

Attachment A
Grant of Encroachment Easements

[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF ENCROACHMENT EASEMENTS

(door swing and step encroachments upon Harrison Avenue and Ruhlman Place at 3044 Harrison Avenue)

This Grant of Encroachment Easements is made this ____ day of _____, 2020 by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in favor of **K-S REALTY HOLDINGS, LLC**, an Ohio limited liability company, the tax-mailing address of which is 3636 Muddy Creek Drive, Cincinnati, OH 45238 ("**Grantee**").

Recitals:

A. By virtue of a Deed recorded in Official Record 8887, Page 2022 Hamilton County, Ohio Recorder's Registered Land Records, Grantee owns the real property located at 3044 Harrison Avenue, Cincinnati, Ohio, generally located at the northeast corner of the intersection of Harrison Avenue and Ruhlman Place in the Westwood neighborhood of Cincinnati, as more particularly described on Exhibit A – (*Legal Description – Benefitted Property*) hereto (the "**Benefitted Property**").

B. The City owns the adjoining Harrison Avenue and Ruhlman Place public rights-of-way, which are under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

C. Grantee has requested three (3) encroachment easements from the City for improvements that encroach upon portions of the Harrison Avenue and Ruhlman Place rights-of-way (namely, two door swing encroachments and an encroachment for steps; collectively, the "**Improvements**" and each an "**Improvement**", as applicable).

D. The City Manager, in consultation with DOTE, has determined that the easements will not have an adverse effect on the City's retained interest in the public right-of-way.

E. The City's Real Estate Services Division has determined that the fair market value of the easements, as determined by appraisal, is \$100, 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 July 17, 2020.

G. Cincinnati City Council approved the easements by Ordinance No. ____-2020, passed on _____, 2020.

NOW THEREFORE, the parties do hereby agree as follows:

1. Grant of Encroachment Easements. 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, the following three non-exclusive easements for the maintenance of the Improvements: (i) two encroachment easements for doors and their associated swing radii that encroach into the Ruehlman Place right-of-way, as depicted on Exhibit B (Site Survey) and described on Exhibit C (Legal Description – Door Swing Easements) hereto (the “**Door Swing Easements**”), and (ii) an encroachment easement for steps upon the Harrison Avenue right-of-way, as depicted on Exhibit B and described on Exhibit D (Legal Description – Step Easement) hereto (the “**Step Easement**,” and together with the Door Swing Easements, the “**Encroachment Easements**,” and each an “**Encroachment Easement**,” as applicable). Grantee shall not make any modifications to the Improvements without the City’s prior written consent. Notwithstanding anything herein to the contrary, the Encroachment Easements shall automatically terminate upon (x) the complete demolition of the building; (y) any permanent alteration of the building that entails the elimination of an Improvement within an easement area such that the respective Encroachment Easement would be rendered unnecessary; or (z) upon written notice from the City if the City determines that it needs the easement areas or any portions thereof for a municipal purpose or upon DOTE’s determination that the Improvements are creating a public safety issue.

2. Maintenance and Repairs. Grantee, at no cost to the City, shall at all times maintain the Improvements 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 easement areas (“**Third Party Utility Lines**”). In connection with Grantee’s activities within the easement areas, 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 easement areas, 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 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 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 Improvements.

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 #41-2019). The following additional conditions shall apply:

(a) DOTE:

(i) Petitioner is required to coordinate work, including schedule and grades, with DOTE's Project Manager for the City's streetscape project being constructed in 2020 on Harrison Avenue.

(ii) The two doors on Ruehlman Place are to be glass, or mostly glass, to allow user visibility.

(iii) Petitioner is required to apply for a Revocable Street Privilege for planters on either side of both doors on Ruehlman Place.

(iv) 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.

(b) Cincinnati Bell Telephone: Cincinnati Bell has underground telecommunication facilities at this location. The existing facilities must remain in place, in service, and be able to be accessed. Any damage done to the facilities or any work done to relocate the facilities as a result of the Encroachment Easements will be handled entirely at the property owner'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*
Exhibit C – *Legal Description – Door Swing Easements*
Exhibit D – *Legal Description – Step Easement*

[Signature Page Follows]

Executed on the date of acknowledgement indicated below.

CITY OF CINCINNATI

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. 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:

K-S REALTY HOLDINGS, LLC,
an Ohio limited liability company

By: _____

Printed name: _____

Title: _____

Date: _____, 2020

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

EXHIBIT A

to Grant of Encroachment Easements

LEGAL DESCRIPTION - BENEFITTED PROPERTY

Property Address: 3044 Harrison Avenue, Cincinnati, Ohio 45211

Auditor's Parcel No.: 210-0075-0094-00

Situate, lying and being in Section 9, Town 2, Fractional Range 2 of the Miami Purchase in Cincinnati, Hamilton County, Ohio and being part of Lot Number One (1) of Peter Ruehlman's Homestead Subdivision as the same is recorded in Plat Book 24, page 32 of the Hamilton County, Ohio Records, and being more particularly described as follows: Beginning at the southwesterly corner of Lot Number One (1) of Peter Ruehlman's Homestead Subdivision, said beginning point also being the northeasterly corner of Harrison Avenue and Ruehlman Place; thence measure north 75 deg. east 111.27 feet to an old stake; thence north 14 deg. 30' west 96.62 feet to a point; thence south 81 deg. 50' west 39.05 feet to a point; thence south 64 deg. 35' west 108.70 feet to a point in the easterly line of Harrison Avenue; thence in a southeasterly direction along the easterly line of Harrison Avenue 83.05 feet to the point and place of beginning.

EXHIBIT B

to Grant of Encroachment Easements

Site Survey

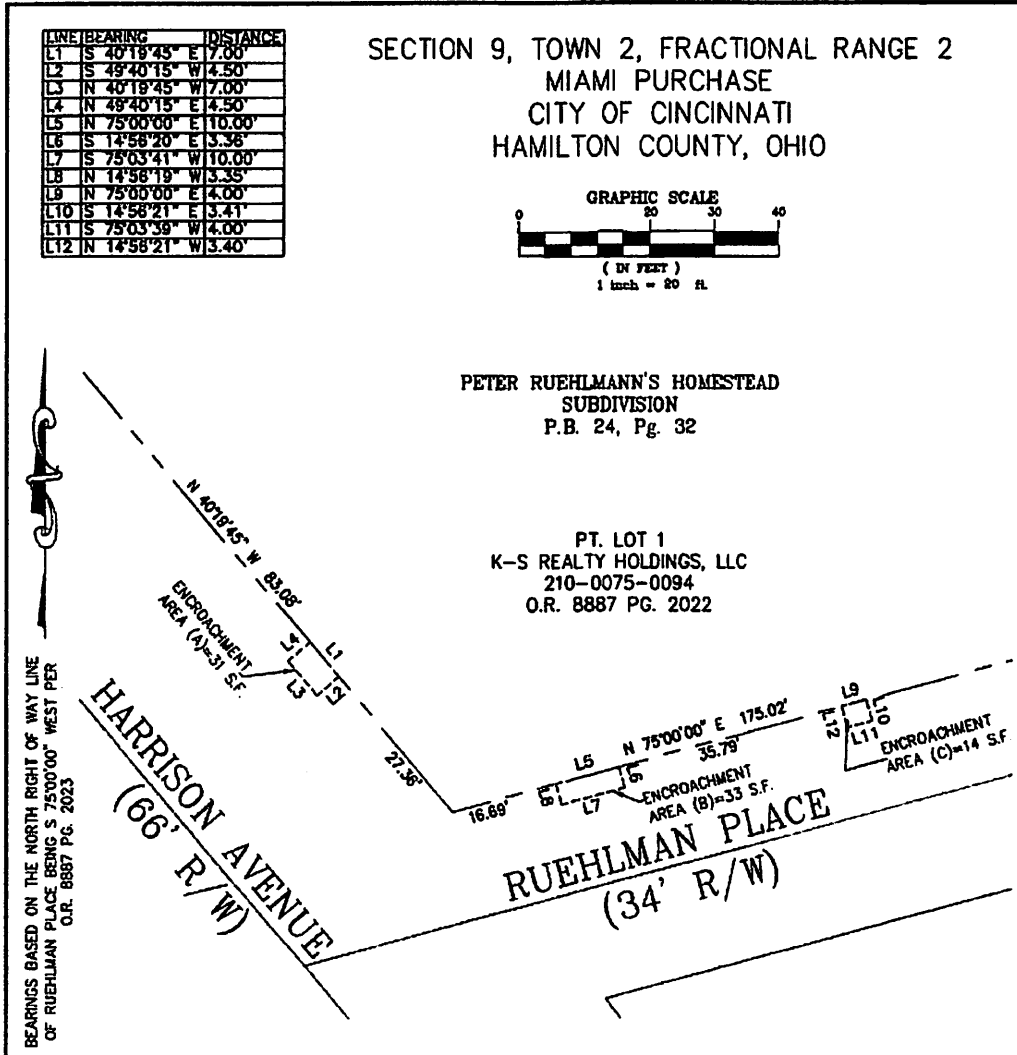


EXHIBIT C

to Grant of Encroachment Easements

Legal Description – Door Swing Easements

ENCROACHMENT AREA (B)

Being in section 9, Township 2, Fractional Range 2 of the Miami Purchase, City of Cincinnati, County of Hamilton, State of Ohio and being adjacent to the tract of land conveyed to K-S Realty Holdings, LLC in O.R. 8887, Page 2022 of Hamilton County, Ohio, and more particularly described as follows:

COMMENCING at the intersection of north right of way of Ruehlman Place and east right of way of Harrison Avenue;

Thence along the north right of way of Ruehlman Place, North 75°00'00" East a distance of 16.69 feet to the POINT OF BEGINNING;

Thence along said right of way line, North 75°00'00" East a distance of 10.00 to a point;

Thence through said right of way for the following 3 courses:

1. South 14°56'20" East a distance of 3.36 feet;
2. South 75°03'41" West a distance of 10.00 feet;
3. North 14°56'19" West a distance of 3.35 feet to the POINT OF BEGINNING.

Containing 33 Square feet, more or less.

Bearings are based on the North right of way line of Ruehlman Place being South 75°00'00" West per O.R. 8887 Pg. 2022.

ENCROACHMENT AREA (C)

Being in section 9, Township 2, Fractional Range 2 of the Miami Purchase, City of Cincinnati, County of Hamilton, State of Ohio and being adjacent to the tract of land conveyed to K-S Realty Holdings, LLC in O.R. 8887, Page 2022 of Hamilton County, Ohio, and more particularly described as follows:

COMMENCING at the intersection of north right of way of Ruehlman Place and east right of way of Harrison Avenue;

Thence along the north right of way of Ruehlman Place, North 75°00'00" East a distance of 62.49 feet to the POINT OF BEGINNING;

Thence along said right of way line, North 75°00'00" East a distance of 4.00 to a point;

Thence through said right of way for the following 3 courses:

1. South 14°56'21" East a distance of 3.41 feet;
2. South 75°03'39" West a distance of 4.00 feet;
3. North 14°56'21" West a distance of 3.40 feet to the POINT OF BEGINNING.

Containing 14 square feet, more or less.

Bearings are based on the North right of way line of Ruehlman Place being South 75°00'00" West per O.R. 8887 Pg. 2022.

EXHIBIT D

to Grant of Encroachment Easements

Legal Description – Step Easement

ENCROACHMENT AREA (A)

Being in section 9, Township 2, Fractional Range 2 of the Miami Purchase, City of Cincinnati, County of Hamilton, State of Ohio and being adjacent to the tract of land conveyed to K-S Realty Holdings, LLC in O.R. 8887, Page 2022 of Hamilton County, Ohio, and more particularly described as follows:

COMMENCING at the intersection of north right of way of Ruehlman Place and east right of way of Harrison Avenue;

Thence along the east right of way of Harrison Avenue, North 40°19'45" West a distance of 27.36 feet to the POINT OF BEGINNING;

Thence through said right of way for the following 3 courses:

1. South 49°40'15" West a distance of 4.50 feet;
2. North 40°19'45" West a distance of 7.00 feet;
3. North 49°40'15" East a distance of 4.50 feet to the aforesaid east right of way line of Harrison Avenue;

Thence with said right of way line, South 40°19'45" East a distance of 7.00 to the POINT OF BEGINNING.

Containing 31 square feet, more or less.

Bearings are based on the North right of way line of Ruehlman Place being South 75°00'00" West per O.R. 8887 Pg. 2022.