across a twenty-foot (20') wide tract of land adjacent to, and running along, the entire easterly property line of the Subject Properties, together with the right to construct, operate, maintain, repair, replace and/or remove any facilities that may be necessary for sanitary sewer service and storm water drainage.
- c. Evenhuis Investco shall grant a perpetual easement to the City in, under, over, and across a ten-foot (10') wide tract of land adjacent to, and running along, the entire northerly property line of the Evenhuis Investco Property, together with the right to construct, operate, maintain, repair, replace and/or remove any facilities that may be necessary for sanitary sewer service and storm water drainage.

Said Easements shall be in the general form of easements marked as “Exhibit B” and “Exhibit C” attached hereto and made a part hereof.

4. **Agreement Contingencies.** The obligations contained in this Agreement are contingent upon: (i) approval of this Agreement by the City of Richmond Heights Council; (ii) execution of all necessary contract(s) for the Project; (iii) the fact that based upon the mutual consideration contained herein, each and every Party to this Agreement, by their signatures hereon, hereby releases each and every other party to this Agreement from any and all claims that such party may now have against another party to this Agreement, whether asserted or unasserted, known or unknown, as of the effective date of this Agreement as a result of all matters which are the subject of this Agreement.

5. **Assignment of Agreement.** Except as otherwise stated herein, no assignment of the rights or benefits and no delegation of the duties provided in this Agreement may be made without the written consent of the non-assigning or non-delegating parties, except that the benefits of the water main and sanitary sewer, once installed, shall be available to subsequent and succeeding owners of the Subject Properties, but no conveyance of any or all of the Subject Properties after the date of execution hereof shall relieve Owners of their respective obligations hereunder unless the City consents in writing and a successor acceptable to the City assumes such obligations. Such consent shall not be unreasonably denied or delayed.

6. **Savings Clause.** If one or more provisions of this Agreement or any application of any provisions shall be deemed or declared to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions of this Agreement shall in no way be affected.

7. **Status of Parties.** The relationship created by this Agreement shall be, at all times and under all circumstances, one of contracting parties and shall not be one of joint venturer or partnership for any intents, purposes, designs or in any activities described in this Agreement. This Agreement, however, shall not modify or affect the rights of any Party hereto under any other contract or agreement between the Parties, including, without limitation, any joint venture agreement.

8. **No Continuing Waiver.** The waiver of any Party of a breach of any provision of this Agreement shall not operate or be construed to be a waiver of any subsequent breach. No waiver shall be effective unless in writing and signed by the Party against whom it is sought to be enforced.

9. **Binding Nature.** This Agreement shall bind and inure to the benefit and burden of the Parties, their personal representatives, successors and assigns to the extent stated herein, and to all owners of the Subject Properties and the Evenhuis Investco Property.

10. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

11. **Miscellaneous.** This Agreement constitutes the entire agreement and no oral or implied agreement exists. Any amendments to this Agreement shall be in writing signed by all Parties and copies provided to them. This Agreement shall be binding upon the Parties and their heirs, administrators, executors, successors and assigns. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of Ohio. The City may, in its sole discretion, cause this Agreement to be filed for record with the Cuyahoga County Recorder.

IN WITNESS WHEREOF, the undersigned have hereunto set their hand as of the date set forth below.

**CITY OF RICHMOND HEIGHTS,
OHIO**

By: _____
Daniel J. Ursu, Mayor

Date: _____

Approved as to legal form and correctness:

Director of Law
City of Richmond Heights

ERIC UCHBAR

Date: _____

**EVENHUIS PROPERTIES, L.L.C.,
A Florida limited liability company**

By: _____

Printed Name: _____

Title: _____

Date: _____

**EVENHUIS INVESTCO, LLC,
A Florida limited liability company**

By: _____

Printed Name: _____

Title: _____

Date: _____

This instrument prepared by:

Walter & Haverfield LLP
The Tower at Erieview
1301 East Ninth Street, Suite 3500
Cleveland, Ohio 44114-1821
Telephone: 216.781.1212

BEFORE ME, a Notary Public in and for said county and state personally appeared the above-named ***City of Richmond Heights, Ohio***, by ***Daniel J. Ursu***, its Mayor, who acknowledged that he did sign the foregoing instrument and that the same is his/her free act and deed personally and as the legally authorized representative of The City of Richmond Heights.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____, this ____ day of _____, 2010.

NOTARY PUBLIC

BEFORE ME, a Notary Public in and for said county and state personally appeared the above-named **ERIC UCHBAR**, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at
, this day of , 2010.

NOTARY PUBLIC

STATE OF _____)
)
COUNTY OF _____)

BEFORE ME, a Notary Public in and for said county and state personally appeared the above-named **EVENHUIS PROPERTIES, L.L.C.**, by _____, its _____, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed personally and as the legally authorized representative of Evenhuis Properties, L.L.C.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____, this ____ day of ____, 2010.

NOTARY PUBLIC

BEFORE ME, a Notary Public in and for said county and state personally appeared the above-named **EVENHUIS INVESTCO, LLC**, by _____, its _____, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed personally and as the legally authorized representative of Evenhuis Investco, LLC.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____, this ____ day of _____, 2010.

NOTARY PUBLIC

EXHIBIT A
(Form Petition for Voluntary Assessment)

IMPROVEMENT PETITION

TO THE COUNCIL OF THE CITY OF RICHMOND HEIGHTS, STATE OF OHIO:

We, the undersigned, being the legal owners of record of the properties that are set forth opposite our names below ("Properties"), which comprise one hundred (100%) of the area to be assessed for the public improvements set forth herein, do hereby respectfully petition the Council of the City of Richmond Heights for public improvements between certain termini in the City of Richmond Heights by constructing a water main and sanitary sewer facilities, together with necessary appurtenances thereto (the "Public Improvements"), which will be accessible for connection to certain properties, including the Properties set forth herein, along Hilltop Road in order to provide such utility services to the properties.

The undersigned, each of them, agree to contribute to the cost of the Public Improvements and consent and request that they each be assessed the lesser of the following as their contribution: Forty Thousand Dollars (\$40,000.00) or one-fourth (1/4th) of the final total cost of the Public Improvements, in accordance with the benefits upon the lots and lands benefited by the Public Improvements, all of which properties the undersigned, and each of them, hereby acknowledge will be specially benefited by the said Public Improvements. The assessments proposed to be levied against the undersigned will be payable in ten (10) semi-annual installments over a period of five (5) years with no interest.

The undersigned, each of them, further consent and request that the said assessments be levied and collected without limitation as to the value of the property assessed hereunder and waive all rights, benefits or privileges fixed by Ohio Revised Code Sections 727.03 and 727.06 or any other section thereof restricting assessments to thirty-three and one-third percent (33-1/3%) of the actual improved value of said properties as enhanced by the Public Improvements to be made, and waive all benefits of Ohio Revised Code Section 727.04 or of any other section thereof limiting assessments for reimprovements where an assessment has been levied and paid previously.

The undersigned, and each of them, further waive any damages or claims for damages of whatsoever kind, character or description growing out of or resulting from said Public Improvements, or the making thereof, including, but not by way of limitation, all rights, benefits and privileges which are fixed by Ohio Revised Code Sections 727.18 to 727.22, inclusive, Ohio Revised Code Section 727.43.

The undersigned, and each of them, further waive all resolutions, ordinances and notices required for the making of said Public Improvements, including the notice of adoption of the resolution of necessary assessments, the increase in the cost of labor and materials over the estimated costs thereof and the passage of the assessing ordinance or ordinances, including, but not by way of limitation, such notices as are authorized and required by Ohio Revised Code Sections 727.13, 727.16, 727.17, 727.24 and 727.26.

The undersigned, and each of them, further waive any and all irregularities and defects in all proceedings pertaining to said Public Improvements and agree that the terms of this Petition shall be binding upon their respective heirs, successors and assigns.

The undersigned persons, who are owners of parcels of land to be assessed or who have
{00917221 -6}

dower interest in any of said parcels, do hereby consent and request that their individual parcels be assessed as set forth above and do consent and agree that their individual parcels shall be subject to the terms of this Petition in all respects:

Permanent Parcel No.

662-03-003

Name

EVENHUIS PROPERTIES, L.L.C.,
a Florida limited liability company

By: _____

Its: _____

Date: _____

662-03-004

ERIC UCHBAR

Date: _____

EXHIBIT B
(Form Water Main Easement)

**STANDARD 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:

[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 to lay, install and maintain therein a water main and appurtenances, including service connections and pipes; to set all water meters and make all repairs to 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
{00917221 -6}

installing a water main and appurtenances upon the Premises, which main shall be located not less than nine (9) feet from either lateral limit of 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 which cross over or under the Premises at an angle of not less than forty-five (45) degrees with the center line of the water main, or which clear the water main by not less than one and one-half (1 - 1/2) feet above or one and one-half (1 - 1/2) feet below.

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. Grantor further agrees to make no alterations to the Premises which would increase the dept of the water main to more than six (6) feet or reduce its depth to less than five (5) feet.

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. Upon receipt of such approval, the Grantor shall at his/her own expense relocate or reconstruct all or any portion of the water main and appurtenances which are affected by such alteration and, where necessary, grant a new easement that shall not be less in width than the easement Premises herein and shall be adjoining a public right of way of not less than fifty (50) feet in width under the same terms and conditions as herein provided. The relocated or reconstructed water main and appurtenances shall, upon completion, and approval by the Grantees, become the property of Grantee, the City of Richmond Heights.

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 on the Premises under the terms of this easement, 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 Grantor further covenants that he/it will warrant and defend the Premises with the appurtenances thereunto belonging to the Grantees against all lawful claims and demands whatsoever for the purposes described herein.

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:

Before me, a Notary Public in and for said County and State, personally appeared the above-named _____, 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
_____, 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

EXHIBIT B

EXHIBIT C
(Form Sanitary Sewer and Storm Water Facility Easement)

GRANT OF EASEMENT
(Sanitary Sewer and Storm Water Facilities)

This Grant of Easement is by _____ ("Grantor") to the **CITY OF RICHMOND HEIGHTS, OHIO**, a municipal corporation ("Grantee").

W-I-T-N-E-S-S-E-T-H

WHEREAS, Grantor is the owner of certain land situated in the City of Richmond Heights, Cuyahoga County, Ohio, known as Permanent Parcel Number _____, and described in Exhibit "A" attached hereto and incorporated herein (hereinafter referred to as the "Premises");

WHEREAS, Grantor desires to grant to Grantee an easement for the construction and maintenance of a certain sanitary sewer and storm water facilities located on the Premises.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other valuable consideration received to the full satisfaction of Grantor and in further consideration of covenants, promises and agreements set forth herein, the parties agree as follows:

1. Grantor, for itself, its heirs, personal representatives and assigns, does hereby, upon the terms and subject to the conditions set forth herein, give, grant and convey unto Grantee, its successors, legal representatives and assigns, a perpetual nonexclusive easement and right of entry upon, under and across that portion of the Premises depicted in Exhibit "B" attached hereto and incorporated herein and more specifically described in Exhibit "C" attached hereto and incorporated herein (the "Easement Parcel") for the purpose of permitting the Grantee and the Cuyahoga County Sanitary Engineer, or their agents, to enter upon the Easement Parcel to remove trees, if any, and to construct, install, maintain, operate, inspect, repair and replace a sanitary sewer and its appurtenances and storm water facilities.

2. Grantee shall, at its expense, upon installing, constructing, operating, inspecting, maintaining, repairing or replacing the sanitary sewer and/or storm water facilities, restore the surface of the Easement Parcel and replace and repair any driveway, curbs, sidewalks, fence, landscaping (except trees), lawns and the like to substantially the same condition as existed before any such work was performed.

3. Grantee agrees to defend and hold Grantor, its heirs, representatives and assigns, harmless from and against all actions, claims, damages, liabilities, expenses, judgments and liens occurring or arising by reason of use of the easement by Grantee, or arising in connection with or attributable to the construction, installation, operation, maintenance, repair or replacement of the sanitary sewers and/or storm water facilities.

4. Grantor shall not at any time construct any permanent or temporary building, structure or improvement on, over or under the Easement Parcel.

5. Grantor warrants and represents its has title in fee simple, in and to the Premises, and Grantor has all right and authority to grant this easement to Grantee.

6. This Agreement shall bind and inure to the benefit of the parties hereto, their respective successors, heirs, personal and legal representatives and assigns and all future owners of the Premises.

7. The easement herein granted shall run with the land.

IN WITNESS WHEREOF, the undersigned have hereunto set their hand as of the date set forth above.

GRANTOR:

GRANTEE:

CITY OF RICHMOND HEIGHTS, OHIO

By: _____
Daniel J. Ursu, Mayor

Date: _____

Approved as to form:

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

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said County and State, personally appeared the above-named _____, 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 _____, this _____ day of _____, 20____.

NOTARY

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the ***City of Richmond Heights, Ohio, by Daniel J. Ursu, its Mayor***, who acknowledged that he did sign the foregoing instrument and that the same was his free act and deed as a City official and the free act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2010.

NOTARY

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
OF GRANT OF EASEMENT
THE PREMISES

EXHIBIT B
OF GRANT OF EASEMENT
DEPICTION OF EASEMENT PARCEL

EXHIBIT C
OF GRANT OF EASEMENT
DESCRIPTION OF EASEMENT PARCEL

URGENT