

ORDINANCE NO. 6 , 2019

**AN ORDINANCE ACCEPTING PUBLICLY DEDICATED EASEMENT RIGHTS FOR
PEDESTRIAN SIDEWALK IMPROVEMENTS FROM TERRA FIRMA-CONNER
CROSSING, LLC ON KENNEDY LANE AT MONTGOMERY ROAD**

WHEREAS, Terra Firma-Conner Crossing, LLC ("Terra Firma") is the owner of property at 9157 Montgomery Road, Montgomery, Ohio 45242, being Hamilton County Auditor's Parcel Number 603-0003-0076-00; and

WHEREAS, the City, in cooperation with Sycamore Township, Ohio, is contracting for the construction of a pedestrian sidewalk along Kennedy Lane; and

WHEREAS, it was determined that to properly complete the sidewalk improvements to connect to the City sidewalk system, additional right-of-way is needed on the southeast corner of the property owned by Terra Firma; and

WHEREAS, Terra Firma has agreed with the City to grant an easement to the City to allow construction of the sidewalk improvements, which agreement is outlined in an Easement Agreement, a copy of which is attached hereto; and

WHEREAS, Council does desire to authorize the City Manager to execute this Easement Agreement and to accept these property rights for and on behalf of the City and to commit the City to the maintenance of the pedestrian sidewalk within the easement area now and in the future.

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

SECTION 1. The City Manager is hereby authorized to execute the attached Easement Agreement to accept the grant of certain easement rights by Terra

Firma-Conner Crossing, LLC to the City for an easement area of approximately Two Hundred Fifty-Five square feet (255 sf.) located on the southeast corner of the property owned by Terra Firma at 9157 Montgomery Road, Montgomery, Ohio 45242, being Hamilton County Auditor's Parcel Number 603-0003-0076-00.

SECTION 2. Council hereby accepts the permanent easement rights from Terra Firma-Conner Crossing, LLC upon and across the property located at 9157 Montgomery Road, Montgomery, Ohio 45242, being Hamilton County Auditor's Parcel Number 603-0003-0076-00. It shall be the City of Montgomery's responsibility to maintain these pedestrian sidewalk improvements within this easement area as public improvements consistent with the terms of the Easement Agreement executed by and between Terra Firma and the City of Montgomery.

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

PASSED: July 10, 2019

ATTEST: Connie M. Gaylor
Connie M. Gaylor, Clerk of Council

Christopher P. Dobrozsi
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon
Terrence M. Donnellon, Law Director

EASEMENT AGREEMENT

This Easement Agreement ("Agreement") is entered into as of the _____ day of _____, 2019, by and between **Terra Firma-Conner Crossing, LLC**, an Ohio limited liability corporation, whose address is 6281 Tri-Ridge Boulevard, Loveland, Ohio 45140 ("Terra Firma") and **The City of Montgomery, Ohio**, an Ohio municipal corporation, whose address is 10101 Montgomery Road, Montgomery, Ohio 45242 ("City").

RECITALS

A. Terra Firma is the owner of certain real property situated in the City of Montgomery, Hamilton County, Ohio, Auditor's Parcel Number 603-0003-0076, as further described on **Exhibit A** attached hereto and incorporated herein by reference ("Terra Firma Property").

B. The City is an Ohio municipal corporation permitted by law to construct and maintain public roadways and related streetscape improvements including sidewalks within and throughout the City. The City is authorized to acquire and hold certain right-of-way and easement rights to support such roadways and sidewalk improvements.

C. Terra Firma 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 a public sidewalk upon the Terra Firma Property at the intersection of Montgomery Road and Kennedy Lane.

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.** Terra Firma 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 Two Hundred Fifty-Five square feet (255 sf.) on, over, under and across portions of the Terra Firma 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 pedestrian sidewalk improvements (collectively "Improvements"), provided, however, that none of the Improvements will interfere with access to and from nor the use of the Terra Firma Property.

(b) **Non-Exclusive Easement.** This easement shall be limited to the purposes set forth in foregoing paragraph (a), and Terra Firma 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). Provided, however, Terra Firma shall not construct any structures over the Easement Area, nor landscape improvements within or around the Easement Area which would interfere with the Easement, and the Improvements constructed in the Easement Area. The City has the right to remove such structures or improvements to the extent necessary to enforce this obligation, and the City shall not be responsible for the loss of such structure or improvement. Unless there is an emergency requiring immediate removal, the City shall notify Terra Firma, or its successors and assigns, no less than fourteen (14) days before removing such structure or improvement to allow Terra Firma to first take corrective action.

(c) **No-Effect of Easement on Terra Firma Property.** The Grant of Easement shall have no effect whatsoever on the net useable area of the Terra Firma 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 Terra Firma, or its successor, shall revert to the then titled owner of the Terra Firma 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 necessary, Terra Firma will cooperate to grant to the City such license to enter the Terra Firma Property to make such repairs. Terra Firma shall not construct, erect or install any structures, landscaping or other private improvements in and around the Easement Area which would interfere with the City's ability to access the City's Improvements in the Easement Area.

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. City Responsibility. The City, its successors and assigns, shall defend and hold harmless Terra Firma, its invitees, licensees, successors and assigns, 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 Terra Firma 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 does represent that the persons executing such Easement Agreement and any related documents have full authority to

execute such documents and to bind their principals thereto. Further, each party agrees 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.

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

**TERRA FIRMA-CONNER CROSSING,
LLC**

By: _____
Richard A. Haglage
Its: **Managing Member**

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 _____, 2019, by **Richard A. Haglage, Managing Member of Terra Firma-Conner Crossing, LLC, an Ohio limited liability corporation**, who acknowledged the signing and sealing of the Easement Agreement to be his voluntary act and deed.

Notary Public

THE CITY OF MONTGOMERY, OHIO

By: _____

Brian K. Riblet

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 _____, 2014, by **Brian K. Riblet, 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

APPROVED AS TO FORM:

Terrence M. Donnellon
Director of Law

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

EXHIBIT A
(Terra Firma Property)

Situated in Section 3, Township 4, Entire Range 1, Miami Purchase, Sycamore Township, Village of Montgomery, Hamilton County, Ohio, being part of Lot 1 of the James Kennedy Estate as recorded in Plat Book 5, Page 177, Hamilton County, Ohio Records, and more particularly described as follows:

Beginning at the Southeast Corner of said Lot 1 at the intersection of the Center lines of Kennedy Lane (a 30 ft. in width roadway) and the Montgomery Road (a 60 ft. in width roadway); thence North $78^{\circ} 45'$ West, five hundred four and $15/100$ (504.15) ft. along the center line of Kennedy Lane to a spike; thence North $9^{\circ} 12'$ East, one hundred seventy-one and $57/100$ (171.57) feet to a cross cut in concrete base maintaining a post and passing over an iron pipe on the north side of Kennedy Lane at 15 ft.; thence South $78^{\circ} 45'$ East, five hundred and four and $15/100$ (504.15) feet to the centerline of Montgomery Road passing over an iron pipe on the west line of said Road at 474.13 ft.; thence South $9^{\circ} 12'$ West, one hundred seventy-one and $57/100$ (171.57) ft. along the center line of Montgomery Road to the place of beginning.

Containing 1.985 acres more or less. Subject to all legal highways.

Property Address: 9157 Montgomery Road, Cincinnati, Ohio 45242

Auditor's Parcel No.: 603-0003-0076

EXHIBIT B-1



LEGAL DESCRIPTION TERRA FIRMA-CONNER CROSSING, LLC SIDEWALK EASEMENT 603-3-76

Situated in the Section 3, Town 4, Entire Range 1 of the Miami Purchase, City of Montgomery, Hamilton County, Ohio, being a Sidewalk Easement over and through the property conveyed to Terra Firma-Conner Crossing, LLC by deed recorded in Official Record 13235, Page 2696, being part of Lot 1 of the James Kennedy Estate as recorded in Plat Book 5, Page 177, Hamilton County Recorder's office, and being more particularly described as follows:

Commencing at the grantor's southeasterly corner, being the intersection of the centerline of Montgomery Road with the centerline of Kennedy Lane;

Thence with the centerline of Kennedy Lane, North 78°45'00" West, a distance of 95.50 feet;

Thence leaving said centerline, North 11°15'00" East, a distance of 20.00 feet to a point in the northerly line of Kennedy Lane and the Principal Point of Beginning for this description;

Thence through the grantor's property with the herein described sidewalk easement, for the following three (3) courses and distances:

1. South 88°11'36" East, a distance of 59.22 feet;
2. North 09°12'00" East, a distance of 6.00 feet;
3. South 80°48'00" East, a distance of 3.00 feet to a point in the westerly line of Montgomery Road;

Thence with the westerly line of Montgomery Road, South 09°12'00" West, a distance of 5.83 feet;

Thence continuing with said westerly line, South 67°49'34" West, a distance of 18.14 feet to the northerly line of Kennedy Lane;

Thence with the northerly line of Kennedy Lane, North 78°45'00" West, a distance of 46.26 feet to the point of beginning;

Containing 255 square feet, more or less, and being subject to all easements, restrictions, covenants and/or conditions of record.

Description prepared by:

CT Consultants, Inc.
February 26, 2019
File No. 180191

BEARINGS BASED ON O.R. 13235, PG. 2696

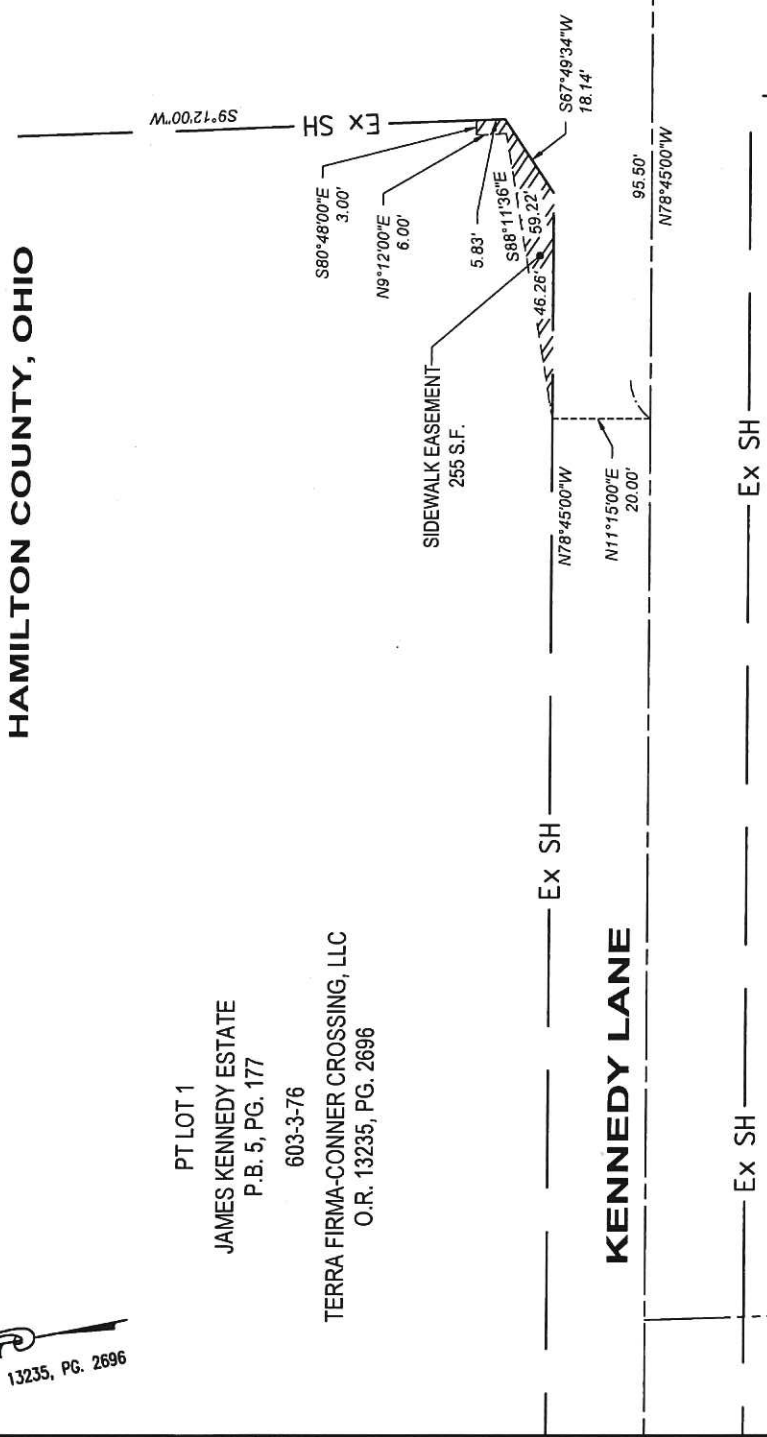
PT LOT 1
 JAMES KENNEDY ESTATE
 P.B. 5, PG. 177
 603-3-76
 TERRA FIRMA-CONNER CROSSING, LLC
 O.R. 13235, PG. 2696

EXHIBIT "A"
SIDEWALK EASEMENT
SECTION 3, TOWN 4, ENTIRE RANGE 1, M.P.
CITY OF MONTGOMERY
HAMILTON COUNTY, OHIO

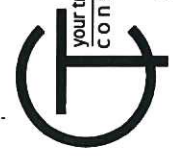
EXHIBIT B-2

MONTGOMERY ROAD

KENNEDY LANE



FILE No.: 180901
 DATE: 02/26/2019



your trusted advisor
 consultants engineers
 architects planners

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