

ORDINANCE NO. 19-3608

**AN ORDINANCE AUTHORIZING THE VILLAGE MANAGER
TO ENTER INTO A PERMANENT EASEMENT AGREEMENT
FOR MUNICIPAL PROPERTY AT 6860 PLAINFIELD ROAD BETWEEN THE
VILLAGE OF SILVERTON AND DUKE ENERGY OHIO, INC.,
AND DECLARING AN EMERGENCY**

WHEREAS, the Village of Silverton presently owns 1.075 acres of land (“property”) at 6860 Plainfield Road, commonly referred to as the former Memorial Municipal Building. The property is known by the County Auditor’s Parcel Identification Number 602-0003-0003-90; and

WHEREAS, the Council of the Village of Silverton has leased said property to HighGrain Brewing Company, LLC, which is converting the former Memorial Municipal Building into a craft brewery, restaurant, and taproom; and

WHEREAS, HighGrain Brewing Company’s plans require new and additional services from Duke Energy Ohio, Inc. to facilitate HighGrain’s brewery plans; and

WHEREAS, The Council of the Village of Silverton desires to grant a permanent easement on said property; and

WHEREAS, The Village of Silverton wishes to grant Duke Energy Ohio, Inc. a permanent easement as provided in Exhibit A attached hereto and made a part hereof.

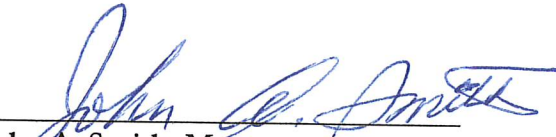
NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Silverton, that:

SECTION I. The Council of the Village of Silverton hereby accepts the terms of the permanent easement price confirmation attached hereto as “Exhibit A”.

SECTION II. The Village Manager is hereby authorized to execute the permanent easement and any related documents to effectuate the grant of such easement.


SECTION III. This Ordinance is declared to be an emergency measure necessary to preserve the public peace, health, safety and welfare of the citizens of the Village of Silverton; the reason for the emergency being the immediate need to provide Duke Energy Ohio, Inc. with a permanent easement so that HighGrain Brewing Company can open for business at the earliest possible time and so that other uses for the property will be viable. Accordingly, this Ordinance shall take effect and be in force from and after its passage and approval.

Passed this 24th day of January, 2019.




John A. Smith, Mayor

ATTEST:



Thomas M. Carroll, Village Manager


Approved as to form:



Bryan E. Pacheco, Village Solicitor

CERTIFICATION:

I, Meredith L. George, Clerk of Council of the Village of Silverton, County of Hamilton, State of Ohio; do hereby certify that there is no newspaper published in said municipality and that publication of the foregoing Ordinance No. 19-3608 has been duly made by posting true copies in two (2) places that are accessible by the public in said municipality, as determined by Council as follows: 1) Silverton Town Hall lobby area and Council Chambers foyer; and 2) Silverton's official website. Said posting was for a period of fifteen days commencing January 28, 2019.



Meredith L. George
Clerk of Council of Silverton, Ohio

GRANT OF EASEMENT

Pt. Parcel #602-0003-0003-90

In consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, **VILLAGE OF SILVERTON, OHIO**, an Ohio municipal corporation (hereinafter referred to as "Grantor"), hereby grant(s) unto **DUKE ENERGY OHIO, INC.**, an Ohio corporation, with a mailing address of 139 East Fourth Street, Cincinnati, OH 45202 and its successors and assigns (hereinafter referred to as "Grantee"), a perpetual, non-exclusive easement to construct, reconstruct, operate, patrol, maintain, repair, replace, relocate, add to, modify and remove, electric, and/or telecommunication line or lines including but not limited to, all necessary and convenient supporting structures (such as poles), underground ducts, conduits, wires, cables, manholes, pullboxes, guy wires with anchors, grounding systems, counterpoises, surface equipment (including, but not limited to, transformers and switchgears), and all other appurtenances, fixtures and equipment (hereinafter referred to as the "Facilities"), for the transmission and distribution of electrical energy, and for technological purposes (including but not limited to telecommunications), both overhead and underground, in, upon, over, along, under, through and across the following described real estate:

Situate in Section 18, Town 4, Fractional Range 2, Miami Purchase, Village of Silverton, Hamilton County, State of Ohio; being Lot No. 8 of John J. Wright's Subdivision of part of the Sampson Farm as recorded in Plat Book 6, Page 176 in the Office of the Hamilton County, Ohio Recorder, as conveyed to the **VILLAGE OF SILVERTON, OHIO** from Anna M. Clasgens by Warranty Deed dated July 7, 1937 and recorded in **Deed Book 1753, Page 212** in the aforesaid Recorder's Office. (hereinafter referred to as "Grantor's Property").

Said underground electric easement being a strip of land fifteen feet (15') in uniform width, lying seven and one-half feet (7.5') wide on both sides of a centerline; and an overhead electric easement thirty-two feet (32.0') in uniform width, lying sixteen feet (16.0') wide on both sides of a centerline which centerline shall be established by the center of the Facilities as constructed and as generally shown on Exhibit "A", attached hereto and becoming a part hereof (hereinafter referred to as the "Easement Area").

This easement grant shall include, but not be limited to, the following respective rights and duties of Grantor and Grantee:

1. Grantee shall have the right of ingress and egress over the Easement Area, and over the adjoining land of Grantor's Property (using lanes, driveways, and adjoining public roads where practical as determined by Grantee).

2. Grantee shall have the right to cut down, clear, trim, remove, and otherwise control any trees, shrubs, overhanging branches, and/or other vegetation upon or over the Easement Area. Grantee shall also have the right to cut down, clear, trim, remove, and otherwise control any trees, shrubs, overhanging branches, and/or other vegetation which are adjacent to the Easement Area but only to the extent such vegetation may endanger, as reasonably determined by Grantee, the safe or reliable operation of the Facilities, or where such vegetation is trimmed consistent with generally accepted arboricultural practices.

3. Grantee shall have the right to allow third parties (a) to attach equipment to Grantee's Facilities and (b), to trench with Grantee's Facilities, and with either (a) or (b), any such equipment shall include, but not be limited to, wires, cables, and other fixtures; provided, that Grantor shall pursue any claim with the third party and not Grantee, if any such claim arises out of any third party's attachment.

4. To the best of Grantor's knowledge, the Easement Area and the adjoining land of Grantor's Property, have never been used to release, discharge, generate or store any toxic, hazardous, corrosive, radioactive or otherwise harmful substance or material.

5. Grantor shall not place, or permit the placement of, any obstructions, which may interfere with the exercise of the rights granted herein to Grantee. Grantee shall have the right to remove any such obstruction.

6. Grantee shall have the right to pile dirt and other material and to operate equipment upon the surface of the Easement Area and the adjoining land of Grantor's Property, *but only* during those times when Grantee is constructing, reconstructing, maintaining, repairing, replacing, relocating, adding to, modifying, or removing the Facilities.

7. Excluding the removal of vegetation and obstructions as provided herein, any physical damage to the surface area of the Easement Area and the adjoining land of Grantor's Property resulting from the exercise of the rights granted herein to Grantee, shall be promptly paid by Grantee, or repaired or restored by Grantee to a condition which is reasonably close to the condition it was in prior to the damage, all to the extent such damage is caused by Grantee or its contractors or employees. In the event that Grantee does not, in the opinion of Grantor, satisfactorily repair any damage, Grantor must, within ninety (90) days after such damage occurs, file a claim for such damage with Grantee at (a) 139 East Fourth Street, Cincinnati, OH 45202, Attn: Right of Way Services, or (b) by contacting an authorized Right of Way Services representative of Grantee.

8. Grantor shall have the right to use the Easement Area and the adjoining land of Grantor's Property in any manner which is consistent with the rights granted herein to Grantee, and shall comply with all applicable codes when making use of the land near the Facilities.

9. Notwithstanding anything to the contrary contained herein, Grantor shall not without the prior written consent of Grantee (a) construct or install, or permit the construction or installation of any building, house, or other above-ground structure, or portion thereof, upon the Easement Area; or (b) excavate or place, or permit the excavation or placement of any dirt or other material upon or below the Easement Area; or (c) cause, by excavation or placement of material, either on or off the Easement Area, a pond, lake, or similar containment vehicle that would result in the retention of water in any manner within the Easement Area.

10. Grantor warrants that it has the necessary authority and title to Grantor's Property to grant this easement to Grantee, and shall defend and hold Grantee harmless from the claim of any third party that Grantor does not have such authority or title.

The respective rights and duties herein of Grantor and Grantee shall inure to the benefit of, and shall be binding upon the respective successors, assigns, heirs, personal representatives, lessees, licensees, and/or tenants of Grantor and Grantee. Easement, Grantor and Grantee, as used herein, shall be deemed to be plural, when required to be so. The exercise of any or all of the rights and privileges of Grantee set forth herein, shall be at the sole discretion of Grantee.

Signature page to follow.

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IN WITNESS WHEREOF, Grantor has caused this Grant of Easement to be signed by its duly authorized representative(s), effective the 25th day of January, 2019.

VILLAGE OF SILVERTON, OHIO,
an Ohio municipal corporation,
Grantor

By: [Signature] By: _____

Printed Name: Thomas M. Carroll Printed Name: _____

Printed Title: Village Manager Printed Title: _____

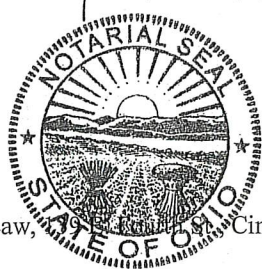
STATE OF _____)
) SS:
COUNTY OF _____)

Personally appeared before me this day January 25, 2019, (a) duly authorized representative(s) of Grantor and acknowledged the signing of this Grant of Easement by _____ to be a voluntary act and deed for and on behalf of Grantor, and having been duly sworn/affirmed, state(s) that any representations contained therein are true to the best of _____ personal knowledge.

WITNESS my hand and notarial seal, this 25 day of January, 2019.

My Commission Expires: 2-28-21 Signed Name: Alycia Boggs

My County of Residence: Hamilton Printed Name: Alycia Boggs



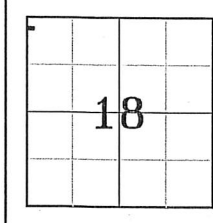
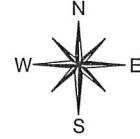
ALYCIA BOGGS
Notary Public, State of Ohio
My Commission Expires 02-28-2021

This Instrument Prepared by Janice L. Walker, Attorney-at-Law, Cincinnati, OH 45202.

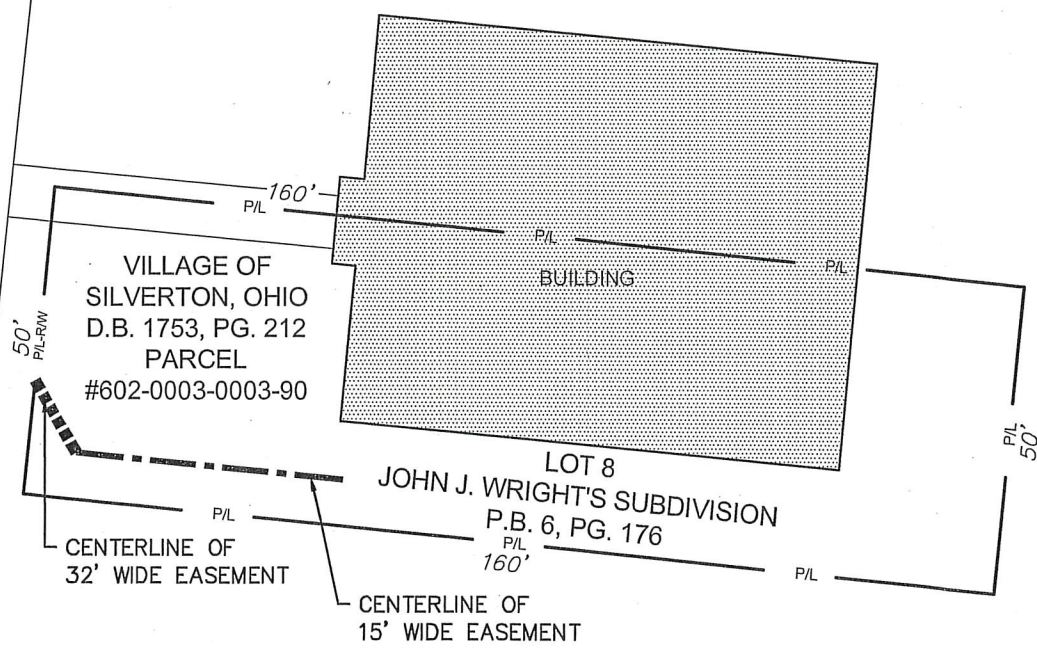
[Signature]

For Grantee's Internal Use:
eMax #30901858
Prepared by: CLP / MDA
Prepared date: January 16, 2019
Pad #HMO-28116

THIS IS NOT A SURVEY. LOCATIONS SHOWN ARE APPROXIMATE. THE ACTUAL CENTERLINE LOCATION OF THE UTILITY LINE IS THE CENTERLINE OF THE EASEMENT.



PLAINFIELD RD.



NOTE: PROPERTY LINES AS SHOWN WERE PLOTTED FROM D.B. 1753, PG. 212; P.B. 6, PG. 176 AND SITE IMPROVEMENTS FROM GIS DATA

HAMILTON COUNTY, OHIO

SITE NAME: VILLAGE OF SILVERTON, SECTION 18 T-4, F.R.-2

	DR. AM	EXHIBIT MAP OF: EASEMENT
	CK. MT	EXHIBIT MAP FOR: VILLAGE OF SILVERTON, OHIO
	DATE 01/16/2019	LOCATION 6860 PLAINFIELD RD, CINCINNATI, OH
EXHIBIT 'A'		EMAX #30901858