

AUDITORS OFFICE  
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DEC 18 2012

*Ken Garnier*  
Henry County Auditor

Instrument 201200093095 OR Volume Page 274 700

201200093095  
Filed for Record in  
HENRY COUNTY OHIO  
SARA L MYLES, RECORDER  
12-18-2012 At 03:36 pm.  
EASEMENT 84.00  
OR Volume 274 Page 700 - 708

201200093095  
CITY OF NAPOLEON  
PICK UP

Agreement No. DF-77040b

### WIRELINE CROSSING AND UTILITY POLE EASEMENT

RMW Ventures, LLC and Maumee & Western Railroad Corporation (severally and collectively the "Grantor") for the sum of \$1.00 and other good and valuable consideration paid by the City of Napoleon, Ohio (the "Grantee"), receipt of which is hereby acknowledged, does hereby grant to the Grantee an Easement and right-of-way above and across the railroad corridor, right-of-way and rail line of Grantor, located in the City of Napoleon, Ohio, at, above and adjacent to the public crossing of Scott Street, further described as AARDOT 477643P; the metes and bounds of which are described in Exhibit A, attached hereto and made a part hereof by reference (the "Easement").

The Easement granted shall be used solely for the purpose of the installing, repairing, maintaining, rebuilding, replacing, inspecting and removing Grantee owned and operated public electric transmission and fiber optic lines (the "Wirelines" or the "Wireline Crossing"), and two (2) appurtenant utility poles with crossarms, street lights and arms attached (the "Poles"); (altogether, the "Facilities" or the "Crossing"), with right of ingress and egress for the purposes hereinafter set forth.

The Easement, rights, and privileges shall exist for so long as the Easement is used for the aforesaid purposes, and said Easement may be assigned by Grantee to any governmental unit or agency, subject to prior approval of Grantor. This agreement is made expressly for the benefit of, and shall be binding on, the heirs, personal representatives, successors in interest and permitted assigns of the respective parties.

It is expressly agreed and understood that the Easement rights and privileges conveyed to Grantee are limited to the installation, operation, and physical support of public electric transmission and fiber optic Wirelines and street illumination devices, and that Grantee or its heirs, successors and permitted assigns shall be fully responsible for all costs associated with the placing, constructing, operating, using, repairing, maintaining, rebuilding, replacing, and removing the Facilities, and for complying with all of Grantor's reasonable safety and notification requirements. It is further agreed and understood that since the aforesaid Wirelines pass above and across the railroad line operated by Grantor, Grantee shall provide Grantor with reasonable advance notice of any and all activities of Grantee which require it to enter upon Grantor's property or

railroad right-of-way for any purposes related to the aforesaid Facilities. Grantee shall maintain a minimum height clearance of at least twenty seven feet (27') above the top of the rails, and shall not allow for any impairment of Grantor's operations, property, tracks or right-of-way to occur as a result of any of Grantee's aforementioned activities on, under, or about the Facilities; such impairments shall be promptly and fully remediated at Grantee's sole expense.

The Easement, rights and privileges granted herein are not exclusive and are subject to preexisting easement(s) or occupancies, but Grantor covenants not to convey any other easement(s) rights within the area covered by this grant which will preclude the use of the Easement by Grantee, as herein set forth.

Grantor also retains, reserves and shall continue to enjoy the use of the surface, subsurface and aerial rights of the property subject to this Easement for any and all purposes, including, but not limited to:

- 1) any act or activity required or associated with the provision of railroad service(s) and/or related or associated activities;
- 2) the right to, or to allow others to build, install, construct, locate, maintain, use, operate, repair, and renew: any drainage ditch or related facilities; any fiber optic or other types of communication lines; electric transmission lines; pipelines, and; any structures or facilities associated with any of these, on, under, over, across, or about the Easement and the right to maintain, repair, replace, operate, use, improve or remove any or all such facilities, lines and pipelines, and to derive such income from the same, as in the sole judgment of Grantor may be requisite or advisable. Provided however, that Grantor's exercise of the rights reserved to Grantor in this sub-paragraph shall not prevent the use by Grantee of the Facilities for the purposes intended, as set forth herein.

Grantee shall have the duty to construct, repair and maintain the Facilities and related appurtenances, as well as, all surfaces and signage on the property subject to this Easement in a safe and presentable condition, and shall at all times keep the Easement property free and open for the benefit of Grantor and any other concurrent user(s). Grantee shall have right of ingress and egress to perform or undertake its obligations hereunder. Grantee will, during the entire actual physical presence of the Facilities on and above Grantor's property, right-of-way and tracks, be solely responsible for all costs associated with the maintenance, repair, replacement, improvement and ultimate removal of the Poles and Wirelines up to and in the Crossing. Grantor and Grantee will coordinate and give each other 24 hours advance notice of any maintenance or related activities in the vicinity of the Crossing, and Grantee and each of Grantee's employees, contractors and agents shall comply with Grantor's reasonable safety and notification requirements, while on or about Grantor's property and/or the Easement.

In addition to the Easement rights and privileges, Grantee, with prior notice to Grantor, shall have the right to use as much of the surface of the servient estate as may be

reasonably necessary to construct and install, within the Easement, the Facilities contemplated by this Easement. Upon completion of construction and installation of the Facilities, Grantee shall, or shall cause, with prior approval from Grantor, the replacement and restoration all railroad tracks, signals, signs and related structures and facilities that have been relocated, damaged, destroyed or removed during construction and installation of the Facilities to the location and condition reasonably satisfactory to Grantor. Grantee will install and maintain for so long as the subject Wireline Crossing exists, signage located as close as possible to the point where the Wirelines enter into and/or under (if applicable) Grantor's property and right-of-way from adjacent property. The signage shall be in a form, size and format as will be reasonably acceptable to Grantor and shall warn of the ownership, location, height and type of Wireline Crossing involved.

The rights and privileges granted under this Easement shall terminate if the purposes of the Easement cease to exist or are abandoned by Grantee, or if the Facilities shall be conveyed to any party which is not a governmental unit or government owned and operated utility, or if the Facilities cease to be utilized for public purpose.

The consideration recited herein shall constitute full and final payment for said Easement and all damages sustained and/or claimed by the Grantor, their heirs, executors, administrators, successors, and assigns, except such damage to railroad property or facilities which may occur during the construction, installation, maintenance, repair, removal, operation, use, or improvement of the contemplated Facilities which occurs during the existence of this Easement or the existence of the Facilities in, on, under or about the Easement.

To have and to hold said Easement, together with all rights and privileges belonging thereto unto the Grantee and its public successors and permitted assigns. This Easement, together with all agreements, covenants and other provisions recited herein, shall constitute a covenant running with the land for the benefit and use of the Grantee, its successors and permitted assigns for so long as the contemplated Facilities shall continue to physically exist and be regularly used by Grantee for the public purposes contemplated herein. Except as herein noted, the provisions of this Easement will inure to the benefit of and bind the heirs and/or permitted assigns of the respective parties to it. Said Easement may be assigned by Grantee to any unit of government or public governmental agency (Grantee's "permitted assigns"), subject to Grantor's prior approval.

RMW Ventures, LLC hereby covenants that it is the true and lawful owner of the above described real estate and has full power and authority to convey the same.

Grantor's claim title to this property evidenced by a deed recorded in Volume 23, Page 131 of the Henry County deed records.

Any oral representation or modification concerning this instrument shall be of no force and effect. Any modification of this agreement must be signed by all parties.

In Witness hereof, this instrument is executed on this 11th day of December, 2012.

Spencer Wendler  
RMW Ventures, LLC, Grantor

Spencer  
WITNESS

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me, a notary public in and for said county and state, personally appeared the  
named RMW Ventures, LLC by and through its  
Manager, the Grantor, who acknowledged that he did  
sign the foregoing instrument and that the same is his free act and deed.

(SEAL)

Stacy M Spencer  
NOTARY PUBLIC  
MY COMMISSION EXPIRES:



In witness hereof this instrument is executed on this 11th day of December, 2012.

James W. Wampler  
Maumee & Western Railroad Corporation, Grantor

Spencer  
WITNESS

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me, a notary public in and for said county and state, personally appeared the named Maumee & Western Railroad Corporation by and through its CEC, the Grantor, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

(SEAL)  
SEAL

Stacy M. Spencer  
NOTARY PUBLIC  
MY COMMISSION EXPIRES:

In witness hereof this instrument is executed on this 11th day of December, 2012.

This instrument was prepared by:

Trevor M. Haybarger  
Trevor M. Haybarger  
Law Director, City of Napoleon, Ohio



This Easement is accepted by the City of Napoleon, Ohio, by having its duly authorized and empowered representative or officer having executed below:

For City of Napoleon, an incorporated Ohio municipality, Grantee, by its:

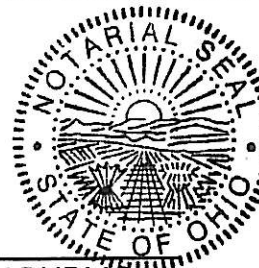
City Manager : Jon A. Bisher  
Title Name

STATE OF Ohio

COUNTY OF Henry

Before me, a notary public in and for said county and state, personally appeared the named City of Napoleon, Ohio by and through its City Manager, Jon Bisher, the Grantee, who acknowledged that he did sign the foregoing instrument and that the same is his free, clear and duly authorized act and deed.

(SEAL)



ROXANNE DIETRICH  
NOTARY PUBLIC  
FOR THE  
STATE OF OHIO  
My Commission Expires  
June 23, 2017

Roxanne Dietrich

NOTARY PUBLIC  
MY COMMISSION EXPIRES:

In witness hereof this instrument is executed on this 7<sup>th</sup> day of  
December, 2012.

**EXHIBIT A**

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LPA RX 883 U

Rev. 06/09

Ver. Date 12/11/12

PID 86846

**PARCEL 20-U1  
SCOTT STREET  
PERPETUAL EASEMENT FOR UTILITY PURPOSES  
IN THE NAME AND FOR THE USE OF THE  
CITY OF NAPOLEON, HENRY COUNTY, OHIO**

Easement for overhead electric transmission lines and municipal owned fiber optic cables to the City of Napoleon.

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Henry, City of Napoleon, being in the northwest quarter of Section 13, Town 5 North, Range 6 East, and also being on the right side of the centerline of right of way of Scott Street (State Route 108), as shown on a Right of Way Acquisition Plat made in 2010, for the City of Napoleon titled "Contract No. 2010-01, Scott Street Improvements" and bounded and described as follows:

BEGINNING at a the intersection of the northerly right of way line of the Maumee & Western Railroad with the easterly right of way line of Scott Street (SR 108), also being the southwesterly corner of E. S. Dodd's First Addition to Napoleon and being 41.25 feet right of Station 860+50.24;

1. Thence South 37 degrees 05 minutes 24 seconds East a distance of 5.27 feet to a point 41.25 feet right of Station 860+44.97;
2. Thence North 52 degrees 54 minutes 36 seconds East a distance of 4.00 feet to a point 45.25 feet right of Station 860+44.97;
3. Thence South 37 degrees 05 minutes 24 seconds East a distance of 2.00 feet to a point 45.25 feet right of Station 860+42.97;
4. Thence South 52 degrees 54 minutes 36 seconds West a distance of 4.00 feet to a point 41.25 feet right of Station 860+42.97;
5. Thence South 37 degrees 05 minutes 24 seconds East a distance of 89.00 feet to a point 41.25 feet right of Station 859+53.97;
6. Thence North 52 degrees 54 minutes 36 seconds East a distance of 4.00 feet to a point 45.25 feet right of Station 859+53.97;
7. Thence South 37 degrees 05 minutes 24 seconds East a distance of 2.00 feet to a point 45.25 feet right of Station 859+51.97;
8. Thence South 52 degrees 54 minutes 36 seconds West a distance of 4.00 feet to a point 41.25 feet right of Station 859+51.97;



**EXHIBIT A**

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9. Thence South 37 degrees 05 minutes 24 seconds East a distance of 2.75 feet to a point on the southerly right of way line of said Maumee & Western Railroad, also being the northerly right of way line of Railroad Street and being 41.25 feet right of Station 859+49.22;
10. Thence South 61 degrees 02 minutes 55 seconds West a distance of 2.27 feet, along said southerly right of way line of the Maumee & Western Railroad, to a point 39.00 feet right of Station 859+49.54;
11. Thence North 37 degrees 05 minutes 24 seconds West a distance of 2.43 feet to a point 39.00 feet right of Station 859+51.97;
12. Thence South 52 degrees 54 minutes 36 seconds West a distance of 4.00 feet to a point 35.00 feet right of Station 859+51.97;
13. Thence North 37 degrees 05 minutes 24 seconds West a distance of 2.00 feet to a point 35.00 feet right of Station 859+53.97;
14. Thence North 52 degrees 54 minutes 36 seconds East a distance of 4.00 feet to a point 39.00 feet right of Station 859+53.97;
15. Thence North 37 degrees 05 minutes 24 seconds West a distance of 89.00 feet to a point 39.00 feet right of Station 860+42.97;
16. Thence South 52 degrees 54 minutes 36 seconds West a distance of 4.00 feet to a point 35.00 feet right of Station 860+42.97;
17. Thence North 37 degrees 05 minutes 24 seconds West a distance of 2.00 feet to a point 35.00 feet right of Station 860+44.97;
18. Thence North 52 degrees 54 minutes 36 seconds East a distance of 4.00 feet to a point 39.00 feet right of Station 860+44.97;
19. Thence North 37 degrees 05 minutes 24 seconds West a distance of 5.59 feet to a point on the northerly right of way line of said Maumee & Western Railroad, 39.00 feet right of Station 860+50.56;
20. Thence North 61 degrees 02 minutes 55 seconds East a distance of 2.27 feet, along said northerly right of way line of the Maumee & Western Railroad, to the TRUE POINT OF BEGINNING.

The above described area contains a gross take of 259 square feet or 0.006 acres more or less.

The easement described shall be limited to overhead electric lines and municipal owned fiber optic cables only, subject to all legal highways and prior easements of record.

This description was prepared by Jon D. Bruner, Professional Surveyor Number 7098 of The Mannik & Smith Group, on December 11, 2012.

This description is based on a survey made in 2010 by The Mannik & Smith Group, Inc. under the direction and supervision of Jon D. Bruner, Professional Surveyor Number 7098.

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**EXHIBIT A**

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The bearings are based on the Ohio State Plane Coordinate System, North Zone, and North American datum of 1983 (1986 Adjustment) as established from a GPS survey tied to a network of control monuments established by the City of Napoleon.

  
Jon D. Bruner

Professional Surveyor #7098

The Mannik and Smith Group, Inc.

1800 Indian Wood Circle

Maumee, Ohio 43537

12-14-12

Date

