

GRANT OF EASEMENT

(2503 Handasyde Court)

This Grant of Easement (this "**Easement**") is executed on the Effective Date (as defined on the signature page hereof) by the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), in favor of **ROBERT B. HINTON, JR.**, married, whose tax mailing address is 2503 Handasyde Court, Cincinnati, Ohio 45208 ("**Grantee**").

Recitals:

A. By virtue of a Deed recorded in Official Record 13763, Page 1289, Hamilton County, Ohio Recorder's Office, Grantee owns the residential real property located at 2503 Handasyde Court, Cincinnati, Ohio, designated as Auditor's Parcel Number 046-0001-0022, as described on Exhibit A (*Legal Description-Grantee's Property*) hereto ("**Grantee's Property**").

B. The City owns the abutting public rights-of-way known as Handasyde Court and Menlo Avenue, as depicted on Exhibit B (*Site Map*), which are under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

C. Grantee has constructed certain improvements that encroach upon Handasyde Court and Menlo Avenue, namely: retaining walls and pavement for a driveway that serves Grantee's residence (the "**Improvements**"), as more particularly depicted on Exhibit B.

D. The parties now desire to memorialize Grantee's ownership and corresponding obligation to maintain and repair the Improvements.

E. The City Manager, in consultation with DOTE, has determined that (i) granting this Easement will not have an adverse effect on the City's retained interest in the Handasyde Court and Menlo Avenue public rights-of-way, and (ii) granting this Easement will not have an adverse effect on the usability or accessibility of any existing Handasyde Court and Menlo Avenue public right-of-way facilities.

F. The City's Real Estate Services Division has determined by appraisal that the fair market value of the Easement is \$3,150, however in consideration of the costs incurred by Grantee in constructing a public sidewalk in the Handasyde Court and Menlo Avenue public rights-of-way at the request of the City, the City has agreed to convey this Easement for \$1.00 because the City anticipates that the City and the general pedestrian public will receive a combination of economic and non-economic benefits from the public sidewalk that will equal or exceed the fair market value of this Easement.

G. City Planning Commission, having authority to approve the change in the use of City-owned property, approved this Easement at its meeting on January 19, 2018.

H. Execution of this instrument was authorized by Ordinance No. ____-2022, passed by Cincinnati City Council on _____, 2022.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Grant of Easement; Termination.

(A) Grant of Easement. The City hereby grants to Grantee, on the terms and conditions set forth herein, as an appurtenance to and for the benefit of Grantee's Property, a non-exclusive easement to use, maintain, repair, reconstruct, replace, and remove the Improvements over the portions of the Handasyde Court and Menlo Avenue public rights-of-way, as more particularly depicted on Exhibit B and described on Exhibit C (Legal Description – Easement Areas) hereto (the "**Easement Areas**"). For all purposes, Grantee shall be deemed to be the owner of the Improvements. The City has no responsibility or liability for the design, constructability, functionality, physical condition or any other aspect of the Improvements.

(B) Termination. Notwithstanding anything herein to the contrary, this Easement shall automatically terminate, and the City shall have the right to execute and record an instrument memorializing the termination of this Easement in the Hamilton County Recorder's Office, (i) upon any permanent alteration or elimination of the Improvements within the Easement Areas such that this Easement or any portion thereof would be rendered unnecessary; (ii) upon written notice from the City if the City determines that it needs the Easement Areas or any portion thereof for a municipal purpose, including, without limitation, to comply with Americans with Disabilities Act ("**ADA**") regulations or accessibility standards; (iii) if Grantee completely removes the Improvements and does not commence construction of replacement improvements within 90 days thereafter; or (iv) upon written notice from the City if the City determines that the Improvements are creating a public safety issue, such as noncompliance with ADA accessibility regulations, or contributing to adverse impacts on the usability or accessibility of any Handasyde Court or Menlo Avenue public right-of-way facilities. Upon the termination of this Easement, Grantee shall undertake all necessary steps to design, engineer, and obtain necessary approvals from the City to remove, relocate, and reconstruct the Improvements. Grantee shall have up to 180 days to remove and relocate the Improvements upon obtaining all necessary City approvals. Grantee shall be solely responsible for any and all costs incurred in relocating, reconstructing, or constructing replacement improvements. Upon the City's termination of this instrument, if Grantee fails to remove the Improvements as noted herein, the City and its contractors shall have the right to remove and destroy or otherwise dispose of the Improvements, without liability of any kind to Grantee.

2. Maintenance and Repairs. Grantee shall maintain the Improvements in a continuous state of good and safe condition and repair and shall promptly repair any and all resulting damage to City property caused thereby, including, without limitation, damaged vegetation. In the event Grantee fails to maintain and repair the Improvements as required hereunder or violates any of the covenants or restrictions contained herein, the City shall have the right to undertake such maintenance and repairs and to take any and all other necessary corrective actions, whereupon Grantee shall reimburse the City for its costs of doing so within thirty (30) days after receipt of an invoice from the City. Once installed, Grantee shall not make any alterations to the Improvements without the prior written consent of DOTE. Grantee shall not install any improvements or otherwise utilize any areas outside the Easement Areas.

3. Costs; Compliance with Laws. All costs associated with the maintenance and repair of the Improvements, including restoration work to any and all affected portions of City property, shall be borne solely by Grantee. All work undertaken by Grantee hereunder shall be in compliance with all applicable

codes, laws and other governmental requirements. Grantee shall obtain a public tree work permit from the Parks Department if working within 15 feet of any public tree within the public right-of-way.

4. Third-Party Utility Lines. Grantee acknowledges there may be existing easements, utility lines and related facilities in the vicinity of the Easement Areas ("**Third-Party Utility Lines**"). In connection with Grantee's maintenance and repair activities under this instrument, Grantee shall not interfere with the access of any utility company to maintain and repair the Third-Party Utility Lines, and shall, at Grantee's expense, promptly repair any and all damage to the Third-Party Utility Lines caused by Grantee or its agents, employees or contractors. Any relocation of Third-Party Utility Lines necessitated by Grantee's activities under this instrument shall be handled entirely at Grantee's expense. Grantee acknowledges that access to water service branches may be affected by the Improvements. Repairs of any future leaks of the branches on the corresponding water service branches shall be repaired entirely at Grantee's expense.

5. Insurance; Indemnification. At all times during which Grantee is undertaking work within the Easement Areas, Grantee shall maintain a policy of Commercial General Liability insurance, with an insurance company reasonably acceptable to the City and naming the City as an additional insured, in an amount not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, or in such greater amount and with such additional coverages as the City may from time to time require. Grantee shall furnish to the City a certificate of insurance evidencing such insurance upon the City's request, and in any event prior to undertaking any work within the Easement Areas. Grantee hereby waives all claims and rights of recovery against the City, and on behalf of Grantee's insurers, rights of subrogation, in connection with any damage to the Improvements, no matter how caused. Grantee shall defend (with counsel reasonably acceptable to the City), indemnify, and hold the City harmless from and against any and all claims, actions, losses, costs (including, without limitation, attorneys' fees), liability and damages suffered or incurred by, or asserted against, the City in connection with the construction, maintenance, repair or other matters associated with the Improvements.

6. Notices. All notices given hereunder shall be in writing and shall be sent by U.S. certified or registered mail, return receipt requested, or delivered by a recognized courier service, or by personal delivery, to Grantee, and its respective successors-in-interest and assigns, to 2503 Handasyde Court, Cincinnati, Ohio 45208, or such other address as either party may specify from time to time by notice given in the manner prescribed herein. All notices to the City shall be addressed to the Office of the City Manager, 801 Plum Street, Cincinnati, OH 45202, and a copy of each such notice shall simultaneously be delivered to: Department of Transportation and Engineering, 801 Plum Street, Room 450, Cincinnati, OH 45202. In the event of an alleged breach by the City of this instrument, a copy of each notice of breach shall simultaneously be delivered to the Office of the City Solicitor, 801 Plum Street, Room 214, Cincinnati, OH 45202.

7. Default. An event of default shall be deemed to have occurred if Grantee, its successors-in-interest, or assigns fail to perform any required work under this instrument, including, but not limited to, the obligations set forth in Section 1(B), and fail to address the same to DOTE's satisfaction within thirty (30) days after receiving written notice thereof from DOTE, upon which the City shall have right to perform such work, at Grantee's expense, payable within ten (10) days after receiving an invoice from DOTE evidencing the amount due. Grantee, its successors-in-interest, or assigns shall be liable to DOTE for the payment of such work. Any outstanding amount due under this instrument shall create a lien on the Grantee's Property until fully paid. At the City's option, the City may file an affidavit in the Hamilton County, Ohio Recorder's office to memorialize any outstanding amounts due under this instrument.

8. Covenants Running with the Land. The provisions hereof shall run with the land and shall inure to the benefit of and be binding upon the parties hereto and their respective successors-in-interest.

9. Governing Law; Severability. This instrument shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. If any provisions hereof are

determined to be invalid or unenforceable by a court of law, the remainder of this instrument shall not be affected thereby, and all other provisions of this instrument shall be valid and enforceable to the fullest extent permitted by law.

10. Coordinated Report Conditions (CR #99-2016). The following additional conditions shall apply:

(A) DOTE: A DOTE street opening permit, obtained by a DOTE licensed street contractor, is required for all private improvements in the public right-of-way. All improvements in the public right-of-way must be built to City standards, policies and guidelines. Application for permits may be made at Room 425, City Hall, 801 Plum Street. Please note that plan drawings (2 sets), to be reviewed by DOTE, must be attached to the permit application.

(B) Altafiber: There are existing underground telephone facilities at or around this location. The existing facilities must remain in place, in service and able to be accessed. Any damage done to the facilities, or any work done to relocate the facilities as a result of this instrument will be handled entirely at Grantee's expense.

11. Counterparts and Electronic Signatures. This instrument may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original. This instrument may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

12. Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A—*Legal Description-Grantee's Property*
Exhibit B—*Survey*
Exhibit C—*Legal Description – Easement Areas*

[SIGNATURE PAGE FOLLOWS]

Executed on the date of acknowledgement indicated below (the "Effective Date").

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022 by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Recommended by:

John S. Brazina, Director
Department of Transportation and Engineering

Approved as to Form:

Assistant City Solicitor

[Grantee Signature Page Follows]

ACKNOWLEDGED AND ACCEPTED BY:

GRANTEE:

Robert B. Hinton, Jr.

Date: _____, 2022

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street
Cincinnati, OH 45202

EXHIBIT A

Situate in Section 32, Town 4, Fractional Range 2, Miami Purchase, City of Cincinnati, Hamilton County, Ohio, being part of Lot 9, Barnabas Niles Estate recorded in Deed Book 94, Page 121, and being all of the lands conveyed to Robert B. Jr. and Andrea C. Hinton as recorded in Official Record 10217, Page 868 Hamilton County, Ohio Recorder's Office, more particularly described as follows:

Beginning at an existing 3/4" iron pipe in the south Right-Of-Way line of Handasyde Court (50' Right-of-Way), said point lying North 87° 30' 00" East, 285 feet from the northwest corner of said Lot 9 of Barnabas Niles Estate, said point also being the northwest corner of the lands conveyed to Warner A. Meyers and Kim Stookey-Myers by deed recorded in Official Record 12498, Page 178 Hamilton County, Ohio Recorder's Office;

Thence leaving said south Right-Of-Way line of Handasyde Court and with the west line of said Myers' land, South 02° 05' 00" East, a distance of 387.97 feet to a 5/8" iron pin set at the northeast corner of Parcel 2 of lands conveyed to Daniel H. and Judith S. McKinney, Trustees, by deed recorded in Official Record 7563, Page 951 Hamilton County, Ohio Recorder's Office and in the west line of the lands conveyed to Cincinnati Country Club by deed recorded in Official Record 8871, Page 1203 Hamilton County, Ohio Recorder's Office;

Thence with the north line of said Parcel 2, South 86° 19' 20" West, a distance of 142.55 feet to a 5/8" iron set at the northwest corner of Parcel 2 and in the east line of Parcel 1 of said McKinney lands;

Thence in part with the east line of said McKinney lands, North 02° 05' 00" West, a distance of 390.90 feet to a 5/8" iron pin set at the northeast corner of the lands conveyed to Michelle S. and Donald E. Hershey by deed recorded in Official Record 8262, Page 1376 Hamilton County, Ohio Recorder's Office, said point also being in the south Right-Of-Way line of said Handasyde Court;

Thence with the south line of said Handasyde Court, North 87° 30' 00" East, 142.50 feet to the point of beginning.

Containing 1.2739 acres of land.

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

The above description is the result of a survey prepared by McGill Smith Punshon, Inc. under the direction of Melvin W. Pistor, Jr., P.S. No. 8180, dated October 7, 2015. Bearings based on Barnabas Niles Subdivision as recorded in Plat Book 94, Page 121, Hamilton County, Ohio Recorder's Office.

Auditor's Parcel No.: 046-0001-022

Property Address: 2503 Handasyde Court, Cincinnati, Ohio 45208

EXHIBIT B

LINE TABLE		
Line #	BEARING	LENGTH
L1	N75°26'17"E	15.29'
L2	S28°21'59"E	2.00'
L3	S02°05'00"E	5.06'
L4	S87°30'00"W	3.50'
L5	N02°30'00"W	1.00'
L6	N87°30'00"E	5.65'
L7	S02°30'00"E	5.50'

CURVE TABLE					
Curve #	RADIUS	LENGTH	CHD LENGTH	CHD BEARING	DELTA
C1	19.75'	23.33'	22.00'	S31°45'44"W	067°41'28"
C2	20.50'	12.18'	12.00'	N42°25'27"E	034°03'06"
C3	7.00'	7.90'	7.48'	S60°11'18"E	064°37'23"

- LEGEND**
 MONUMENTS
 (UNLESS NOTED OTHERWISE)
 ○ EX. 1/8" IRON PIN
 ⊕ EX. SPK
 ⊕ EX. NATCH
 ⊕ EX. NAIL
 ⊕ EX. STONE
 ⊕ EX. CONC. MON.
 --- EX. FENCE LINE
 ● 1/8" IRON PIN SET
 ⊕ 1" IRON PIN SET
 ⊕ SPK SET
 ⊕ NATCH SET
 ⊕ NAIL SET
 ⊕ CONC. MON. SET



NOTES

OCCUPATION IN GENERAL FITS SURVEY EXCEPT AS SHOWN.

MONUMENTS GENERALLY IN GOOD CONDITION UNLESS NOTED OTHERWISE. SURVEY BASED ON FIELD EVIDENCE AND DEEDS & PLATS OF RECORD NOTED HEREON.

BEARINGS BASED ON PLAT OF BARNABAS NILES SUBDIVISION AS RECORDED IN P.S. 94, PG. 121 IN HAMILTON COUNTY, OHIO RECORDER'S OFFICE.

WALL EASEMENT
2503 HANDASYDE COURT
 0.0222 ACRES TOTAL
 PART OF LOT 9 OF BARNABAS NILES SUBDIVISION
 SECTION 32, TOWN 4, FRACTIONAL RANGE 2, MIAMI PURCHASE
 CITY OF CINCINNATI, HAMILTON COUNTY, OHIO



mSP **McGill Smith Punshon, Inc.**
 3700 Park 42 Drive • Suite 190B
 Cincinnati, Ohio 45241-2097
 Tel 513.759.0004 • Fax 513.563.7099
 www.mcgillsmithpunshon.com

Engineers • Architects • Surveyors • Landscape Architects • Planners

Drawn By:	MWF	Date:	06-17-17	Project No.:	15200.12	Sheet No.:	1/1
Project Mgr.:		Scale:	1"=20'	Points D.B.:	10452		

EXHIBIT C

DESCRIPTION FOR: **Wall Easement – 0.0034 Ac.**

LOCATION: **2503 Handasyde Court**

Situate in Section 32, Town 4, Fractional Range 2, Miami Purchase, City of Cincinnati, Hamilton County, Ohio and being an easement located within the public right-of-way of Handasyde Court (50' right-of-way), and being more particularly described as follows:

Beginning at a point at the southwest corner of the right-of-way line of said Handasyde Court, said point being the northwest corner of the lands conveyed to Robert B. Jr. and Andrea C. Hinton as recorded in Official Record 10217, Page 868 Hamilton County, Ohio Recorder's Office, said point also being in the east line of the lands conveyed to Michelle S. and Donald E. Hershey as recorded in Official Record 8262, Page 1376 Hamilton County, Ohio Recorder's Office;

Thence with the east line of said Michelle S. and Donald E. Hershey and the west right-of-way line of Handasyde Court, the following six (6) courses and distance:

1. North 02°05'00" West, 21.87 feet to a point;
2. North 75°26'17" East, 15.29 feet to a point;
3. South 26°21'59" East, 2.00 feet to a point;
4. Along an arc deflecting to the left, having a radius of 19.75 feet, a distance of 23.33 feet, a central angle of 67°41'28", the chord of said arc bears South 31°45'44" West, 22.00 feet to a point;
5. South 02°05'00" East, 5.06 feet to a point;
6. South 87°30'00" West, 3.50 feet to the point of beginning.

Containing 0.0034 acres of land.

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

The above described Wall Easement is in favor of the owners of 2503 Handasyde Court, as grantees interests lie, their heirs, successors, administrators and/or assigns and is for the maintenance and repair of a landscape and retaining wall.

The above description is the result of a survey prepared by McGill Smith Punshon, Inc. under the direction of Melvin W. Pistor, Jr., P.S. No. 8180, dated May 17, 2017. Bearings based on Barnabas Niles Subdivision as recorded in Plat Book 94, Page 121, Hamilton County, Ohio Recorder's Office.

Prepared by: McGill Smith Punshon, Inc.
Date: May 17, 2017
MSP No.: 15200.12

15200123-EAS Wall Legal 0.0034 AC.docx



McGill Smith Punshon, Inc.
3700 Park 42 Drive ■ Suite 1908 ■ Cincinnati, Ohio ■ 45241-2097
513.759.0004 ■ Fax 513.563.7099 ■ www.mcgillsmithpunshon.com

Exhibit C, continued

DESCRIPTION FOR: Wall Easement – 0.0188 Ac.

LOCATION: 2503 Handasyde Court

Situate in Section 32, Town 4, Fractional Range 2, Miami Purchase, City of Cincinnati, Hamilton County, Ohio and being an easement located within the public right-of-way of Handasyde Court (50' right-of-way), and being more particularly described as follows:

Beginning at a point in the south right-of-way line of said Handasyde Court, said point being the northeast corner of the lands conveyed to Robert B. Jr. and Andrea C. Hinton as recorded in Official Record 10217, Page 868 Hamilton County, Ohio Recorder's Office, said point also being the northwest corner of the lands conveyed to Warner A. Meyers as recorded in Official Record 12498, Page 178 Hamilton County, Ohio Recorder's Office;

Thence with the north line of said Robert B. Jr. and Andrea C. Hinton and the south right-of-way line of Handasyde Court, South 87°30'00" West, 119.50 feet to a point;

Thence leaving said north line of Robert B. Jr. and Andrea C. Hinton the following seven (7) courses and distances:

1. Along an arc deflecting to the right, having a radius of 20.50 feet, a distance of 12.18 feet, a central angle of 34°03'06", the chord of said arc bears North 42°25'27" East, 12.00 feet to a point;
2. North 87°30'00" East, 40.97 feet to a point;
3. North 02°30'00" West, 1.00 feet to a point;
4. North 87°30'00" East, 5.65 feet to a point;
5. Along an arc deflecting to the right, having a radius of 7.00 feet, a distance of 7.90 feet, a central angle of 64°37'23", the chord of said arc bears South 60°11'18" East, 7.48 feet to a point;
6. North 87°30'00" East, 58.08 feet to a point;
7. South 02°30'00" East, 5.50 feet to the point of beginning.

Containing 0.0188 acres of land.

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

The above described Wall Easement is in favor of the owners of 2503 Handasyde Court, as grantees interests lie, their heirs, successors, administrators and/or assigns and is for the maintenance and repair of a landscape and retaining wall.

The above description is the result of a survey prepared by McGill Smith Punshon, Inc. under the direction of Melvin W. Pistor, Jr., P.S. No. 8180, dated May 17, 2017. Bearings based on Barnabas Niles Subdivision as recorded in Plat Book 94, Page 121, Hamilton County, Ohio Recorder's Office.

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