

RESOLUTION NO. 33-15  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Paul Gheslam ON THE  
15<sup>th</sup> DAY OF JUNE 2015.

A RESOLUTION GRANTING A NON-EXCLUSIVE EASEMENT TO ITHKICAN, LLC FOR THE INGRESS, EGRESS, GENERAL VEHICLE ACCESS AND PRIVATE STORMWATER INFRASTRUCTURE OVER THE CITY OF CENTERVILLE RIGHT OF WAY LOCATED ALONG WILMINGTON PIKE.

WHEREAS, Ithkican, LLC (hereinafter referred to as "Ithkican") intends to construct a Montessori School along Wilmington Pike in the City of Centerville (hereinafter referred to as the "City") and has received prior approval of its plat subject to conditions; and

WHEREAS, one of the conditions for the Plat is for Ithkican to be able to obtain legal access over the City's Right of Way located along Wilmington Pike; and

WHEREAS, the City is agreeable to substitute an easement for the License Agreement requirement; and

WHEREAS, Ithkican intends to install a driveway access to Wilmington through the City's Right of Way; and

WHEREAS, an easement from the City to Ithkican across Wilmington Pike is necessary for the installation, maintenance and repair of their access drive; and

WHEREAS, the City proposes to grant to Ithkican a non-exclusive easement for a portion of land upon property set forth in more fully described in Exhibit "A", attached and incorporated herein, for said purpose.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:


Section 1. The City of Centerville hereby agrees to grant a non-exclusive easement for a portion of the right of way for the ingress, egress, general vehicle access and private storm water infrastructure over the right of way along Wilmington Pike, said land being more particularly described in Exhibit "A" attached hereto and made a part hereof.

Section 2. The City Manager is hereby authorized to execute the easement attached as Exhibit "A" and take all necessary actions to effectuate this grant of easement to Ithkican pursuant to the terms of the Easement.

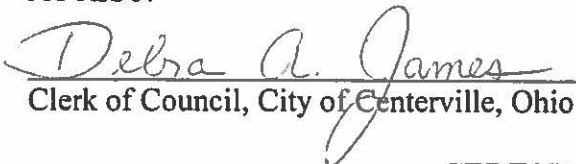
Section 3. The City agrees that this Easement shall substitute for and satisfy the condition requiring a right of way license of the Montessori-Centerville Plat.

Section 4. This Resolution shall become effective at the earliest date allowed by law.

PASSED this 15<sup>th</sup> day of June, 2015.

  
\_\_\_\_\_  
Mayor of the City of Centerville,  
Ohio

ATTEST:

  
\_\_\_\_\_  
Clerk of Council, City of Centerville, Ohio

**CERTIFICATE**

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 33-15, passed by the Council of the City of Centerville, Ohio, on the 15<sup>th</sup> day of June, 2015.

  
\_\_\_\_\_  
Clerk of Council

Approved as to form, consistency  
with the Charter and Constitutional Provisions.

Department of Law  
Scott A. Liberman  
Municipal Attorney

**EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Centerville, Ohio, 100 W. Spring Valley Road, Centerville, Ohio 45458, hereinafter referred to as "GRANTOR" and ITHKICAN, LLC, an Ohio Limited Liability Company, 1720 Belvo Rd., Miamisburg, OH 45342, hereinafter referred to as "GRANTEE."

**WITNESSETH:**

WHEREAS, Grantor desires to grant a non-exclusive easement to use a portion of the public right-of-way located along Wilmington Pike, in the City of Centerville, Ohio, to Grantee, for the sole purpose of allowing vehicular ingress and egress, general vehicle access and private storm water infrastructure; and

WHEREAS, Grantee desires to obtain said non-exclusive easement, as described herein, to allow vehicular ingress and egress, general vehicle access and private storm water infrastructure and all related activities (described below) upon the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements hereinafter set forth, the parties hereto agree as follows:

1. This Agreement is created in furtherance of a record plan titled Montessori-Centerville Plat and at Grantee's request and expense.
2. Grantor hereby grants to Grantee, for use by Grantee and its tenants, agents, employees and invitees, a perpetual (subject to the right of revocation reserved by Grantor as provided herein), non-exclusive easement and right to enter upon and use certain City right-of-way (the "Easement Area") as shown or described in Exhibit "A" attached hereto and incorporated by reference herein, for the sole purposes of vehicular ingress, egress, general vehicle access, and private stormwater infrastructure, for the benefit of Grantee's real property described in Exhibit "B" attached hereto and incorporated by reference herein ("Grantee's Property"), and for no other purposes.
3. Grantee specifically agrees that it shall defend, indemnify and hold harmless Grantor and its officials, officers and employees from any and all damages, injuries or losses suffered by any person arising as a result of the ingress, egress, access of vehicles, and stormwater infrastructure in the Easement Area, to the extent caused by or attributable to the use of the Easement Area or the exercise of Grantee's rights under this Agreement by Grantee, its tenants, agents, employees or invitees.

4. Grantor further grants to and obligates Grantee the right and obligation to maintain the Easement Area at the sole cost of the Grantee. Upon the termination of this Agreement, Grantee shall no longer utilize the Easement Area for ingress, egress, access of vehicles, or stormwater infrastructure. Grantor reserves the right to inspect said property at any and all reasonable times.
5. This Agreement shall be of perpetual duration as an easement appurtenant to Grantee's Property; provided however, that Grantor shall have the right to revoke and terminate this Agreement upon thirty (30) days written notice to Grantee in the event that Grantor requires the Easement Area for a widening or relocation of the main, publicly traveled right of way of Wilmington Pike which lies to the east of the Easement Area, or for installation of public infrastructure, or any other public purpose. If Grantor requires only a portion of the Easement Area for such public use, then the revocation shall be limited to the portion required by Grantor and this Agreement shall remain in effect with respect to the balance of the Easement Area.
6. During the term of this Agreement, Grantor agrees not to construct any permanent public improvements, barricades or other obstructions within the Easement Area nor take any action which will prevent the use of the Easement Area by Grantee for the purposes detailed in this Agreement, without the written approval of the Grantee. This paragraph shall not be construed as a limitation on Grantor's rights under Paragraph 5, or upon Grantor's use of the Easement Area for public purposes, and other purposes incidental to a public use, that do not prevent Grantee's use.
7. This Agreement shall operate as a covenant running with the land and shall be binding upon the parties hereto and their respective successors and assigns as owners of the Easement Area and Grantee's Property, respectively. The obligations hereunder that apply to Grantee shall apply to those persons or entities owning Grantee's Property from time to time. Upon the sale or transfer of Grantee's Property, such obligations shall be deemed assumed by the transferee, effective on the date of transfer, and the transferor shall be released from obligations arising after the date of transfer.
8. GRANTEE ACKNOWLEDGES THAT THE PROPERTY WHICH IS THE SUBJECT OF THE EASEMENT GRANTED HEREIN IS HELD BY THE CITY AS PUBLIC RIGHT OF WAY FOR PUBLIC TRAVEL PURPOSES AND AS SUCH MAY BE USED FOR THAT PURPOSE AT ANY TIME. GRANTEE ACKNOWLEDGES AND ASSUMES THE FINANCIAL RISK INCIDENT TO ITS USE AS SET FORTH ABOVE

IN SAID RIGHT OF WAY UNDER THESE CIRCUMSTANCES AND NOT CONTRARY TO ITS CURRENT USE.

**EXECUTED** by the parties hereto on the day and year first above written.

**GRANTOR:**

CITY OF CENTERVILLE, OHIO

\_\_\_\_\_  
By: Gregory B. Horn, City Manager

Approved as to form:

\_\_\_\_\_  
Scott A. Liberman, Municipal Attorney

**GRANTEE:**

ITHKICAN, LLC, an Ohio Limited Liability Company

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF OHIO )  
 ) SS:  
COUNTY OF MONTGOMERY )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015 by Gregory B. Horn, City Manager of the City of Centerville, Ohio, a municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

STATE OF OHIO )  
 ) SS:  
COUNTY OF MONTGOMERY )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the subscriber, a Notary Public in and for said County and State, personally came \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, which executed the foregoing instrument, who acknowledged that he did sign said instrument as such officer on behalf of said corporation and by authority of the Board of Directors; that said instrument was signed as his free act and deed individually, and the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

This Agreement prepared by:

Scott A. Liberman (0058432)  
Altick & Corwin Co., L.P.A.  
1700 One Dayton Centre  
One South Main Street  
Dayton, Ohio 45402

829381.2



570 Congress Park Dr • Dayton, OH 45459 • P 937.438.5650 F 937.438.5645

June 11, 2015

**MONTESSORI CENTERVILLE  
EASEMENT AGREEMENT  
0.2272 ACRES**

LOCATED IN SECTION 14, TOWN 2, RANGE 6 M.Rs., CITY OF CENTERVILLE, MONTGOMERY COUNTY, STATE OF OHIO AND BEING AN AREA FOR A LICENSE AGREEMENT SAID AREA DESCRIBED MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT A POINT THAT IS IS THE INTERSECTION OF THE NORTH RIGHT OF WAY LINE OF HINGHAM LANE AND THE WEST RIGHT OF WAY LINE OF OLD WILMINGTON PIKE AND A POINT ON THE SOUTH LINE OF LOT #1 OF THE WALNUT CREEK PLAT AS RECORDED IN PB. 184, PAGE 26 OF THE PLAT RECORDS OF SAID COUNTY;

THENCE WITH THE EAST LINE OF SAID LOT #1 AND THE WEST LINE OF SAID OLD WILMINGTON PIKE THE FOLLOWING TWO COURSES;

1. ON A CURVE TO THE LEFT WITH A RADIUS OF 15.00 FEET, INTERNAL ANGLE OF  $107^{\circ}32'30''$ , (LONG CHORD BEARING NORTH  $55^{\circ}19'31''$  EAST, 24.20 FEET), ALONG THE ARC 28.15 FEET TO A POINT;
2. THENCE NORTH WITH, THE WEST LINE OF SAID OLD WILMINGTON PIKE THE EAST LINE OF SAID LOT #1 AND ITS EXTENSION BEING THE EAST LINE OF PARCEL I AND PARCEL II AS CONVEYED TO ITHKICAN ENTERPRISES, LLC, AN OHIO LIMITED LIABILITY COMPANY BY THE DEED RECORDED IN I.R. DEED 14-070619 OF THE DEED RECORDS OF SAID COUNTY NORTH  $01^{\circ}33'16''$  EAST, 357.73 FEET TO A POINT ON THE WEST RIGHT OF WAY OF WILMINGTON PIKE;

THENCE WITH THE WEST LINE OF SAID WILMINGTON PIKE ON A CURVE TO THE LEFT WITH A RADIUS OF 1028.38 FEET, INTERNAL ANGLE OF  $05^{\circ}45'15''$ , (LONG CHORD BEARING SOUTH  $15^{\circ}34'10''$  EAST, 103.24 FEET), ALONG THE ARC 103.28 FEET TO A POINT OF INTERSECTION OF THE WEST RIGHT OF WAY OF WILMINGTON PIKE AND THE EAST RIGHT OF WAY LINE OF OLD WILMINGTON PIKE AND THE NORTHWEST CORNER OF THAT LAND AS CONVEYED TO ITHKICAN ENTERPRISES, LLC, AN OHIO LIMITED LIABILITY COMPANY BY THE

DEED RECORDED IN VOL. 3549, PAGE 736 OF THE DEED RECORDS OF GREENE COUNTY, OHIO, A POINT ON THE EAST SIDE OF SAID SECTION 14, A POINT ON THE LINE BETWEEN SAID MONTGOMERY COUNTY AND SAID GREENE COUNTY, AND THE EAST CORPORATION LINE OF SAID CITY OF CENTERVILLE ;

THENCE WITH THE EAST LINE OF OLD WILMINGTON PIKE, SAID CORPORATION LINE, COUNTY LINE, SAID SECTION LINE AND THE WEST LINE OF LAST SAID ITHKICAN ENTERPRISES, LLC, AN OHIO LIMITED LIABILITY COMPANY LAND SOUTH 01°33'46" WEST, 273.01 FEET TO A POINT BEING THE SOUTHWEST CORNER LAST SAID ITHKICAN ENTERPRISES, LLC, AN OHIO LIMITED LIABILITY COMPANY LAND AND A POINT ON THE NORTH RIGHT OF WAY LINE OF WHITES CORNER;

THENCE LEAVING THE EAST LINE OF OLD WILMINGTON PIKE, SAID CORPORATION LINE, SAID COUNTY LINE, SAID SECTION LINE, THE WEST LINE OF LAST SAID ITHKICAN ENTERPRISES, LLC, AN OHIO LIMITED LIABILITY COMPANY LAND AND THE NORTH RIGHT OF WAY LINE OF WHITES CONER THE FOLLOWING TWO COURSES;

1. SOUTH 79°49'13" WEST, 31.47 FEET TO A POINT ;
2. THENCE NORTH 70°54'14" WEST, 20.00 FEET TO THE POINT OF BEGINNING CONTAINING 0.2272 ACRES MORE OR LESS.

*Jeffrey Vanatta*  
6/11/15





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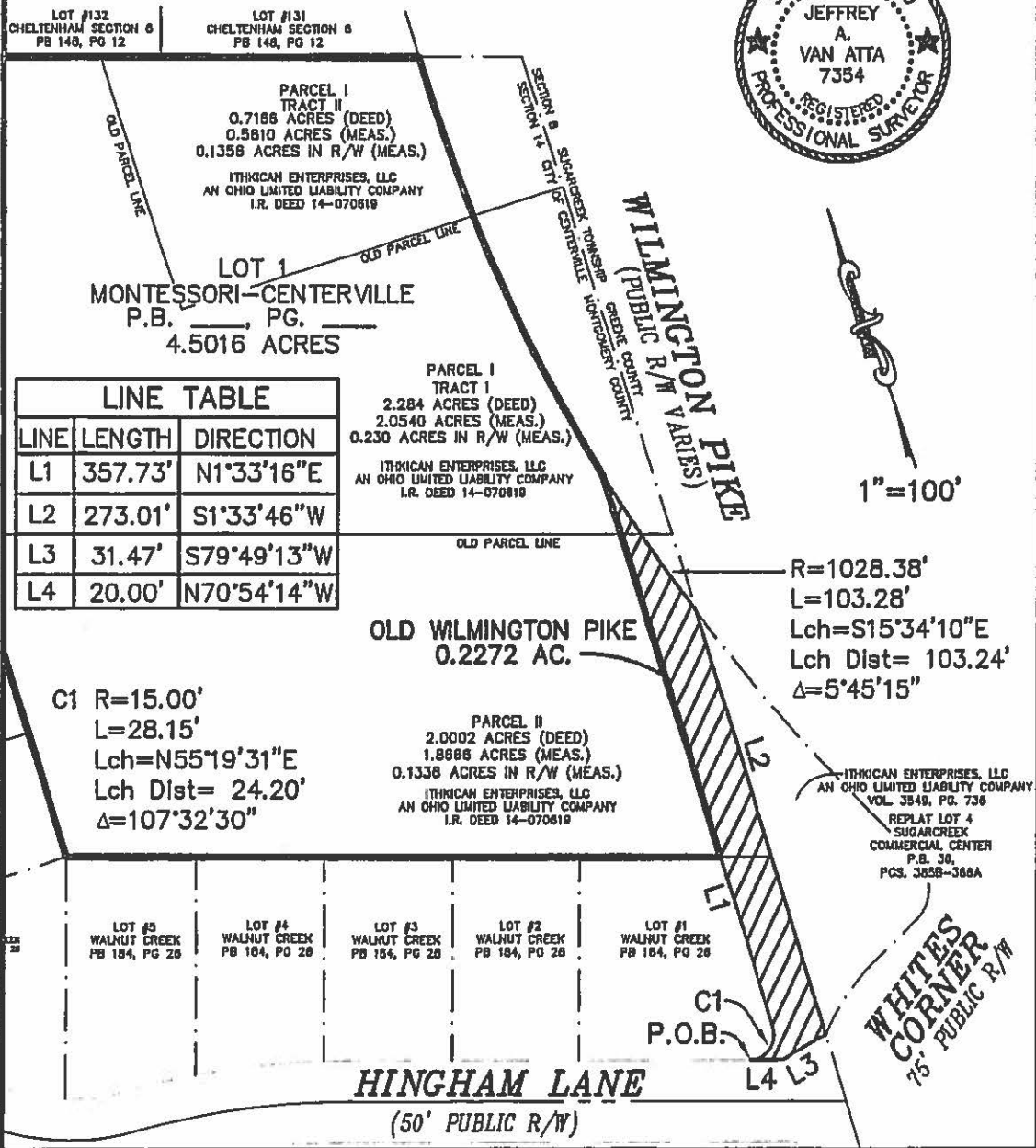
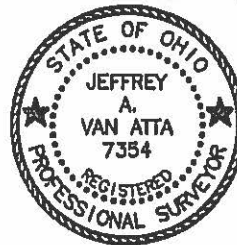
## EXHIBIT MONTESSORI-CENTERVILLE

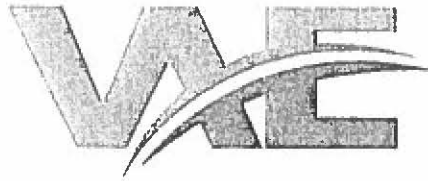
LOCATED IN SECTION 14, TOWN 2, RANGE 6 M.Rs.  
CITY OF CENTERVILLE, MONTGOMERY COUNTY, OHIO  
**0.2272 ACRES**  
JUNE, 2015

*Jeffrey Van Atta*  
6/11/15

### LEGEND

INDICATES AREA SUBJECT TO EASEMENT AGREEMENT





**VANATTAENGINEERINGINC**

*570 Congress Park Dr • Dayton, OH 45459 • P 937.438.5650 F 937.438.5645*

June 12, 2015

**MONTESSORI CENTERVILLE  
4.5016 ACRES**

LOCATED IN SECTION 14, TOWN 2, RANGE 6 M.Rs., CITY OF CENTERVILLE,  
MONTGOMERY COUNTY, STATE OF OHIO AND ALL OF LOT 1 OF THE  
MONTESSORI-CENTERVILLE PLAT AS RECORDED IN P.B. , PG. OF THE PLAT  
RECORDS OF SAID COUNTY.