

ORDINANCE NO. 2 , 2013

**AN ORDINANCE ACCEPTING PUBLICLY DEDICATED EASEMENT RIGHTS
FROM SCHIPPER PROPERTIES, INC. AT 9500 MONTGOMERY ROAD
MONTGOMERY, OHIO AS A PART OF THE MONTGOMERY ROAD
CORRIDOR SIGNALIZATION PROJECT**

WHEREAS, the City undertook a project in cooperation with the Ohio Department of Transportation to upgrade signalization equipment controlling traffic along the Montgomery Road corridor from the Heritage District through Bethesda Hospital; and

WHEREAS, as a part of this project, the City updated its survey of right-of-way and located certain discrepancies where traffic signal improvements had been constructed and placed along the corridor which were not located within dedicated right-of-way or easement areas; and

WHEREAS, in negotiating easement rights with Schipper Properties, Inc. at 9500 Montgomery Road, Montgomery, Ohio, it was discovered that further right-of-way was needed for improvements completed in the past including the paver sidewalk and decorative retaining wall; and

WHEREAS, the City has negotiated with Schipper Properties, Inc. to acquire certain easement rights to support these public improvements; and

WHEREAS, Council does desire to accept these property rights for and on behalf of the City, to authorize the City Manager to finalize the Easement Agreement and to pay the appropriate compensation for acquiring such easement rights.

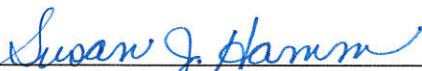
NOW THEREFORE, BE IT ORDAINED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

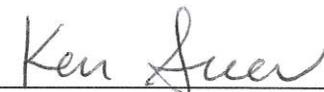
SECTION 1. Council hereby accepts easement rights dedicated for public use in support of the Montgomery Road Signalization Improvement Project and to support pedestrian walkways upon the property owned by Schipper Properties, Inc. at 9500 Montgomery Road, Montgomery, Ohio 45242, being Auditor's Parcel No. 603-002-0011.

SECTION 2. The City Manager is authorized to execute the attached Easement Agreement granting certain rights and responsibilities to the City of Montgomery within the defined easement area, and further the City Manager is authorized to pay to Schipper Properties, Inc. the sum of \$20,000.00 representing the agreed upon fair market value for such easement rights. The City Manager is directed to execute the Easement Agreement and any and all additional documentation necessary to accept these property rights, and thereafter to accept responsibility for maintenance of such public improvements upon such property.

SECTION 3. This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED: January 2, 2013

ATTEST: 
Susan J. Hamm, Clerk of Council


Ken Suer, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon, Law Director

EASEMENT AGREEMENT

This Easement Agreement (“Agreement”) is entered into as of the _____ day of _____, 2012, by and between **Schipper Properties, Inc.**, an Ohio corporation, located at 9500 Montgomery Road, Montgomery, Ohio 45242, (“Schipper”) and **The City of Montgomery, Ohio**, an Ohio municipal corporation, whose address is 10101 Montgomery Road, Montgomery, Ohio 45242 (“City”).

RECITALS

A. Schipper is the owner of certain real property situated in the City of Montgomery, Hamilton County, Ohio, Auditor’s Parcel Number 603-0002-0011, as further described on Exhibit “A” attached hereto and incorporated herein by reference (“Schipper Property”).

B. The City is an Ohio municipal corporation charged by law with the responsibility to construct and maintain public roadways including pedestrian walkways within and throughout the City, and to acquire and hold certain right-of-way and easement rights to support such roadways and walkways.

C. Schipper and the City desire, subject to the covenants, conditions and restrictions set forth within this Agreement, to establish easements and certain related rights described herein to enable the City to construct and maintain roadway signalization improvements upon the Schipper Property.

NOW THEREFORE, in consideration of the payment of the sum of One Dollar (\$1.00), the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Grant of Access Easement.**

(a) Grant of Easement. Schipper hereby grants to the City, and its successors and assigns, for the benefit of the general public, a perpetual easement in an area of approximately one thousand one hundred seventy square feet (1,170 sf.) on, over, under and across portions of the Schipper Property, as described on the attached Exhibit "B-1" and depicted in the plat attached as Exhibit "B-2" ("Easement Area"), to permit the City to construct, install, use, maintain, repair and replace certain traffic signalization, surface roadway and pedestrian walkway improvements, including a traffic signal pole, underground electric pull boxes, pedestrian paver sidewalk and the decorative retaining wall adjacent to the pedestrian sidewalk fronting Remington Road (collectively "Improvements"), provided, however, that none of the Improvements interfere with access to and from the Schipper Property.

(b) Non-Exclusive Easement. This easement shall be limited to the purposes set forth in foregoing paragraph (a), and Schipper shall retain all rights of ownership of this property to use, occupy, and otherwise exercise control over the Easement Area to the extent such is not inconsistent with the provisions of foregoing paragraph (a).

(c) No-Effect of Easement on Schipper Property. The Grant of Easement shall have no effect whatsoever on the net useable area of the Schipper Property including but not limited to the density of development, intensity of use, or the potential future development of the Schipper Property.

(d) Reverter. In the event that the City no longer needs the Easement Area for the purposes set forth in foregoing paragraph (a) or abandons the Easement Area, the Easement Area, at the request of the owner, shall revert to the owner of the Schipper Property, its successors and assigns. The City shall execute any instruments that may be requested to clear the title to the Easement Area in such event.

(e) Construction and Maintenance Costs. During the term of the Easement, the City shall be responsible, at its expense, for the maintenance, repair and replacement of the Improvements, to keep the Improvements in good condition and repair as the City may deem necessary. As further consideration for the Easement rights granted herein, the City also shall be responsible, at its expense, to maintain, repair, and replace those portions of the decorative retaining wall attached to that portion of the wall fronting Montgomery Road which portion of the decorative retaining wall extends around the Schipper's landscape area and entry steps. As necessary, Schipper will cooperate to grant to the City such license to enter the Schipper Property to make such repairs. Schipper shall not construct, erect or install any structures, landscaping or other private improvements in the Easement Area which would interfere with the City's ability to access the City's Improvements in the Easement Area.

(f) Temporary Construction Easement. In order to facilitate installation and maintenance of the Improvements, Schipper hereby grants to the City, and its agents, successors and assigns, a temporary non-exclusive construction easement over portions of the Schipper Property within a ten (10) foot radius, in and around the Easement Area for construction activities and storage of materials. The City shall cause its employees, agents and contractors to coordinate such work and storage with Schipper so as to prevent the interruption of Schipper's business and to minimize, to the extent reasonably possible, any disruption to the use of the Schipper Property. The City shall promptly restore any damage to the disturbed areas of the Schipper Property to the condition existing upon commencement of the construction activities, which damage may be caused by its construction and/or related activities. The temporary construction easement provided for herein shall only remain in effect during any limited period of time when it is necessary to repair or reconstruct the Improvements, and such temporary construction easement shall automatically terminate upon the completion of the construction of the Improvements

2. Covenants Running with the Land / Obligation of Future Owners. The easements granted in this Agreement and the covenants contained herein shall be easements and covenants running with the land, and these easements and covenants along with the terms and

provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors, assigns, mortgagees and tenants.

3. **Indemnification.** The City, its successors and assigns, shall indemnify, defend and hold Schipper, its officers, directors, employees, invitees, licensees, successors and assigns, harmless for, from and against any and all claims, demands, causes of action, losses, damages, liabilities, obligations, costs and expenses (including but not limited to reasonable attorney's fees, mechanics and materialmen's liens and disbursements) arising out of any breach of this Agreement by the City, its successors or assigns, or any personal injury or property damage caused by the City or its agents, contractors or employees in any way related to this Agreement and the related construction activity.

4. **Amendment.** The provisions of this Agreement may be modified or amended, in whole or in part, only with the consent of the City and the persons who are at such time the fee owners of the Schipper Property by declaration in writing executed and acknowledged by all parties and duly recorded in Hamilton County, Ohio. It is expressly understood and agreed that no modification or amendment of this Agreement, in whole or in part, shall require any consent or approval on the part of any mortgagee, occupant, permittee or tenant other than the fee owner.

5. **Notices.** Notices permitted or required under this Agreement shall be in writing and shall be delivered or sent by certified mail to the addresses set forth above, provided that any party may change such address by written notice to the other party.

6. **Miscellaneous.**

(a) **Captions.** The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction.

(b) **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Ohio. The rules of strict interpretation shall not apply to this Agreement, and this Agreement shall be given a reasonable interpretation so that the intention of the parties to confer commercially usable easements and other rights is carried out.

(c) Non-Waiver. No delay or failure by either party to exercise any right under this Agreement and no partial or single exercise of that right shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

(d) No Partnership. Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third party, to create the relationship of principal and agent, or a partnership, or a joint venture, or of association between any of the parties to this Agreement.

(e) Severability. If any term, provision or condition contained in this Agreement shall, to any extent, be determined to be invalid or unenforceable, the remainder of this Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable), shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(f) Further Assurances. Each of the parties hereto agree to execute and deliver such further instruments and to perform such acts as are reasonably necessary for a party to perform any requirement or to carry out the purposes of this Agreement.

(g) Exhibits. All exhibits referred to in this Agreement and attached hereto shall be deemed a part of this Agreement.

(h) Counterparts. For the convenience of the parties, this Agreement may be executed in one or more counterparts including separate signature pages, which counterparts together shall constitute the entire Agreement of the parties.

[SIGNATURE PAGE TO FOLLOW]

IN CONCLUSION, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the date first written above.

SCHIPPER PROPERTIES, INC.,
AN OHIO CORPORATION

By: _____

Its: _____

THE CITY OF MONTGOMERY, OHIO

By: _____

Wayne S. Davis

Its: City Manager

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me, a Notary Public in and for this County and State, this _____ day of _____, 2012 by _____, _____ of **Schipper Properties, Inc., an Ohio corporation**, who acknowledged the signing and sealing of the Easement Agreement to be _____ voluntary act and deed.

Notary Public

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me, a Notary Public in and for this County and State, this _____ day of _____, 2012 by **Wayne S. Davis, City Manager of the City of Montgomery, Ohio**, who acknowledged the signing and sealing of the Easement Agreement to be his voluntary act and deed, and the voluntary act and deed of the City.

Notary Public

This Instrument prepared by:
Terrence M. Donnellon, Esq.
Donnellon, Donnellon & Miller
9079 Montgomery Road
Cincinnati, OH 45242
(513) 891-7087

EXHIBIT A

“SCHIPPER PROPERTY”

Situate in Section 3, Township 4, Entire Range 1, in the Village of Montgomery, Sycamore Township, County of Hamilton, State of Ohio, and being Lot Number 6 and 7 in Lodwick Weller's Addition to the Town of Montgomery, as shown in Deed Book P. 1, page 14 of the Deed Records of Hamilton County, Ohio.

Beginning at the northeast corner of Montgomery Pike and Remington Road; thence North 14° 15' East, along the easterly line of Montgomery Pike, 176.56 feet to the northwest corner of Lot Number 6 of said addition; thence South 68° 30' East along the north line of Lot Number 6, 124.61 feet to the northeast corner of Lot Number 6; thence South 14° 45' West along the east line of Lot Number 6 and Number 7, 161.91 feet to the northerly line of Remington Road; thence North 75° 15' West along the northerly line of Remington Road 123.75 feet to the place of beginning.

The above description is a description as per boundary survey plat executed February 25, 1966 and recorded February 28, 1966 in Miscellaneous Book 22, page 287 of the Records of the Recorder of Hamilton County, Ohio.

Auditor's Parcel No.: 603-0002-0011



CDS ASSOCIATES, INC.

**Legal Description
Roadway & Utility Easement
Schipper Properties, Inc.**

Situated in Section 3, Town 4, Entire Range 1, Sycamore Township, City of Montgomery, being a Roadway and Utility Easement over and through Lot 7 of Ludowick Weller's Addition to the Town of Montgomery, recorded in Deed Book P-1, Page 14 (all references to recorded documents are to those of the Hamilton County Recorder's Office in Cincinnati, Ohio) and the property conveyed to Schipper Properties, Inc. by deed recorded in Official Record 6700, Page 1150, being more particularly described as follows:

Beginning at the intersection of the northerly line of Remington Road with the easterly line of Montgomery Road, being the grantor's southwesterly corner;

Thence along the easterly line of Montgomery Road, North 21°33'14" East, a distance of 29.36 feet;

Thence through the grantor's property, along the herein described easement, along an arc deflecting to the left, having a radius of 20.00 feet, an arc length of 31.11 feet and a chord bearing South 23°00'43" East, a chord distance of 28.07 feet;

Thence continuing through said grantor's property, South 67°34'40" East, a distance of 104.07 feet to the grantor's easterly line;

Thence along the grantor's easterly line, South 21°36'37" West, a distance of 7.91 feet to the grantor's southeasterly corner, being in the northerly line of Remington Road;

Thence along the northerly line of Remington Road, North 68°23'23" West, a distance of 123.75 feet to Point of Beginning;

Containing 1,170 square feet, more or less, and being subject to all easements, restrictions, covenants and/or conditions of record.

CDS Associates, Inc.
August 31, 2010
Revised June 8, 2011
2008215-000

EXHIBIT B-1
2 of 2

Remington NE Revised.txt

Parcel name: Remington NE

North: 452725.1605 East: 1443356.9450
Line Course: N 21-33-14 E Length: 29.3627
North: 452752.4699 East: 1443367.7322
Curve Length: 31.1128 Radius: 20.0000
Delta: 89-07-54 Tangent: 19.6992
Chord: 28.0691 Course: S 23-00-43 E
Course In: S 68-26-46 E Course Out: S 22-25-20 W
RP North: 452745.1224 East: 1443386.3336
End North: 452726.6345 East: 1443378.7050
Line Course: S 67-34-40 E Length: 104.0728
North: 452686.9381 East: 1443474.9097
Line Course: S 21-36-37 W Length: 7.9095
North: 452679.5845 East: 1443471.9967
Line Course: N 68-23-23 W Length: 123.7500
North: 452725.1606 East: 1443356.9451

Perimeter: 296.2078 Area: 1,170 sq.ft. 0.0269 acres

Mapcheck Closure - (Uses listed courses and chords)
Error Closure: 0.0001 Course: N 24-39-59 E
Error North: 0.00011 East: 0.00005
Precision 1: 2,931,641.0000

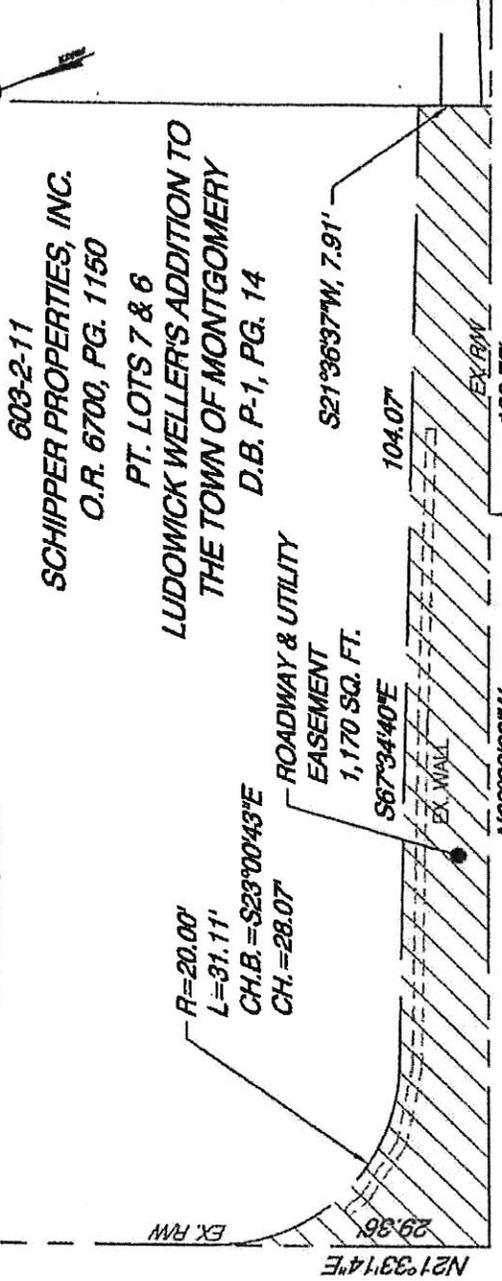
EXHIBIT "A" ROADWAY & UTILITY EASEMENT

SITUATED IN:
SECTION 3, TOWN 4, ENTIRE RANGE 1
SYCAMORE TOWNSHIP
CITY OF MONTGOMERY
HAMILTON COUNTY, OHIO

NORTH AND BEARING SYSTEM
BASED ON OHIO STATE PLANE
COORDINATES (SOUTH ZONE)

603-2-11
SCHIPPER PROPERTIES, INC.
O.R. 6700, PG. 1150

PT. LOTS 7 & 6
LUDWICK WELLER'S ADDITION TO
THE TOWN OF MONTGOMERY
D.B. P-1, PG. 14



REMINGTON ROAD

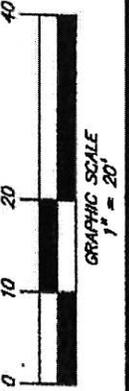
AUGUST 31, 2010 (REVISED JUNE 2011)
2008215-000 V.R.O.W.C.M.G



CDS ASSOCIATES, INC.

Knowledge ■ Expertise ■ Innovation

www.cds-assoc.com



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Cincinnati, Ohio 45242-1818
(p) 513.791.1700
(f) 513.791.1936

7000 Dixie Highway
Florence, Kentucky 41042
(p) 859.525.0544
(f) 859.525.0561

MONTGOMERY ROAD

66' RW

EX. RW

EX. RW

EX. RW

93' RW