

ODOT RE 222  
Rev. 03/2013

ROE  
State

## CONTRACT FOR RIGHT OF ENTRY

PARCEL(S): 1T  
VIN-327-7.45

This Agreement is by and between the State of Ohio, Department of Transportation ["State"] and Marshall Wilburn ["Owner"]; "Owner" includes all of the foregoing named persons or entities]. State and Owner are referred to collectively in this Agreement as "Parties."

In consideration of the mutual promises, agreements and covenants herein contained, the Parties hereto do hereby contract as follows:

### **1. Price and Consideration**

State shall pay to Owner the sum of \$2,500.00, which sum shall constitute the entire amount of compensation due Owner for granting to State the rights, interests and privileges hereinafter described immediately below in Section 2 Rights of Possession and Use.

Except as otherwise specified in this Agreement, in no event shall Owner be entitled to receive from State any interest, rent or other compensation of any kind whatsoever for the period of time during which State occupies, possesses and uses the real property described in Exhibit A attached hereto and by this reference incorporated herein.

### **2. Rights of Possession and Use**

On and after August 1, 2015, State, its employees, agents, consulting engineers, contractors, subcontractors, utility companies and any other representatives of State shall have the irrevocable right to enter upon, occupy and have exclusive possession of the real property described in Exhibit A for the purposes of constructing thereon a highway or a facility incidental thereto.

Upon payment of the aforementioned sum to Owner, State shall have the right to physical possession of any and all buildings, houses, garages, sheds or any other types of structures, fixtures and other property, if any, located within or upon the real property described in Exhibit A.

The foregoing rights of possession shall be subject to the terms and conditions set forth in Exhibit B attached hereto and by this reference incorporated herein.

### **3. Owner's Covenant of Title**

Owner hereby covenants with State that Owner is either (a) the true and lawful owner of the fee simple in and of the real property described in Exhibit A or (b) the true and lawful owner of all those rights, titles and interests required by law to occupy, use and enjoy the real property described in Exhibit A. Owner covenants further that Owner is the true owner of any property described in Exhibit B; and that Owner has the right and full power to grant to State the rights, interests and privileges described above in Section 2 Rights of Possession and Use.

### **4. Terms and Conditions Relevant to Appropriation of Owner's Property**

(A) One of the express purposes of this Agreement is to allow State to enter upon, occupy and have exclusive possession of the real property described in Exhibit A for the purposes of constructing thereon a highway or facility incidental thereto, while the Parties attempt to negotiate further the sale and purchase of the property described in Exhibits A and B, and the conveyance and transfer thereof by Owner to State.

(B) Owner shall notify State of any prospective transfer of any of Owner's rights, titles or interests in the property. Owner shall provide to State such notification in writing not less than 14 days prior to the date on which the prospective transfer is to be closed or otherwise consummated; provided, however, if the prospective transfer will be closed or otherwise consummated less than 14 days after Owner agrees to such prospective transfer, then Owner shall provide to State such notification in writing immediately.

(C) Owner acknowledges that State has the right to commence an action to appropriate the property described in Exhibits A and B at any time it appears to the State that further negotiations with Owner are not warranted.

(D) State agrees to commence promptly an action to appropriate the property described in Exhibits A and B upon State's receipt from Owner of a written notice to commence an action to appropriate.

(E) The Parties agree that the hereinabove mentioned \$2,500.00 shall be credited to and applied against the total purchase price the Parties may negotiate for the sale and purchase of the property described in Exhibits A and B, and the conveyance and transfer thereof by Owner to State.

(F) The Parties agree that if State acquires the property described in Exhibits A and B by way of an action to appropriate the same, then the abovementioned \$2,500.00 shall be credited to and applied against any amount awarded to Owner in such appropriation action.

(G) Owner acknowledges that State has explained to Owner that no owner of property can be required to surrender possession of the same to State prior to:

- (i) the payment of the total, agreed upon purchase price by State; or
- (ii) the deposit by State with the court having jurisdiction over an action to appropriate property, for the benefit of the owner thereof, of an amount equal to not less than State's approved appraisal of the fair market value of the property.
- (iii) if the deposit described immediately above in paragraph 4(G)(ii) is not made, then upon the deposit by State with the court having jurisdiction over an action to appropriate property for the benefit of the owner thereof, of an amount equal to the amount assessed by the trier of fact (i.e., the court or a jury) and awarded to the owner upon a trial of such action.

**5. Owner's Waiver of Right to Refuse Possession**

Notwithstanding the rights described above in paragraphs 4(G)(i) and (ii), Owner hereby expressly waives the right to refuse to permit State to occupy, possess and use the property described in Exhibits A and B.

**6. Preservation of All Other Rights**

Except and unless otherwise specifically modified by the terms and conditions of this Agreement, any and all rights, privileges, titles and interests in or to the property described in Exhibit A and Exhibit B are preserved and retained by Owner.

**7. Binding Agreement**

Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of State and Owner and their respective heirs, executors, administrators, successors and assigns.

**8. Multiple Originals**

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

**9. Entire Agreement**

This instrument contains the entire agreement between the Parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatever, express or implied, other than herein set forth, shall be binding upon either State or Owner.

**10. Amendments and Modifications**

No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement and is signed by State and Owner.

IN WITNESS WHEREOF, the State of Ohio, Department of Transportation, and Marshall Wilburn have executed this Agreement on the date(s) indicated immediately below their respective signatures

Marshall Wilburn  
MARSHALL WILBURN

Date: 7-27-2015

STATE OF OHIO, COUNTY OF Ross ss:

BE IT REMEMBERED that on the 27<sup>th</sup> day of July, 2015, before me the subscriber, a Notary Public in and for said state and county, personally came the above named Marshall Wilburn, who acknowledged the foregoing instrument as his voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.



RANDALL D WELSH  
Notary Public State of Ohio  
My Commission Expires

Randall D. Welsh

NOTARY PUBLIC  
My Commission expires: 9-19-2016

STATE OF OHIO  
DEPARTMENT OF TRANSPORTATION

Jerry Wray 107  
Jerry Wray, Director

Date: 7/27/15  
By: Dan Frazee  
District 9 Real Administrator

STATE OF OHIO, COUNTY OF ROSS ss:

BE IT REMEMBERED, that on the 27<sup>th</sup> day of July, 2015, before me the subscriber, a Notary Public in and for said state and county, personally came the above named Dan Frazee, the duly authorized representative of the State of Ohio, Department of Transportation, who acknowledged the foregoing instrument to be the voluntary act and deed of the State of Ohio, Department of Transportation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.



**RANDALL D WELSH**  
Notary Public State of Ohio  
My Commission Expires

Randall D. Welsh  
NOTARY PUBLIC  
My Commission expires: 9-19-2016

**EXHIBIT A**

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Rev. 06/09

Ver. Date 07/27/2015

PID 98489

**PARCEL 1-T  
VIN-327-7.45  
TEMPORARY EASEMENT FOR THE PURPOSE OF  
PERFORMING THE WORK NECESSARY TO  
REMOVE DEBRIS FROM A WATERWAY  
FOR 6 MONTHS FROM DATE OF ENTRY BY THE  
STATE OF OHIO, DEPARTMENT OF TRANSPORTATION**

[Surveyor's description of the premises follows]

Situate in the State of Ohio, Vinton County, Eagle Township, Section 6, Township 9 North, Range 19 West, and being part of a 2.893 acre tract conveyed to Marshall Wilburn and Lillie E. Wilburn, by deed recorded in Official Record 109, Page 207 in the Vinton County Recorder's office, and being more particularly described as follows:

BEGINNING at a point at the Grantor's southwest corner, at the northwest corner of a 0.116 acre parcel conveyed to the Ohio Department of Transportation by deed recorded in Official Record Volume 38, Page 761, and on the existing northerly Right-of-Way line of State Route 671, said point being 62.48 feet left of centerline Station 1+98.43;

Thence **North 01° 29' 37" West**, a distance of **475.00** feet along the Grantor's westerly line, and along the easterly line of a 12 acre tract conveyed to Lloyd Gearing and Vina Gearing by deed recorded in Deed Book 99, Page 13, to a point 531.54 feet left of centerline Station 2+73.27;

Thence **South 87° 02' 09" East**, a distance of **199.72 feet** across the Grantor's tract, to a point on the Grantor's easterly line, and on the westerly line of a 142.19 acre tract conveyed to Vernon R. Brown and Forrest E. Brown by deed recorded in Deed Book 91, Page 642, 491.53 feet left of centerline Station 4+23.43;

Thence **South 03° 42' 32" West**, a distance of **440.00 feet** along the Grantor's easterly line, and along the westerly line of said Brown tract, to the Grantor's southeasterly corner, and the northeasterly corner of said 0.116 acre Ohio Department of Transportation tract, 59.07 feet left of centerline Station 3+57.09;

Thence along the Grantor's southerly line, the northerly line of said 0.116 acre Ohio Department of Transportation tract and the existing northerly Right-of-Way line of State Route 671, the following four courses:

**EXHIBIT A**

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- 1) **South 81° 41' 17" West**, a distance of **40.03 feet** to a point 60.00 feet left of centerline Station 3+19.02;
- 2) **South 10° 33' 28" East**, a distance of **6.71 feet** to a point 53.29 feet left of centerline Station 3+19.02;
- 3) Westerly a distance of **31.54 feet** along the arc of a curve deflecting to the left, having a radius of **746.20 feet**, a chord bearing of **South 84° 42' 00" West** and a chord length of **31.54 feet** to a point 56.18 feet left of Station 2+87.61;
- 4) **South 83° 29' 25" West**, a distance of **89.40 feet** to the TRUE POINT OF BEGINNING.

The above described area contains 1.884 acres of land, more or less, of which the present road occupies 0.000 acres of land, more or less which is part of the Vinton County Auditor's Permanent Parcel number 04-00434.000.

This description was prepared on July 27, 2015, by Michael James Ware, Professional Surveyor Number 8054.

Instrument reference as of the date this survey was prepared: Official Record 109, Page 207, Recorder's Office, Vinton County, Ohio.

All stations and offsets contained in this description are referenced to the VIN-671-0.00 Right-of-Way plans prepared for the Ohio Department of Transportation.

Bearings for this description are based on the VIN-671-0.00 Right-of-Way plans prepared for the Ohio Department of Transportation.

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Michael James Ware  
Professional Surveyor S-8054

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Date

# Exhibit 7



ODOT RE 222-B  
Rev. 06/09

ROE  
State

**EXHIBIT B**  
**To**  
**CONTRACT FOR RIGHT OF ENTRY**

PARCEL(S): 1T  
VIN-327-7.45

State's right to physical possession of any and all buildings, houses, garages, sheds or other types of structures as provided for in Section 2 of the *Contract For Right of Entry* to which this document is attached as Exhibit B shall be subject to only the following restrictions [if "none" then so indicate]: NONE

## TERMS AND CONDITION OF ROE

- 1.) Lump sum \$2,500 rent for duration of work.
- 2.) Two inches maximum of 411 stone placed and compacted on the entire driveway when work is completed
- 3.) All disturbed areas levelled, seeded and mulched when work is complete.