

TEMPORARY ORDINANCE NO. 15-17\*

PERMANENT ORDINANCE NO. 16-17

AN ORDINANCE TO APPROVE AN EASEMENT FOR H & W INVESTMENT PROPERTIES LLC **NKA THE MITHOFF COMPANIES, LTD.**

WHEREAS, the City has the responsibility to manage and preserve the right-of-way for all users; and

WHEREAS, the City is attempting to address encroachments on the right-of-way with a consistent approach; and

WHEREAS, the former H & W INVESTMENT PROPERTIES LLC **NKA THE MITHOFF COMPANIES, LTD.** encroachment occurred over 50 years ago and no evidence of failure to obtain building permits has been found;

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

SECTION 1. That due to the encroachment described in Exhibit B as "Stairs" being in existence prior to the requirement of building permits, the City hereby grants the Easement attached as Exhibit 1, which includes referenced Exhibits A and B, to continue and expand the encroachment for the purpose of building a porch onto 431 S. Columbus Street, while retaining public and private utility easements to be executed by the Mayor or his designee.

SECTION 2. The Easement in the form presently on file with the Clerk of Council is hereby approved and authorized with changes therein not inconsistent with this Ordinance and not substantially adverse to the City and which has been tentatively approved by the Service-Safety Director. The Service-Safety Director for and in the name of the City, is hereby authorized to execute the Final Easement in this matter, provided further that the approval of changes thereto by the Service-Safety Director, and their character not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof. This Council further authorizes the Service-Safety Director for and in the name of the City, to execute any amendments or changes to the Final Easement, which amendments are not inconsistent with this Ordinance and not substantially adverse to the City.

SECTION 3. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: 4/10/17 after 2<sup>nd</sup> reading. Vote: Yeas 8 Nays 0

Approved: 4/10/17

Clerk: Jessica Lee Sandy

Offered by: David C. Hill

Second by: [Signature]

Requested by Law Committee

[Signature]

President of Council

[Signature]

Mayor



## Encroachment Easement

The City of Lancaster, a Municipal Corporation of the State of Ohio (“Grantor”), in consideration of \$1.00 received from **The Mithoff Companies, Ltd.** (“Grantee”), whose tax mailing address is 4805 Scooby Lane, Carroll, Ohio 43112, does hereby grant, sell, and convey unto Grantee, Grantee’s successors and assigns, an easement to build and maintain an encroachment on, under, and across the real property of Grantor described in Exhibit “A” and platted in Exhibit “B” together with the right to make all lawful uses of the encroaching structure.

This easement is granted subject to the following term and conditions:

1. Purpose: Grantee, by its acceptance of this easement, agrees to use it for the exclusive purpose of building a porch within the 398 square foot easement area described in Exhibit “A” and platted in Exhibit “B” attached hereto.
2. Other Consistent Uses: Grantor reserves the right to use the easement area for any purpose not inconsistent with rights granted by this easement.
3. Utility Easements: Grantor reserves a perpetual, non-exclusive easement for general utility purposes on, over, across, and under Grantor’s real property described in Exhibit “A” and platted in Exhibit “B” that may be necessary for the supply of gas, water, electrical power, sewage and waste disposal, drainage, telephone, communications, cable television, or other utilities; however, any utility installation under Grantee’s structure shall be performed in such a manner as to insure the structural integrity of Grantee’s building.
4. Indemnification: Grantee, by its acceptance of this easement, shall indemnify, defend, and hold Grantor harmless against any claims, damages, losses, or expenses arising as a result of Grantee’s exercise of the rights granted by this easement.
5. Construction, Maintenance, and Restoration of Property: Grantee shall be responsible for the entire cost of construction of said encroaching porch and for the maintenance, repair, or replacement thereof. On the completion of any construction, maintenance, repair, or replacement, Grantee shall replace and restore all dirt, grass, gravel, or pavement that may have been removed or damaged to the condition it was prior to the construction, maintenance, repair, or replacement.
6. Building Restriction: No other buildings or structures shall be constructed in the easement area by Grantor or Grantee besides the porch contemplated herein.
7. Perpetuity: This easement shall be perpetual and will continue to exist if the contemplated building encroachment no longer continues for any reason, including, but not limited to the demolition or destruction of the encroaching structure by fire or otherwise; so long as the then existing owner of the property makes diligent efforts to restore and reconstruct the building on its original location within a reasonable period of time after said demolition or destruction. Further, this easement shall run with the land and be binding upon and benefit Grantee’s successors and assigns.

8. Title: Grantor hereby warrants that Grantor has full power and authority to grant this easement and has a good and indefeasible fee simple title to the above described easement premises, subject, however, to (a) all legal highways, (b) easements, covenants, and restrictions of record, (c) real estate taxes and assessments not yet due and payable, and (d) zoning, building, and other applicable laws, codes, and regulations.
9. Modification or Termination: This agreement may not be changed, terminated, or modified orally or in any manner other than by agreement in writing signed by the parties hereto.
10. Original: This agreement may be executed in counter parts, each of which when executed by the parties hereto shall be deemed an original when all of which together shall be deemed an original and all of which together shall be deemed the same agreement.
11. Applicable Law: This agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Ohio.

NOW, THEREFORE, the parties hereto have caused this instrument to be executed this \_\_\_\_\_ day of April, 2017.

GRANTOR:

The City of Lancaster, Ohio

By: \_\_\_\_\_

Paul Martin, Service Safety Director

GRANTEE:

The Mithoff Companies, Ltd.

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

State of Ohio, County of Fairfield, ss:

I HEREBY CERTIFY on this \_\_\_\_ day of April, 2017, before me, the undersigned, a Notary Public for the State and County aforesaid, personally appeared Paul Martin, who acknowledged himself to be the Service Safety Director for the City of Lancaster, and as such, being authorized to do so, executed the foregoing instrument as his own free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

{Affix Seal}

\_\_\_\_\_  
Notary Public

State of Ohio, County of Fairfield, ss:

I HEREBY CERTIFY on this \_\_\_\_ day of April 2017, before me, the undersigned, a Notary Public for the State and County aforesaid, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ for **The Mithoff Companies, Ltd.**, and as such, being authorized to do so, executed the foregoing instrument as his own free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

(Affix Seal)

\_\_\_\_\_  
Notary Public

This instrument was prepared by the City of Lancaster Law Director's Office, 136 W. Main Street, PO Box 1008, Lancaster, Ohio 43130, (740) 687-6616.



**Legal Description**  
**Clearcreek Township, Fairfield County, Ohio**  
**Section 12, Township 14N, Range 19W**  
**398 Square Feet – Easement – Old Mill Tract**

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 the old town circle at the intersection of South Columbus Street and South Broad Street as delineated in Carpenter's Addition, Plat Book 1, Page 2 in the Fairfield County Recorder's Office;

Beginning at a Mark in a Brick Found at the north east corner of Lot 204 (new numbering) of said Carpenter's Addition;

Thence with the east line of said Lot 204 S25°24'52"W 17.11 feet to a point, being the **TRUE POINT OF BEGINNING**;

Thence on a new line through the intersection of Columbus Street and South Broad Street the following seven calls S83°04'22"E 1.10 feet to a point;

Thence S06°55'38"W 14.34 feet to a point;

Thence S83°04'22"E 4.67 feet to a point;

Thence S06°55'38"W 23.33 feet to a point;

Thence N83°04'22"W 4.67 feet to a point;

Thence S06°55'38"W 7.33 feet to a point;

Thence N83°04'22"W 8.69 feet to a point in the east line of Lot 203 (new numbering) of said Carpenter's Addition;

Thence with the east line of said Lot 203 N09°55'52"E 26.50 feet to a point;

Thence with the east line of said Lot 204 N25°24'52"E 19.55 feet to the **TRUE POINT OF BEGINNING**;

Containing 398 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°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



March 14, 2017  
Date

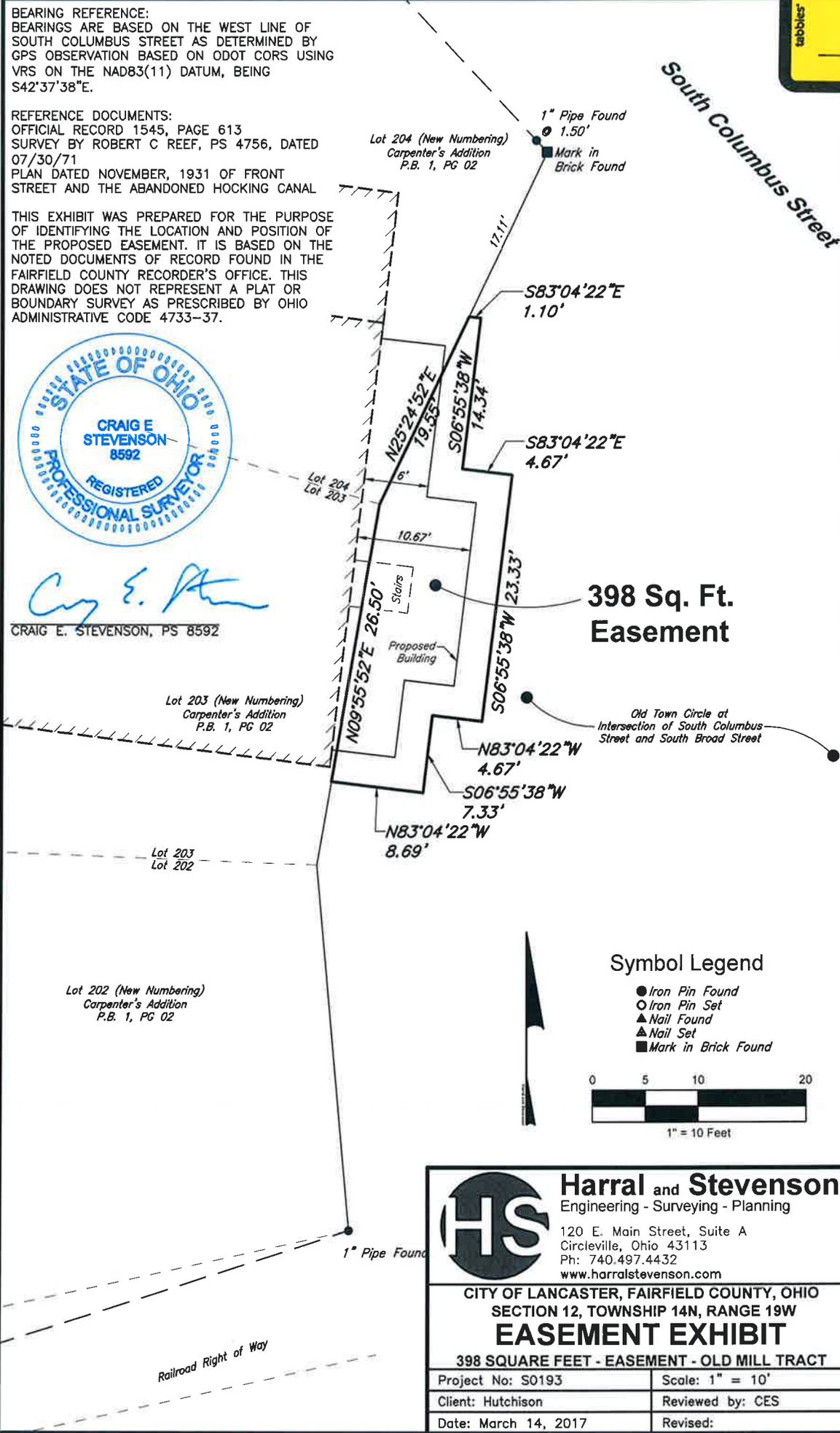
BEARING REFERENCE:  
 BEARINGS ARE BASED ON THE WEST LINE OF SOUTH COLUMBUS STREET AS DETERMINED BY GPS OBSERVATION BASED ON ODOT CORS USING VRS ON THE NAD83(11) DATUM, BEING S42°37'38"E.

REFERENCE DOCUMENTS:  
 OFFICIAL RECORD 1545, PAGE 613  
 SURVEY BY ROBERT C REEF, PS 4756, DATED 07/30/71  
 PLAN DATED NOVEMBER, 1931 OF FRONT STREET AND THE ABANDONED HOCKING 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.



*Craig E. Stevenson*  
 CRAIG E. STEVENSON, PS 8592



HS

**Harral and Stevenson**  
 Engineering - Surveying - Planning

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CITY OF LANCASTER, FAIRFIELD COUNTY, OHIO  
 SECTION 12, TOWNSHIP 14N, RANGE 19W  
**EASEMENT EXHIBIT**  
 398 SQUARE FEET - EASEMENT - OLD MILL TRACT

Project No: S0193	Scale: 1" = 10'
Client: Hutchison	Reviewed by: CES
Date: March 14, 2017	Revised: