

TEMPORARY ORDINANCE NO. 12-20

PERMANENT ORDINANCE NO. _____

AN ORDINANCE TO ENTER INTO A PERMANENT GENERAL UTILITY EASEMENT AGREEMENT, AND TO DECLARE AN EMERGENCY

WHEREAS, pursuant to Temporary Ordinance 11-20, City personnel have determined that a portion of Fulkerson Avenue and a 12-foot alley are no longer needed by the City and City Planning Commission has approved the right-of-way vacation; and

WHEREAS, as a condition of granting the aforementioned right-of-way vacation, the parties have agreed to enter into a Permanent General Utility Easement Agreement;

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

SECTION 1. That a portion of Fulkerson Avenue is before City Council to be vacated. Within the vacated portion, the City of Lancaster Gas and Water Departments have infrastructure that will need to be maintained and eventually, improved.

SECTION 2. Therefore, the Service-Safety Director is hereby authorized to enter into a permanent general utility easement to allow for the maintenance and improvement of city infrastructure and to execute all documents necessary to complete said transaction.

SECTION 3. The Easement and ancillary documents (Exhibit A – Plat and Exhibit B – Legal Description) in the form presently on file with the Clerk of Council are hereby approved and authorized with changes therein not inconsistent with this Ordinance and not substantially adverse to the City and which have 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 and documents in this matter, provided further that the approval of changes thereto by the Service-Safety Director, 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 documents, which amendments are not inconsistent with this Ordinance and not substantially adverse to the City.

SECTION 4. That in the interest of economic development and more specifically new development in the City in a timely manner, City Council does hereby declare an emergency so that this ordinance shall take effect and be in full force immediately.

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

Date Approved: _____

Clerk: _____

Offered by: _____

Second by: _____

Requested by Economic Development Committee

President of Council

Mayor

DEED OF PERMANENT EASEMENT
GENERAL UTILITY FACILITIES EASEMENT

The SHARED OPTION 4 LLC, having a mailing address of 1450 E. Walnut Street, Lancaster, Ohio, 43130, hereinafter ("Grantor"), for valuable consideration received, does hereby grant, bargain, sell and convey to the CITY OF LANCASTER, OHIO, a municipal corporation, having a mailing address of 104 East Main Street, Lancaster, Ohio, 43130, its successors and assigns, hereinafter ("Grantee"), a permanent General Utility Facilities Easement, hereinafter ("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 City of Lancaster, County of Fairfield and State of Ohio, and more fully described as .0295 acres of right of way known as Fulkerson Avenue, Lancaster, Ohio, 43130, with the 0.295 acres recorded as a part of the Carbon Works Addition in Plat Book 2, Page 11 (the "Real Property"). The exact location of the Easement consists of the Real Property more specifically described as "Exhibit B" depicted in the legal description and survey attached hereto as "Exhibit A" and incorporated herein by reference, and which shall be referred to hereinafter as the ("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, improve, operate, maintain, remove, replace and control General Utility Facilities, 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, improving, operating, maintaining, removing, and replacing the General Utility Facilities over and across the Easement Premises, and shall not interfere with Grantee's use, access, ingress and egress to the Easement Premises. 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 construction, reconstruction, installing, realigning, modifying, replacing, improving, adding, altering, substituting, operating, maintaining, accessing, inspecting, patrolling, protecting,

repairing, changing the size of, and relocating the General Utility Facilities within the Easement Premises, abandoning in place and removing at will, in whole or in part, the General Utility Facilities, together with above- and below-ground appurtenances as may be necessary or desirable for the operation of the General Utility Facilities, over, across, under and upon the Easement Premises.

3. All improvements on the Easement Premises shall be at the sole cost of the Grantee, and Grantee shall indemnify and hold harmless Grantor from any and all liens or causes of action arising out of construction, repair, maintenance or replacement of the General Utility Facilities undertaken by 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 General Utility Facilities, associated equipment and appurtenances thereto.
5. Grantor owes no duty to keep the premises safe for entry, Grantor extends no assurance, through the act of conveying the Easement Premises, that the premises are safe for entry or use, and Grantor assumes no responsibility nor does Grantor incur liability for any injury to person or property caused by any act undertaken by Grantee in furtherance of the use of the Easement Premises.
6. Grantee shall be responsible for maintaining the Easement Premises in a clean and safe condition. 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 General Utility Facilities.
7. Grantee shall have the right to prohibit public access to the Easement Premises during periods of construction, improvement, constructing, operation, maintenance, removal, and replacement of the General Utility Facilities.
8. 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 for such or any other purposes. The Grantor reserves the right to utilize the Easement Premises to maintain and repair existing telephone, electric, water, wells, or other

utility lines or mains already serving the Real Property. If such repairs and maintenance are required, upon the completion of any necessary repairs and/or maintenance, Grantor shall restore the Easement Premises to its condition prior to such repair or maintenance.

9. 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.
10. Grantee has the right to mow the Easement Premises and to trim or cut down or eliminate trees or shrubbery, in the sole judgment of Grantee, its successors and assigns, as may be necessary to prevent possible interference with the operation of the General Utility Facilities and to remove possible hazard thereto, and the right 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 General Utility Facilities. 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.
11. Grantor hereby 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 at any time whatsoever without the express prior written consent of Grantee.
12. 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), in addition, Grantee shall also have the right to obtain injunctive relief for the enforcement of the covenants and restrictions from a court of competent jurisdiction.
13. Grantee shall have the right to post or clearly mark the boundaries of the

Easement Premises.

14. Grantee shall have exclusive possession of the Easement Premises at all times.
15. 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.
16. 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 conducted in a skillful manner, and that Grantor's interest in the Easement Premises shall be protected to the same extent as hereunder.
17. 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.
18. If any damage to Grantor's Real Property is caused by Grantee's exercise of its rights hereunder, Grantee, at its expense, shall promptly restore any disturbed areas as nearly as possible to the condition existing prior to the occurrence of the damage.
19. Grantor hereby 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(s) of the property herein described and that 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 Easements except: NONE.
20. Grantor agrees to defend, indemnify, and hold harmless the Grantee, its successors and assigns from any and all claims disputing Grantor's legal right to convey the Easement to the 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 the Grantor's legal rights to convey the Easements pursuant to this Agreement.

21. Any and all notices to which the parties shall be entitled hereunder or under any law, statute, rule, regulation, order, ordinance or policy of any governmental agency or entity having jurisdiction of the subject matter for which this Agreement is granted, shall be envelope or other appropriate mail container, addressed to the addressee shown above, bearing the adequate amount of postage to result in deliver of same to the address shown thereon, and sent by certified mail, retain receipt requested, to the party to whom such notice is given. In the alternative, either party may give such notice by United Parcel Service (UPS), Federal Express or other similar national expedited mail service guaranteeing not later than two (2) day delivery of any such letter or notice to the addresses provided for herein. Grantor and Grantee designate the following persons, addresses, and telephone numbers for all notices and information to be delivered hereunder:

GRANTOR
SHARED OPTION 4 LLC.
c/o Harold Schwartz, General Manager
1450 E. Walnut Street
Lancaster, Ohio 43130
Telephone No.: (740) 407-5300

GRANTEE
City of Lancaster, Ohio, a Municipal Corporation
c/o Service-Safety Director
104 E. Main Street
Lancaster, Ohio 43130
Telephone No.: (740) 687-6600

Such persons, addresses, and telephone numbers may be changed by the respective party by delivering written notice of such change to the other party.

22. This Agreement shall be interpreted, enforcement and governed under the laws of the State of Ohio. Venue lies in the Court of Common Pleas, Fairfield County, Ohio.
23. This Agreement 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 Agreement 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 this _____ day of _____, 2020.

GRANTOR:
SHARED OPTION 4 LLC.

GRANTEE:
CITY OF LANCASTER, OHIO
Ohio Municipal Corporation

HAROLD SCHWARTZ,
GENERAL MANAGER

PAUL D. MARTIN,
SERVICE- SAFETY DIRECTOR

State of Ohio:
County of Fairfield:

BEFORE ME, a Notary Public in and for said county and state, personally appeared the above named **Harold Schwartz**, General Manager, on behalf of SHARED OPTION 4 LLC., who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed on behalf of said SHARED OPTION 4 LLC.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Lancaster, Ohio, this _____ day of _____, 2020.

Notary Public, State of Ohio

State of Ohio:
County of Fairfield:

BEFORE ME, a Notary Public in and for said county and state, personally appeared the above named **Paul D. Martin**, Service-Safety Director of the City of

Lancaster, Ohio, an Ohio Municipal Corporation, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed on behalf of said Municipal Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Lancaster, Ohio, this ____ day of _____, 2020.

Notary Public, State of Ohio

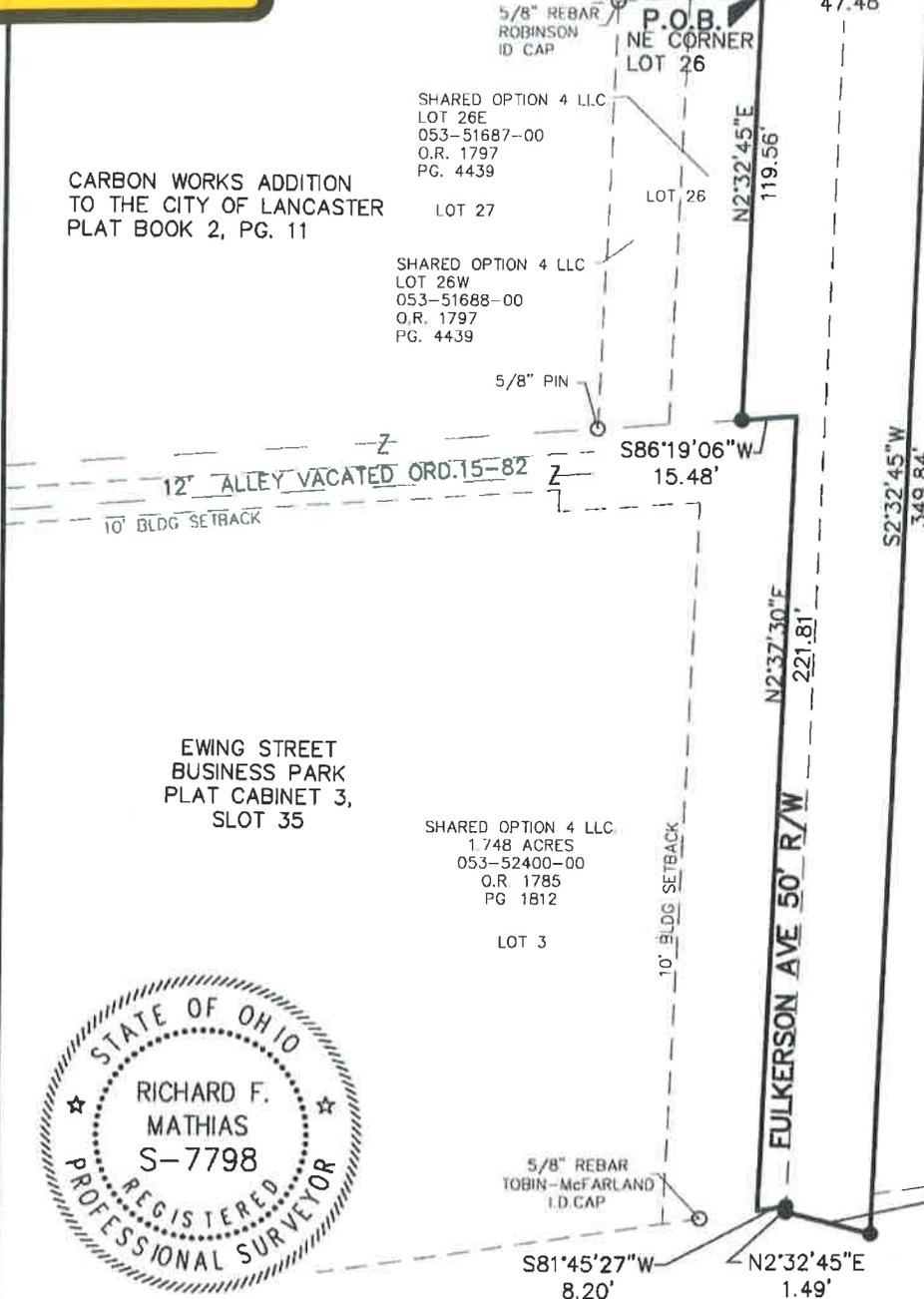
PLEASE RETURN RECORDED ORIGINAL TO:

City of Lancaster, Ohio
c/o Service-Safety Director's Office
104 E. Main Street
Lancaster, OH 43130

This instrument prepared by:
The Law Director & City Prosecutor's Office
City of Lancaster, Ohio
123 East Chestnut Street
P.O. Box 1008
Lancaster, Ohio 43130
(740) 687-6616



WALNUT STREET 50' R/W



CARBON WORKS ADDITION
TO THE CITY OF LANCASTER
PLAT BOOK 2, PG. 11

SHARED OPTION 4 LLC
LOT 26E
053-51687-00
O.R. 1797
PG. 4439

SHARED OPTION 4 LLC
LOT 26W
053-51688-00
O.R. 1797
PG. 4439

EWING STREET
BUSINESS PARK
PLAT CABINET 3,
SLOT 35

SHARED OPTION 4 LLC
1.748 ACRES
053-52400-00
O.R. 1785
PG. 1812

SHARED OPTION 4 LLC
5.59 ACRES
053-50069-00
O.R. 1784
PG. 2783



THIS SURVEY PERFORMED UNDER THE SUPERVISION OF
RICHARD F. MATHIAS, PROFESSIONAL SURVEYOR No. 7798
IN APRIL, 2020

Richard F. Mathias 6-2-2020
RICHARD F. MATHIAS DATE
PROFESSIONAL SURVEYOR No. 7798



Horizontal Scale: 1 inch = 50 ft
Vertical Scale: 1 inch = ft

BEARINGS BASED ON OHIO
STATE PLANE COORDINATE
SYSTEM SOUTH ZONE NAD83(2011)

- 30" LONG, 5/8" REBAR WITH PLASTIC 1-1/4" CAP STAMPED "LOCKWOOD, LANIER, MATHIAS, NOLAND" (SET)
- IRON MONUMENT (FOUND)
- ▲ RAILROAD SPIKE (SET)
- △ RAILROAD SPIKE (FOUND)
- CONCRETE MONUMENT (SET)
- ⊠ CONCRETE MONUMENT (FOUND)
- P K NAIL (SET)
- P K NAIL (FOUND)
- ⊕ BOLT (FOUND)
- ⊕ STONE (FOUND)
- × REFERENCE POINT

NO 1 OF 1	<p>EXHIBIT A</p> <p>SECTION 5, TWP 14, RANGE 18 FAIRFIELD COUNTY CITY OF LANCASTER, OHIO 0.387 ACRES APRIL, 2020</p>	<p>PLANS PREPARED FOR:</p> <p>SHARED OPTION 4 LLC.</p>	<p>2LMN, Inc.</p> <p>Civil Engineers / Land Surveyors</p> <p>2475 Sugar Grove Rd. SE Lancaster, Ohio 43130 (740) 687-5542 · Fax (740) 687-0086</p>
	<p>This work product was prepared to meet the specific expressed needs of our client and is not to be copied or relied upon by any person who is not in privity of contract with our company, nor is it to be used for any other purpose than that for which it was expressly provided</p> <p>© Copyright 2015 by 2LMN, Inc All rights reserved</p>		



**Legal Description
Utility Easement of part of Fulkerson Ave.
0.295 acres**

Situated in the State of Ohio, Fairfield County, City of Lancaster being part of Section 5, Township 14, Range 18, and being part of Fulkerson Avenue from the south right of way line of Walnut Street to the north line of the CSX Transportation property.

Commencing at an iron pin set at the northeast corner of Lot 26 in the to the City of Lancaster as shown in Plat Book 2, page 11 in the Pickaway County Recorder's office, said Northeast corner being the **TRUE POINT OF BEGINNING** for the property herein described:

Thence, along the projection of the south line of Walnut Street, North 86 degrees 19 minutes 06 seconds East 47.48 feet to a point on the east right of way line of Fulkerson Avenue;

Thence, along the east right of way line of Fulkerson Ave, South 02 degrees 32 minutes 45 seconds West 349.84 feet to an iron pin set on the north line of CSX Transportation property;

Thence, along the south line of said Fulkerson Ave and the north line of CSX Transportation property, North 75 degrees 37 minutes 15 seconds West 24.59 feet to an iron pin set;

Thence, along the south line of said Fulkerson Ave and the north line of CSX Transportation property, North 02 degrees 32 minutes 45 seconds East 1.49 feet to an iron pin set;

Thence, along the south line of said Fulkerson Ave, South 81 degrees 45 minutes 27 seconds West 8.20 feet to a point;

Thence, North 02 degrees 37 minutes 30 seconds East 221.81 feet to a point;

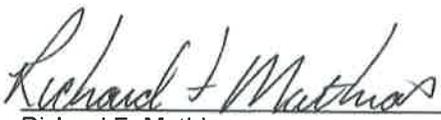
Thence, along the north line of said Lot 3 and along the utility line, South 86 degrees 19 minutes 06 seconds West 15.48 feet to a 5/8 inch iron pin set at the southeast corner of said Lot 26 and the west line of Fulkerson Ave.;

Thence, along the west line of said Fulkerson Ave, North 02 degrees 31 minutes 38 seconds East 119.56 feet to the **POINT OF BEGINNING**, containing 0.295 acres, more or less located in Fulkerson Avenue right of way;

All iron pins set are 5/8 inch x 30 inch rebar with an orange plastic cap stamped "2LMN".

Description prepared from an actual field survey by 2LMN, Inc. under the supervision of Richard F. Mathias, P.S. #7798, in February, 2020.

Bearings based on Ohio State Plane Coordinate System South Zone NAD83(2011) tied to ODOT VRS network.


Richard F. Mathias
Ohio Registered Surveyor S-7798



6-2-2020
Date