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[SPACE ABOVE FOR RECORDER'S USE]

## GRANT OF EASEMENT

(Retaining wall upon a portion of Brookfield Avenue)

This Grant of Easement is made as of the Effective Date, as defined on the signature page hereof by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in favor of **Daniel K. Epstein, Trustee of the D.K. Epstein Revocable Trust, dated March 7, 2019**, the tax-mailing address of which is 1208 Hidden Wood Place, Cincinnati, Ohio 45208 ("**Grantee**").

### Recitals:

A. By virtue of a Deed recorded in Official Record 14062, Page 1345 Hamilton County, Ohio Recorder's Office, Grantee owns the real property located at 1208 Hidden Wood Place, Cincinnati, Ohio, as more particularly described on Exhibit A – (*Legal Description – Benefitted Property*) and depicted on Exhibit B – (*Plat of Survey*) hereto (the "**Benefitted Property**").

B. The City owns the adjoining Brookfield Avenue public right-of-way, which is under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

C. Grantee has requested an encroachment easement from the City for an improvement that encroaches upon a portion of the Brookfield Avenue right-of-way (namely, a raised patio retaining wall, the "**Improvement**").

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

E. The City's Real Estate Services Division has determined that the fair market value of the easements, as determined by appraisal, is \$200 which has been deposited with the Real Estate Services Division.

F. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the easements at its meeting on May 6, 2022.

G. Cincinnati City Council approved the easements by Ordinance No. \_\_\_\_-2022, passed on \_\_\_\_\_, 2022.

NOW THEREFORE, the parties do hereby agree as follows:

1. Grant of Encroachment Easement. The City does hereby grant to Grantee, on the terms and conditions set forth herein, as an appurtenance to and for the benefit of the Benefitted Property, a non-exclusive encroachment easement for the maintenance, repair, replacement, and removal of the Improvement that encroaches on, over, across, and under a portion of the Brookfield Avenue public right-of-way, as depicted on Exhibit B and described on Exhibit C (Legal Description – Encroachment Easement) hereto (the “**Encroachment Easement**”). Grantee shall not make any structural changes, alterations, or modifications to the Improvement without the City’s prior written consent. Notwithstanding anything herein to the contrary, the Encroachment Easement shall automatically terminate upon (i) the complete demolition of the Improvement; (ii) any permanent alteration of the Improvement that entails the elimination of the Improvement within the Encroachment Easement area such that the Encroachment Easement would be rendered unnecessary; or (iii) upon written notice from the City if the City determines that it needs the Encroachment Easement area or any portion thereof for a municipal purpose, including, without limitation to the implementation of Americans with Disabilities Act (“**ADA**”) regulations compliance or accessibility standards; (iv) or upon written notice from the City if the City determines that the Improvement is creating a public safety issue, such as noncompliance with ADA accessibility regulations, contributing to adverse impacts on the usability or accessibility of any public right-of-way facilities.

2. Maintenance and Repairs. Grantee, at no cost to the City, shall at all times maintain the Improvement in a continuous state of good and safe condition and repair. Grantee acknowledges that there may be existing easements, utility lines and related facilities in the vicinity of the Encroachment Easement area (“**Third Party Utility Lines**”). In connection with Grantee’s activities within the Encroachment Easement area, Grantee shall not interfere with the access of any relevant utility company to maintain and repair the Third-Party Utilities Lines, and shall, at Grantee’s expense, promptly repair any and all damage to the Third Party Utility Lines caused by Grantee, its agents, employees or contractors. Any relocation of Third-Party Utility Lines necessitated by Grantee’s activities shall be handled entirely at Grantee’s expense. All work undertaken by Grantee hereunder shall be in compliance with all applicable codes, laws, and other governmental standards, policies, guidelines and requirements.

3. Insurance; Indemnification. At all times during which Grantee is undertaking construction activities within the Encroachment Easement area, and in addition to whatever other insurance and bond requirements as the City may from time to time require, 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/\$1,000,000 aggregate, or in such greater amount 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 construction activities within the Encroachment Easement area. 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 Improvement, 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 reasonable 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 Improvement.

4. Covenants Running with the Land. The provisions hereof shall run with the land and shall inure to the benefit of the City and be binding upon Grantee and its successors-in-interest with respect to the Benefitted Property.

5. Coordinated Report Conditions (CR #92-2020). The following additional conditions shall apply:

(a) DOTe:

(b) Duke Energy: Duke Energy land services has an underground gas main that must be available to be accessed at all times.

(c) Cincinnati Bell Telephone: Cincinnati Bell has underground facilities at this location that 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 the easement shall be handled entirely at Grantee's expense.

6. Exhibits. The following exhibits are attached hereto and made a part hereof:  
Exhibit A – *Legal Description - Benefitted Property*  
Exhibit B – *Site Survey – Survey Plat*

Executed by the parties on the dates set forth below of acknowledgement indicated below.

**CITY OF CINCINNATI**

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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 acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

Approved by:

\_\_\_\_\_  
John S. Brazina, Director  
Department of Transportation and Engineering

Approved as to Form by:

\_\_\_\_\_  
Assistant City Solicitor

Acknowledged and Accepted:

**Daniel K. Epstein, Trustee of the D.K. Epstein Revocable Trust,  
dated March 7, 2019**

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

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2022

This instrument prepared by:  
City of Cincinnati Law Department  
801 Plum Street, Suite 214  
Cincinnati, OH 45202

**EXHIBIT A**

to Grant of Encroachment Easement

*LEGAL DESCRIPTION - BENEFITTED PROPERTY*

**Property Address:** 1208 Hidden Wood Place, Cincinnati, Ohio 45208

**Auditor's Parcel No.:** 043-0004-0001-00 (-1, -2, -124 Cons.)

SITUATE IN THE CITY OF CINCINNATI, HAMILTON COUNTY, OHIO AND BEING KNOWN, NUMBERED AND DESIGNATED AS LOT NOS. 68 AND 69 OF KILGOUR'S THIRD SUBDIVISION OF MT. LOOKOUT AS RECORDED IN PLAT BOOK 5, PAGE 16 OF THE PLAT RECORDS IN THE OFFICE OF THE RECORDER OF SAID COUNTY.

ALSO, THE FOLLOWING DESCRIBED REAL ESTATE:

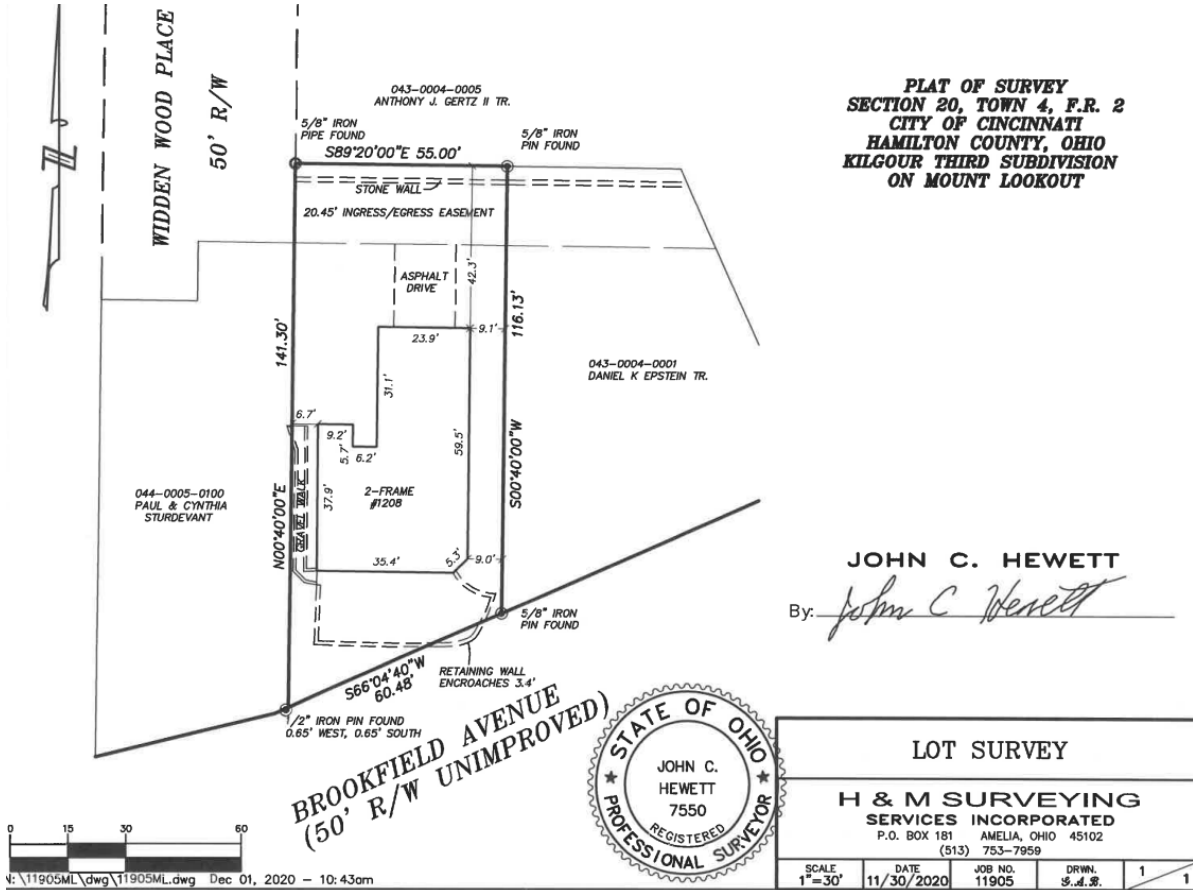
SITUATE IN SECTION 20, TOWN 4, FRACTIONAL RANGE 2, CITY OF CINCINNATI, COUNTY OF HAMILTON, STATE OF OHIO AND BEING THE WESTERN MOST FIVE FEET OF LOT 70 OF KILGOUR'S THIRD SUBDIVISION OF MT. LOOKOUT, PLAT BOOK 5, PAGE 16, HAMILTON COUNTY RECORDER'S OFFICE, THE EASTERN LINE OF WHICH FIVE FOOT STRIP BEARS S. 0 DEG. 40' W, 116.13 FEET FROM THE SOUTHEASTERLY LINE OF SAID LOT 70 TO THE NORTH LINE OF SAID LOT 70, CONTAINING 586.38 SQUARE FEET MORE OR LESS.

THERE ARE EXCEPTED FROM THE WARRANTY COVENANTS SET FORTH HEREIN, MATTERS OF ZONING, CONDITIONS AND RESTRICTIONS, AND EASEMENTS OF RECORD.

**EXHIBIT B**

to Grant of Encroachment Easement

Survey Plat



**PLAT OF SURVEY  
SECTION 20, TOWN 4, F.R. 2  
CITY OF CINCINNATI  
HAMILTON COUNTY, OHIO  
KILGOUR THIRD SUBDIVISION  
ON MOUNT LOOKOUT**

**JOHN C. HEWETT**

By: *John C. Hewett*