

----- space above for Recorder's Office -----

GRANT OF SIDEWALK EASEMENT

This Grant of Sidewalk Easement ("**Easement**") is made as of the Effective Date (as defined on the signature page hereof) by **BRE Retail Residual Owner 1 LLC**, a Delaware limited liability company ("**Grantor**"), in favor of the **City of Cincinnati**, an Ohio municipal corporation, having a mailing address of 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**") on behalf of the general pedestrian public.

Recitals:

A. Grantor is the owner of certain real property located at the corner of Glenway Avenue and Werk Road in Cincinnati, Ohio, designated as Hamilton County Auditor's Parcel No. 212-0063-0043-00 as more particularly described on Exhibit A attached hereto and made a part hereof (the "**Property**").

B. Grantor is re-developing the Property.

C. In connection with its re-development of the Property, the City's Department of Transportation & Engineering ("**DOT**") has requested Grantor to make certain improvements to a sidewalk on the Property connecting to existing sidewalks located within the public right-of-way known as Werk Road.

D. In accordance with plans approved by DOTE, Grantor has constructed or will construct such sidewalk improvements.

E. DOTE has requested that Grantor grant to the City an easement for the new sidewalk improvements for the benefit of the general pedestrian public to permit pedestrian use of said sidewalk improvements on the Property, and Grantor is amenable to grant said easement in connection with the re-development of the Property.

NOW THEREFORE, Grantor does hereby agree as follows:

1. **Grant of Easement.** Grantor does hereby grant to the City, on behalf of the general pedestrian public, a perpetual, non-exclusive easement for pedestrian use of the sidewalk located within the portion of the Property shown on Exhibit B (*Depiction of Easement Area*) and described on Exhibit C (*Legal Description of Easement Area*) hereto (the "**Sidewalk**" and "**Easement Area**",

as applicable) to allow members of the general pedestrian public to pass on foot or in wheelchair or similar ambulatory device. Grantor shall ensure that pedestrian access through and across the Easement Area shall be available to the general pedestrian public at all times; *provided*, however, that Grantor shall have the right to restrict such access and egress for temporary periods to perform maintenance or repair of the Sidewalk or Easement Area. Grantor represents and warrants to the City that (i) it holds good and marketable fee simple title to the Easement Area and that to its actual knowledge there are no mortgages or other liens, utility or other easements, or other encumbrances of any kind that would materially adversely affect the use of the Sidewalk for pedestrian ingress/egress, and (ii) to its actual knowledge there are no underground utility lines within the Easement Area. Grantor reserves the right to use the Easement Area for all legal purposes so long as its use does not unreasonably interfere with the use of the Sidewalk for pedestrian ingress/egress. Without limitation of the foregoing, Grantor shall not permit the construction of any buildings, fences, walls, curbs or other structures or improvements of any kind within the Easement Area that would materially interfere with the use of the Sidewalk for pedestrian ingress/egress.

2. Maintenance and Repairs. Grantor, at no expense to the City, shall maintain the Sidewalk and Easement Area in a continuous state of good and safe condition and repair and in compliance with DOTE rules, regulations and standards and all applicable laws. If Grantor fails to properly maintain and repair the Sidewalk as required hereunder as determined by DOTE, and if Grantor fails to rectify such situation to the satisfaction of DOTE within 10 days after receiving written notice thereof from DOTE (or immediately if such failure has created a threat to public safety as determined by DOTE) (herein, a "default"), the City, at its option and without any obligation to do so, may immediately or at any time during the continuance of the default undertake such maintenance or repairs at Grantor's sole expense. Grantor shall pay the City within 10 days after the City's written demand an amount equal to all costs paid or incurred by the City in effecting compliance with Grantor's maintenance and repair obligations hereunder, together with interest thereon from the date that the City pays or incurs such costs at an annual rate of ten percent. The rights and remedies of the City hereunder are cumulative and are not intended to be exclusive of, and the City shall be entitled to, any and all other rights and remedies to which the City may be entitled at law or in equity. The City's failure to insist in any one or more cases on strict performance of any provision hereof or to exercise any right herein contained shall not constitute a waiver in the future of such right. As a material inducement to the City to accept the easement herein granted, Grantor shall and does hereby agree to defend and indemnify the City against any and all claims, causes of action, losses, costs, judgments, fines, liability and damages arising from Grantor's failure to fulfill its maintenance and repair obligations hereunder, including without limitation any of the foregoing that may occur or be claimed with respect to any death, personal injury or loss of or damage to property.

3. Covenants Running with the Land. The provisions contained herein shall be covenants running with the land and shall bind Grantor and its successors-in-interest, and shall inure to the benefit of the City.

4. Termination. Notwithstanding anything in this instrument to the contrary, Grantor, its successors, and assigns may not terminate the pedestrian access and use rights granted herein without the prior written consent of the City.

5. Representations and Warranties. Grantor represents and warrants to the City that: (i) it is duly organized, existing and in good standing under the laws of the State of Delaware; (ii)

it has full power and authority to enter into and perform its obligations under this Easement; (iii) this Easement has been duly and validly executed and delivered by its duly-authorized officer(s); and (iv) no consent, authorization, order or approval of, or filing or registration with, any governmental authority or other person is required for its execution and delivery of this Easement.

6. Notices. All notices given under this Easement shall be deemed given if personally delivered or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the City at its address set forth in the introductory paragraph hereof, to the attention of the City's Department of Transportation and Engineering, and to Grantor at the following address(es), or at such other addresses as any party may designate by notice to the other parties given in the manner prescribed herein.

To Grantor: BRE Retail Residual Owner 1 LLC
c/o Brixmor Property Group
8700 W Bryn Mawr Ave, Suite 1000S
Chicago, IL 60631

7. General Provisions.

(A) Amendments. This Easement may be amended only by a written amendment signed by Grantor or its successor as owner of the Easement Area, and the City.

(B) Governing Law. This Easement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Easement shall be brought in the Hamilton County Court of Common Pleas, and Grantor agrees that venue in such court is proper. Grantor waives trial by jury with respect to any and all disputes arising under this Easement.

(C) Severability. If any provision of this Easement is held by a court of law to be void, illegal or unenforceable, such provision shall be deemed severed from this Easement, and the balance of this Easement shall remain in full force and effect.

8. Exhibits. The following Exhibits are attached hereto:

- Exhibit A – *Legal Description of the Property*
- Exhibit B – *Depiction of Easement Area*
- Exhibit C – *Legal Description of Easement Area*

[Signature Page Follows]

This Easement is executed on the dates of acknowledgment indicated below, effective as of the later of such dates (the "Effective Date").

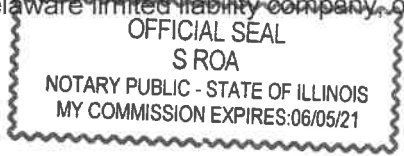
GRANTOR:

BRE Retail Residual Owner 1 LLC, a Delaware limited liability company

By: [Signature]
Printed Name: John Hendrickson
Title: VP - President - Midwest

STATE OF Illinois)
) SS:
COUNTY OF Cook)

The foregoing instrument was acknowledged before me this 14th day of October, 2020, by John Hendrickson, the VP - President - Midwest of BRE Retail Residual Owner 1 LLC, a Delaware limited liability company, on behalf of the limited liability company.



[Signature]
Notary Public
My commission expires: 06/05/21

CITY'S ACCEPTANCE OF EASEMENT

Approval of this Easement was granted by City Planning Commission at its meeting on _____, 2020. Acceptance of this Easement was authorized by Ordinance # _____ passed by City Council on _____, 2020.

City of Cincinnati,
an Ohio municipal corporation

By: _____
Paula Boggs Muething, Interim City Manager

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Paula Boggs Muething, Interim City Manager of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public
My commission expires: _____

Recommended by:

John Brazina
Director, Department of Transportation & Engineering

Approved as to Form by:

Assistant City Solicitor

This instrument prepared in its unexecuted form, without benefit of title exam, by:
Daniel E. Reitz, Esq.
Graydon Head & Ritchey LLP
312 Walnut Street, Suite 1800
Cincinnati, Ohio 45202

Exhibit A

Legal Description of Property

Situate in the City of Cincinnati, County of Hamilton, and State of Ohio:

And known as being part of located in Section 14, Town 2, Fractional Range 2, BTM, being part of Lots 4 and 6 of F.W. Schwartze's Estate as recorded in Plat Book 9, page 37, and part of Lot 3 of Western Woods Subdivision, Block "C" as recorded in Plat Book 95, Pages 4 and 5. of the Hamilton County, Ohio Records, and being part of the land conveyed to HK New Plan Exchange Property Owner II, LP in OR 10086, Page 3199 and being more particularly described as follows:

Beginning at a 5/8 inch iron rebar with cap inscribed "MSP" found at the intersection of the East line of said Lot 6 and the Southerly right-of-way line of Schwartze Avenue (60 feet in width), said corner being the Northwesterly corner of the land conveyed to Ronald S. & Annette Diers in D.B. 4172, Page 1404, being at the True Point of Beginning:

Thence South 5 deg. 34' 30" West, 1517.15 feet to 5/8 inch iron pin with smashed cap found on the Northerly right-of-way line of Werk Road;

Thence Westerly along said Northerly line of Werk Road, North 82 deg. 43' 28" West, 146.83 feet to a cross-notch found;

Thence continuing Westerly with said line, along the arc of a curve to the right (Radius=91.92 feet, Delta=17 deg. 53' 14"), a chord bearing and distance of North 73 deg. 46' 56" West, 28.58 feet to the Easterly right- of-way line of Glenway Avenue;

Thence Northwesterly along the Easterly right-or-way line of Glenway Avenue the following Ten (10) courses:

1) Along the arc of a curve to the left (Radius=1482.69 feet, Delta=7 deg. 25' 50"), a chord bearing and distance of North 39 deg. 46' 35" West, 192.15 feet;

2) North 43 deg. 29' 30" West, 70.88 feet;

3) Along the arc of a curve to the left (Radius=2329.33 feet, Delta=0 deg. 14' 53"), a chord bearing and distance of North 41 deg. 29' 34" West, 10.08 feet;

4) Along the arc of a curve to the left (Radius=3093.61 feet, Delta= 1 deg. 52' 30") a chord bearing and distance of North 42 deg. 33' 14" West, 101.23 feet;

5) North 43 deg. 29' 30" West, 362.77 feet to a cross-notch found;

6) Along the arc of a curve to the left (Radius=2220.25 feet, Delta=2 deg. 37' 30"), a chord bearing and distance of North 44 deg. 48' 17" West, 101.71 feet to a cross-notch found;

7) Along the arc of a curve to the left (Radius=1674.52 feet, Delta=6 deg. 53' 15"), a chord bearing and distance of North 49 deg. 33' 41" West, 201.17 feet to a cross-notch found;

8) Along the arc of a curve to the left (Radius=2220.25 feet, Delta=2 deg. 37' 30"), a chord bearing and distance of North 54 deg. 18' 55" West 101.71 feet to a cross-notch found;

9) North 55 deg. 37' 45" West, 34.71 feet to a cross-notch found;

10) North 53 deg. 24' 30" West, 411.31 feet to a 1/2 inch iron rebar found marking the Southeasterly corner of the parcel of land conveyed to General Mills Restaurant Group Inc., in D.B. 4318, Page 1603;

Thence departing said right-of-way Northerly along the Easterly line of said parcel, North 6 deg. 28' 30" East 423.37 feet to a corner of the parcel of land conveyed to Frisch's Restaurants Inc., in OR 9241, Page 4243 and OR 9187, Page 3510;

Thence Easterly along the Southerly line of said parcel, North 68 deg. 58' 00" East, 149.00 feet;

Thence Easterly along the Southerly line of said Frisch's parcel and then the Southerly line of the parcel of land conveyed of City View Investments LLC in OR 10338, Page 1223, North 56 deg. 30' 00" East, 359.38 feet to a 5/8 inch rebar with cap inscribed "MSP" found;

Thence Southerly along the Westerly line of the parcel of land conveyed to Ronald F. Koch Sr. in OR 8158, Page 2039, then the Westerly line of the parcel of land conveyed to Julio C. Abanto Tr. in OR 7967, Page 2322, and then the Westerly line of the parcel of land conveyed to Rao & Susee R. Paturi in OR 9008, Page 1441, South 37 deg. 57' 30" East, 97.51 feet to a PK nail found marking the Southwesterly corner of said Paturi parcel, witness a RR Spike found bearing North 0 deg. 14' 41" West, 0.94 feet;

Thence along a new division line the following Eighteen (18) courses:

1) South 76 deg. 43' 07" West, 181.52 feet to a 5/8 inch iron pin with cap set;

2) South 3 deg. 16' 17" West, 118.49 feet to a MAG nail set;

3) South 86 deg. 43' 43" East, 73.65 feet to a MAG nail set;

4) South 3 deg. 16' 17" West, 102.33 feet;

5) South 86 deg. 42' 34" East, 15.00 feet;

6) South 3 deg. 16' 17" West, 215.52 feet to a MAG nail set;

7) South 86 deg. 44' 14" East, 20.19 feet to a MAG nail set;

8) South 3 deg. 16' 17" West, 262.63 feet to a MAG nail set;

9) South 55 deg. 35' 22" East, 216.35 feet to a MAG nail set;

- 10) South 47 deg. 58' 34" East, 138.42 feet to a MAG nail set;
- 11) Along the arc of a curve to the right (Radius=515.00 feet, Delta =8 deg. 18' 56"), a chord bearing and distance of South 43 deg. 49' 06" East, 74.68 feet to a MAG nail set;
- 12) South 39 deg. 39' 38" East, 144.14 feet to a MAG nail set;
- 13) North 3 deg. 16' 17" East, 610.42 feet to a MAG nail set;
- 14) Along the arc of a curve deflecting to the left (Radius=59.00 feet, Delta=28 deg. 13' 51"), a chord bearing and distance of South 87 deg. 31' 14" West, 28.78 feet to a MAG nail set;
- 15) Above the arc of a curve to the right (Radius=66.00 Feet, Delta=16 deg. 34' 43") a chord bearing and distance of South 81 deg. 43' 41" West, 19.11 feet to a MAG nail set;
- 16) North. 3 deg. 16' 17" East, 220.34 feet;
- 17) South 86 deg. 43' 43" East, 15.00 feet;
- 18) North 3 deg. 16' 17" East 255.52 feet to a 5/8 inch iron pin with cap set on the Southerly right-of-way line of Schwartze Avenue;

Thence Easterly along said Southerly line South 73 deg. 51' 30" East, 442.57 feet to a MAG nail found marking a point of curvature of Schwartze Avenue;

Thence along the arc of a curve to the left (Radius=330.00 feet, Delta=10 deg. 33' 58") a chord bearing and distance of South 79 deg. 08' 30" East, 60.77 feet to the point of tangency;

Thence South 84 deg. 25' 30" East, 112.26 feet to The True Point of Beginning, containing 26.5971 acres or land more or less.

PPN: 212-0063-0043 & 193 cons.



803 Compton Road, Suite A
Cincinnati, Ohio 45231-3819
(513) 521-4760
Fax (513) 521-2439
bobtrenkamp@tgraham.com

Exhibit C

Legal Description of Easement Area

Legal description:

Situated in Section 14, Township 2, Fractional Range 2, BTM, City of Cincinnati, Hamilton County, State of Ohio, being part of property conveyed to BRE Retail Residual Owner 1 LLC by deed recorded July 8th, 2011 in Official Record 11768, Page 1010 of the Hamilton County Recorder's Office and being more particularly described as follows:

Commencing at the Southeast corner of property conveyed to BRE Retail Residual Owner 1 LLC by deed recorded July 8th, 2011 in Official Record 11768, Page 1010 of the Hamilton County Recorder's Office and the existing North right-of-way line of Werk Road;

thence departing the said Southeast corner with the said existing North right-of-way line,

L1 **North 82° 43' 28" West, 18.74 feet** to the point of beginning of the herein described easement:

L2 thence continuing with the said existing North right-of-way line,
North 82° 43' 28" West, 51.58 feet;

L3 thence departing the existing North right-of-way line of Werk Road,
North 07° 16' 32" East, 20.00 feet;

L4 thence **South 82° 43' 28" East, 51.58 feet;**

L5 thence **South 07° 16' 32" West, 20.00 feet** to the existing North right-of-way line of Werk Road and the point of beginning.

Basis of Bearings: Official Record 11768 Page 1010
Hamilton County Recorder's Office

AUTHORITY CERTIFICATE

The undersigned does hereby certify that he/she is the duly elected, qualified and acting incumbent EVP - President - Midwest of BRE Retail Residual Owner 1 LLC, a Delaware limited liability company ("BRE"), and that he/she is authorized, empowered and approved to execute and deliver to the City of Cincinnati for the benefit of the general pedestrian public, on behalf of BRE, in his/her capacity as such officer, a certain Grant of Sidewalk Easement relating to certain real property owned by BRE and located at the corner of Glenway Avenue and Werk Road in Cincinnati, Ohio.

Dated as of October 14, 2020.

Signature: 
Printed Name: JOHN HENNRICHSEN
Title: EVP - PRESIDENT - MIDWEST