

RESOLUTION NO. 29 , 2018

**A RESOLUTION AUTHORIZING AN EASEMENT AGREEMENT WITH
DUKE ENERGY OHIO, INC.**

WHEREAS, the City has acquired property within the Vintage Club North development to be able to construct certain public improvements in support of the development;
and

WHEREAS, on a portion of the property acquired by the City, Duke Energy Ohio, Inc. has requested an easement to be able to install underground utility lines for the support of the public and private development; and

WHEREAS, City Staff has recommended that the easement be approved.

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

SECTION 1. The City Manager is hereby authorized to execute the attached Grant of Easement and to grant certain rights to Duke Energy Ohio, Inc. to construct, operate and maintain utility lines in and upon property acquired by the City for the development of public improvements within the Vintage Club North development.

SECTION 2. The City Manager is further authorized to execute any and all additional documentation as is necessary to implement this Grant.

SECTION 3. This Resolution shall be in full force and effect from and after its passage.

PASSED: November 7, 2018

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

GRANT OF EASEMENT

Pt. Parcel # 603-0A23-0223 – Tract 3

In consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the **CITY OF MONTGOMERY**, 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, conduits, wires, cables, manholes, pullboxes, 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 underground transmission and distribution of electrical energy, and for technological purposes (including but not limited to telecommunications), in, upon, over, along, under, through and across the following described real estate:

Situate in Section 36, Town 5, Entire Range 1, City of Montgomery, Symmes Township, Hamilton County, State of Ohio; being part of a 1.8883 acre tract of land as conveyed to the **CITY OF MONTGOMERY** from Hunting Hill, LLC by General Warranty Deed dated June 27, 2018 and recorded in **Official Record Book 13715, Page 807** in the Office of the Recorder of Hamilton County, Ohio (hereinafter referred to as “Grantor’s Property”), and further described in Exhibit “B”, attached hereto and hereby made a part hereof.

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, 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 to trench with Grantee's Facilities, and 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 facility location.

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.

11. 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 follows.

IN WITNESS WHEREOF, Grantor has caused this Grant of Easement to be signed by its duly authorized representative(s), effective the _____ day of _____, 2018.

CITY OF MONTGOMERY, an Ohio municipal corporation, Grantor

By: _____ By: _____

Printed Name: _____

Printed Name: _____

Printed Title: _____

Printed Title: _____

STATE OF _____)
) SS:
COUNTY OF _____)

Personally appeared before me this day _____ and _____, (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 _____ day of _____, 2018.

My Commission Expires: _____ Signed Name: _____

My County of Residence: _____ Printed Name: _____

This Instrument Prepared by Janice L. Walker, Attorney-at-Law, 139 E. Fourth St. Cincinnati, OH 45202.

For Grantee's Internal Use:
Emax No.: 29223429
Prepared By: DP
Prepared Date: 9/24/2018
Reviewed By:
Pad No.: HMO-26694

EXHIBIT "B"

Situate in Section 36, Town 5, Entire Range 1, City of Montgomery, Symmes Township, Hamilton County, Ohio and being part of the same premises as conveyed to Hunting Hill LLC by deed recorded in O.R. 13267, Page 1468, Hamilton County, Ohio Recorder's Office and more particularly described as follows:

Beginning at a set 5/8" iron pin in the north corporation line of the City of Montgomery, said point being South 89°39'20" West, 149.47 feet from the northwest corner of Open Space Lot H of The Vintage Club Phase Three as recorded in P.B. 415, Pages 94-95, Hamilton County, Ohio Recorder's Office;

Thence, with new division lines, the following four (4) courses and distances;

1. South 00°00'00" East, 330.37 feet to a set 5/8" iron pin;
2. South 40°25'57" West, 153.88 feet to a set 5/8" iron pin;
3. South 49°34'03" East, 13.71 feet to a set 5/8" iron pin;
4. South 40°25'57" West, 78.46 feet to a set 5/8" iron pin in the north right-of-way line of Vintage Club Boulevard;

Thence, along said north right-of-way line, North 49°26'31" West, 24.35 feet to a set 5/8" iron pin;

Thence, leaving said north right-of-way line, with new division lines, the following three (3) courses and distances;

1. North 40°25'57" East, 94.66 feet to a set 5/8" iron pin;
2. North 49°34'03" West, 72.00 feet to a set 5/8" iron pin;
3. South 40°25'57" West, 83.98 feet to a set 5/8" iron pin in the north right-of-way line of Vintage Club Boulevard;

Thence, along said north right-of-way line, the following three (3) courses and distances;

1. Along an arc deflecting to the right, having a radius of 70.00 feet, a central angle of 02°58'32", a length of 3.64 feet, the chord of said arc bears North 09°03'59" West, 3.63 feet to an existing iron pin;
2. North 07°34'43" West, 60.87 feet to an existing iron pin;
3. Along an arc deflecting to the left, having a radius of 130.00 feet, a central angle of 16°59'10", a length of 38.54 feet, the chord of said arc bears North 16°04'18" West, 38.40 feet to a set 5/8" iron pin;

Thence, leaving said north right-of-way line, with new division lines, the following seventeen (17) courses and distances;

1. North 40°25'57" East, 26.76 feet to a set 5/8" iron pin;
2. South 49°34'03" East, 2.00 feet to a set 5/8" iron pin;
3. North 40°25'57" East, 1.13 feet to a set 5/8" iron pin;
4. North 85°25'57" East, 20.15 feet to a set 5/8" iron pin;
5. South 49°34'03" East, 1.13 feet to a set 5/8" iron pin;
6. North 40°25'57" East, 2.00 feet to a set 5/8" iron pin;
7. North 49°34'03" West, 0.50 feet to a set 5/8" iron pin;
8. North 40°25'57" East, 20.01 feet to a set 5/8" iron pin;
9. North 85°25'57" East, 2.02 feet to a set 5/8" iron pin;
10. South 49°34'03" East, 4.07 feet to a set 5/8" iron pin;
11. North 40°25'57" East, 97.68 feet to a set 5/8" iron pin;
12. North 49°34'03" West, 45.34 feet to a set 5/8" iron pin;
13. South 40°25'57" West, 6.17 feet to a set 5/8" iron pin;

14. North $49^{\circ}34'03''$ West, 25.74 feet to a set $5/8''$ iron pin;
15. South $40^{\circ}25'57''$ West, 7.92 feet to a set $5/8''$ iron pin;
16. North $49^{\circ}34'03''$ West, 40.08 feet to a set $5/8''$ iron pin;
17. South $40^{\circ}25'57''$ West, 136.91 feet to a set $5/8''$ iron pin in the north right-of-way line of Vintage Club Boulevard;

Thence, along said north right-of-way line, North $49^{\circ}26'24''$ West, 24.43 feet to an existing iron pin and along an arc deflecting to the right, having a radius of 88.00 feet, a central angle of $04^{\circ}06'45''$, a length of 6.32 feet, the chord of said arc bears North $47^{\circ}23'01''$ West, 6.32 feet to a set $5/8''$ iron pin;

Thence, with new division lines, the following six (6) courses and distances;

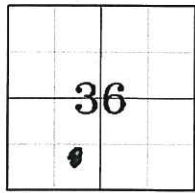
1. Along an arc deflecting to the right, having a radius of 30.00 feet, a central angle of $36^{\circ}44'40''$, a length of 19.24 feet, the chord of said arc bears North $22^{\circ}11'14''$ East, 18.91 feet to a set $5/8''$ iron pin;
2. North $40^{\circ}33'34''$ East, 45.29 feet to a set $5/8''$ iron pin;
3. North $00^{\circ}52'11''$ West, 56.67 feet to a set $5/8''$ iron pin;
4. North $40^{\circ}33'34''$ East, 94.17 feet to a set $5/8''$ iron pin;
5. North $90^{\circ}00'00''$ East, 42.23 feet to a set $5/8''$ iron pin;
6. North $00^{\circ}00'00''$ East, 77.08 feet to a set $5/8''$ iron pin in the aforesaid north corporation line of the City of Montgomery;

Thence, along said north corporation line, North $89^{\circ}55'50''$ East, 136.63 feet to a point, said point being witnessed by an iron pin lying $0.1'S, 0.5'W$ and North $89^{\circ}39'20''$ East, 32.87 feet to the Point of Beginning.

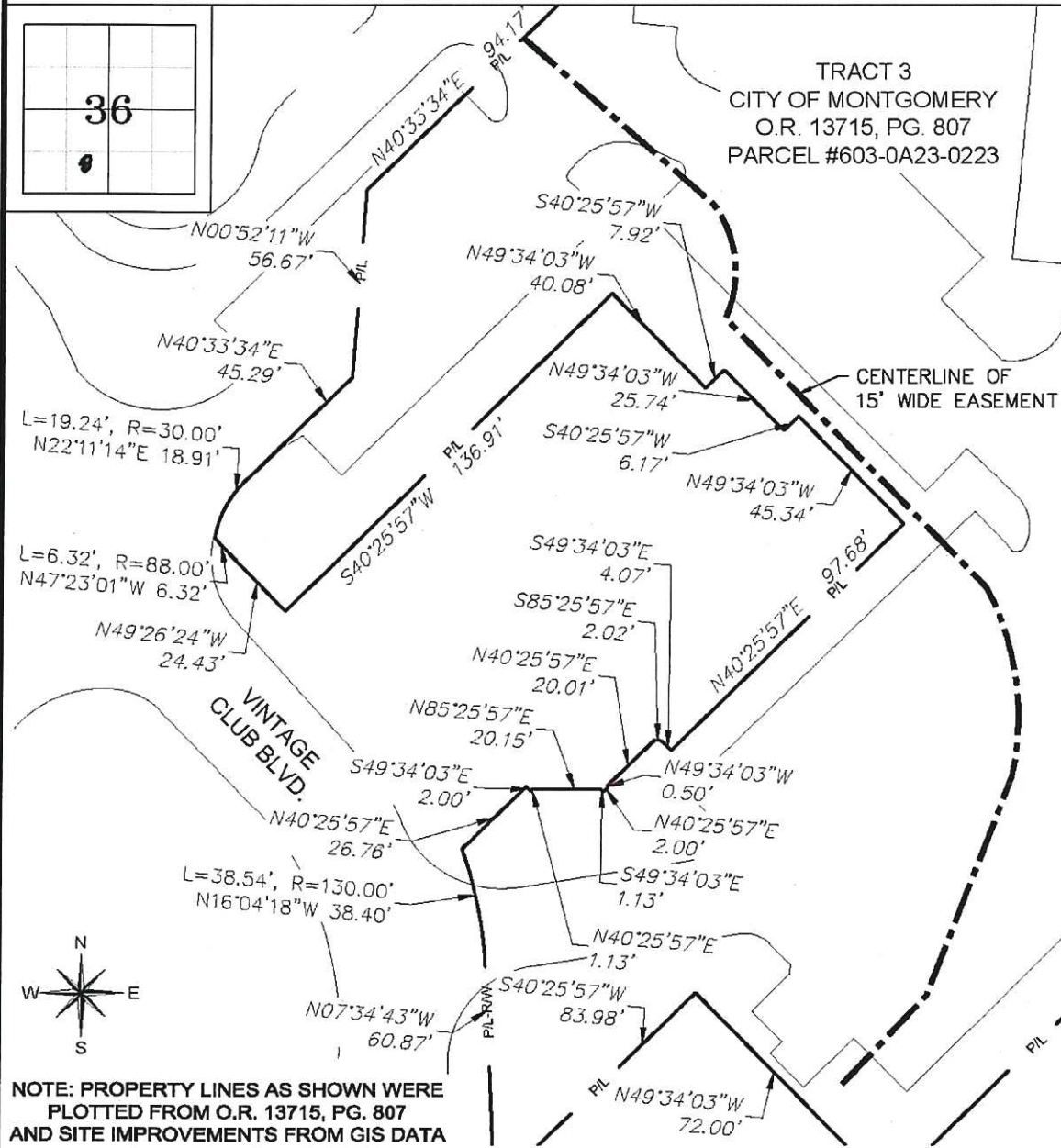
Containing 1.8883 acres of land.

Subject to all legal highways, easements and restrictions of record.

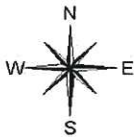
THIS IS NOT A SURVEY. LOCATIONS SHOWN ARE APPROXIMATE. THE ACTUAL CENTERLINE LOCATION OF THE UTILITY LINE IS THE CENTERLINE OF THE EASEMENT.



TRACT 3
CITY OF MONTGOMERY
O.R. 13715, PG. 807
PARCEL #603-0A23-0223



NOTE: PROPERTY LINES AS SHOWN WERE PLOTTED FROM O.R. 13715, PG. 807 AND SITE IMPROVEMENTS FROM GIS DATA



HAMILTON COUNTY, OHIO

SITE NAME: CITY OF MONTGOMERY, SYMMES TOWNSHIP SECTION 36 T-5, E.R.-1



DR. AM	EXHIBIT MAP OF: EASEMENT
CK. MT	EXHIBIT MAP FOR: CITY OF MONTGOMERY
DATE 09/27/2018	LOCATION VINTAGE CLUB BLVD, CINCINNATI, OH
EXHIBIT 'A'	EMAX #29223429