

RESOLUTION 2012- 44

A RESOLUTION AUTHORIZING AN EASEMENT AGREEMENT WITH CARBON VISION, LLC AND AND DECLARING AN EMERGENCY.

WHEREAS, the Village of Hiram owns Winrock Road which is a right of way situated in the Village of Hiram; and

WHEREAS, Hiram College owns certain properties on both sides of Winrock Road; and

WHEREAS, Carbon Vision, LLC has submitted and received approval of the Village of Hiram Planning Commission to install and operate solar panels and solar arrays on property owned by Hiram College adjacent to Winrock Road and to provide electric power to Hiram College's physical plant which is on the other side of Winrock Road; and

WHEREAS, in order to provide the forgoing utility access to Hiram College, Carbon Vision, LLC has requested an easement to bore under Winrock Road in a specified area as said forth in an Easement Agreement; and

WHEREAS, as consideration for the easement Carbon Vision, LLC has agreed to pay the costs of the Village Solicitor in reviewing and revising the Easement Agreement, and preparing this Resolution, and also the costs of filing the Easement granted in the Easement Agreement; and

WHEREAS, the Council of the Village of Hiram has previously granted an easement to Carbon Vision by passage of Resolution 2012-33, however it has since come to light that the area of the easement granted by that Resolution is not the appropriate location for the needed utility access: and

WHEREAS, the Council of the Village of Hiram desires to grant an appropriate easement to Carbon Vision, LLC as is set forth in the Easement Agreement.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF HIRAM, OHIO, two thirds or more of the members of the Council of the Village of Hiram concurring that:

SECTION ONE: Resolution 2012-33 enacted on August 14, 2012 is hereby repealed, and the Easement Agreement attached as Exhibit A to that Resolution is hereby revoked, set aside and held for naught.

SECTION TWO: The Easement Agreement attached as Exhibit A hereto is approved and the Mayor and Fiscal Officer are hereby authorized to execute the Easement Agreement.

SECTION THREE: It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution where adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Revised Code of the State of Ohio.

SECTION FOUR: This resolution is hereby declared an emergency measure necessary to preserve the public health, safety, and general welfare of the inhabitants of the Village, the particular emergency being it is necessary to grant the easement as soon as possible to allow Carbon Vision, LLC to provide electric utilities service to Hiram College at the earliest possible time and accordingly this Resolution shall go into full force and effect immediately upon passage by two-thirds (2/3's) of the members of Council and execution by the Mayor.

PASSED IN COUNCIL the 30th day of October, 2012, as an emergency.

ATTEST:

Kay E. Ziska
Fiscal Officer

Approved as to form:

William Kelly
Solicitor

Wayne Behrman
Mayor

I Kay E. Ziska Fiscal Officer of the
Village of Hiram, Ohio, hereby certify that
the foregoing Resolution or Ordinance
No. 2012-44 has been duly posted in the
required 5 places.

11-7-12 Kay E. Ziska
Date Fiscal Officer, Village of ~~Hiram~~

Resolution 2012-44

Exhibit A

EASEMENT AGREEMENT

This Easement Agreement (this "Agreement") is made and entered into this 30th day of October, 2012 by **THE VILLAGE OF HIRAM**, Ohio ("Grantor"), and **CARBON VISION, LLC**, a Delaware limited liability company ("Grantee").

WHEREAS, Grantor owns Winrock Road and right of way situated in the Village of Hiram, County of Portage, State of Ohio; and

WHEREAS, Hiram College owns or operates certain properties on both sides of Winrock Road; and

WHEREAS, Grantee desires to install and operate solar panels and solar arrays (the "Solar Arrays") at the property owned or operated by Hiram College adjacent to Winrock Road and to provide electrical power to Hiram College's physical plant from the Solar Arrays on the east of Winrock Road across from the Solar Arrays; and

WHEREAS, in order to provide the foregoing utility access to Hiram College, Grantee must bore under Winrock Road and insert cable and conduit to tie-in the Solar Arrays to the Hiram College physical plant; and

WHEREAS, under the terms and conditions set forth in this Agreement, Grantor wishes to grant Grantee the access to bore under Winrock Road in the specified area, as set forth herein, to insert cable and conduit as set forth above, to maintain the cable and conduit, and for access to and from said cable and conduit; and

WHEREAS, the Council of the Village of Hiram approved this grant of easement by Resolution 2012-44 enacted on October 30, 2012 thereby authorizing the Mayor and Fiscal Officer to execute this agreement.

NOW, THEREFORE, for payment of attorney fees, administration and incidental costs in the amount of \$2,000.00 and other valuable consideration set forth herein, the parties hereto agree as follows:

1. Grant of Easement. Subject to the terms of this Agreement, Grantor hereby grants to Grantee, its successors and assigns, the following (the "Easements"): (i) a non-exclusive easement approximately five feet wide, originating and terminating on Hiram College property on either side of Winrock Road, that authorizes Grantee to bore underneath Winrock Road as depicted on Exhibit "A" (the "Easement Area"); and (ii) a non-exclusive easement underneath the Easement Area to install, place, operate, maintain, repair, reconstruct, relocate, review, supplement, or remove such cables, conduit, tie-ins, or ducts, for the sole purpose of connecting the Solar Arrays to the Hiram College physical plant.

2. Restrictions. Grantee's use of the Easement set forth above is subject to the following restrictions: (i) at all times, any cable, conduit and other materials used by Grantee, its successors and assigns, in the Easement Area for the connection of the Solar Arrays to the Hiram College physical plant shall not be visible from the surface; (ii) Grantee's use of the Easements shall in no way at any time interfere with or restrict the use of Winrock Road as a roadway; (iii) Grantee shall not at any time cause any damage, destruction or waste of any kind to the Easement Area or to the public and private utilities nearby, other than specifically with respect to the time of installation or any time of repair of the conduit itself; and (iv) Grantee, at its expenses, upon installing, maintaining, operating, inspecting or replacing any cables or conduits through the Easement Area, shall restore the Easement Area to the same condition as existed before such work was performed.

3. Indemnification. Grantee, its successor and assigns, hereby agrees to indemnify, pay on behalf of, defend and hold harmless Grantor, its successors and assigns, and their employees and agents (individually and collectively, the "Indemnified Parties") from and against all liabilities, claims, suits, damages, judgments, costs and expenses of whatever nature including, but not limited to, reasonable attorney's fees and disbursements, to which the Indemnified Parties may become subject arising out of (i) any violation of the restrictions set forth in Section 2; or (ii) Grantee's or its successors' or assigns' use or operation of the Easements.

4. Covenants Running With the Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefitted thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

5. Miscellaneous. This Agreement and the rights and obligations of the parties shall be interpreted, construed and enforced in accordance with the laws of the State of Ohio. If any provision of this Agreement or the application thereof to any entity, person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other entities, persons or circumstances shall not be affected thereby, and shall be enforced to the extent permitted by law. The Easements granted hereby do not constitute a dedication for public use and the rights and easements herein created are private and do not constitute a grant for public use. Grantor may and shall have the right to construct, repair or replace improvements on the Easement Area including without limitation driveways, sidewalks, curbs, signs, roads, landscaping, trees, shrubs, lawns, fences, and such other improvements.

6. Entire Agreement. This Agreement contains the entire agreement of the parties as to the matters set forth herein. There are no oral representations, warranties or other statements whatsoever except as expressed herein. This Agreement shall not be modified except in writing signed by both parties hereto.

(Signature on following page)

IN WITNESS WHEREOF, the undersigned have duly executed the Easement this 30th day of October, 2012.

“GRANTOR”
The Village of Hiram

“GRANTEE”

CARBON VISION, LLC, a Delaware limited liability company

By: Mayor Lou Bertrand

By: Michael Shaut

Name: Lou Bertrand

Name: Michael Shaut

Title: Mayor

Title: President and CEO

And

By: Kay E Ziska

Name: Kay Ziska

Title: Fiscal Officer

Approved as to Form:

Thomas Reitz
Thomas Reitz, Solicitor

STATE OF OHIO)
) SS:
COUNTY OF PORTAGE)

The foregoing instrument was signed before me this 30th day of October, 2012, by Lou Bertrand, Mayor, and Kay Ziska, Fiscal Officer of the Village of Hiram, who each acknowledged that he executed this Agreement on behalf of said municipality and the same was his free act and deed and the free act and deed of said municipality

Rosemary Yukich
Notary Public

ROSEMARY YUKICH, Notary Public
STATE OF OHIO
My Commission Expires 03/07/14

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

The foregoing instrument was signed before me this 13th day of November August, 2012, by Michael Shaut, the President and CEO of Carbon Vision, LLC, a Delaware limited liability company, who acknowledged that he executed this Agreement on behalf of said company and the same was his free act and deed and the free act and deed of said company.

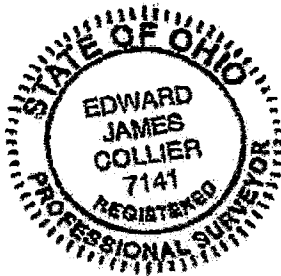
Robert A. Luria
Notary Public

ROBERT A. LURIA, Attorney At Law
Notary Public-State of Ohio
My commission has no expiration date
Section 147.03 R.C.

REGISTERED SURVEYOR No. 7141

EDWARD J. COLLIER
 R.O. BOX 1836
 KENT, OHIO 44240

PHONE: 330-673-7408



September 25, 2012

Hiram College
 utility easement
 5' x 60'

Situated in the Village of Hiram, County of Portage and State of Ohio and known as being part of Lot 23 in Hiram Township and further described as follows:

Beginning in the east right of way line of Winrock Road (60' R/W) as dedicated in Plat Book vol. 27, pg. 39 in the Portage County records and being S 0° 07' 35" W 173.14 feet from the intersection of said road line with the south right of way line of Constance Avenue (60' R/W), a private drive;

Thence S 0° 07' 35" W 5.00 feet along the east right of way line of Winrock Road; thence N 89° 52' 25" W 60.00 feet to the west right of way line of Winrock Road; thence N 0° 07' 35" E 5.00 feet along the west right of way line of Winrock Road; thence S 89° 52' 25" E 60.00 feet to the beginning.

Described & mapped on September 25, 2012 by Edward J. Collier, registered surveyor No. 7141.

EDWARD J. COLLIER

PHONE: 330-673-7408

P.O. BOX 1836
KENT, OHIO 44240

September 25, 2012

Hiram College
north to south 5' easement

Situated in the Village of Hiram, County of Portage and State of Ohio and known as being part of Lot 23 in Hiram Township and further described as follows:

Beginning at the intersection of the north line of Constance Avenue (60' R/W), a private drive, with the easterly line of Winrock Road (60' R/W) as dedicated in Plat Book 27, pg. 39 in the Portage County records;

Thence northwesterly, 192.59 feet along the easterly line of Winrock Road and along the arc of a curve to the left, said curve having a central angle of $33^{\circ} 26' 16''$, a radius of 330.00 feet and a chord bearing $N 26^{\circ} 59' 16'' W$ for a distance of 189.87 feet to the true place of beginning.

Thence $S 2^{\circ} 46' E$ 112.51 feet to the westerly line of Winrock Road; thence northwesterly, 12.35 feet along the westerly line of Winrock Road and along the arc of a curve to the left, said curve having a central angle of $2^{\circ} 37' 15''$, a radius of 270.00 feet and a chord bearing $N 26^{\circ} 40' 15'' W$ for a distance of 12.35 feet; thence $N 2^{\circ} 46' W$ 106.86 feet to the easterly line of Winrock Road; thence southeasterly, 7.54 feet along the easterly line of Winrock Road and along the arc of a curve to the right,

said curve having a central angle of $1^{\circ} 18' 32''$, a radius of 330.00 feet and a chord bearing S $44^{\circ} 21' 40''$ E for a distance of 7.54 feet to the true place of beginning.

Described & mapped on September 25, 2012 by Edward J. Collier, registered surveyor No. 7141.

