

City of Cincinnati

An Ordinance No. _____

CHM

- 2021

AWB

AUTHORIZING the City Manager to execute a *Grant of Easement* in favor of HTS Properties LLC, pursuant to which the City of Cincinnati will grant a driveway encroachment easement upon property known as Bercliff Avenue in Northside.

WHEREAS, HTS Properties LLC, an Ohio limited liability company ("Grantee"), owns certain real property located at 1448 Bercliff Avenue in Northside; and

WHEREAS, the City of Cincinnati owns property adjoining Grantee's property identified as Hamilton County, Ohio Auditor's Parcel Identification No. 221-0021-0028-90 (the "Property"), which Property is known as Bercliff Avenue and is under the management of the City's Department of Transportation and Engineering ("DOTE"); and

WHEREAS, Grantee desires to build a single-family home and has requested a driveway encroachment easement from the City to improve and use an unimproved portion of Bercliff Avenue, as more particularly depicted and described in the *Grant of Easement* attached to this ordinance as Attachment A and incorporated herein by reference; and

WHEREAS, the City Manager, in consultation with DOTE, has determined (i) that granting the easement to Grantee is not adverse to the City's retained interest in the Property; and (ii) that granting the easement will not have an adverse effect on the usability or accessibility of any existing transportation facilities located on the Property; and

WHEREAS, pursuant to Cincinnati Municipal Code Sec. 331-5, the City Council may authorize the encumbrance of City-owned property without competitive bidding in those cases in which it determines that it is in the best interest of the City; and

WHEREAS, the City's Real Estate Services Division has determined by an appraisal that the fair market value of the easement is approximately \$540, which Grantee has agreed to pay; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the easement at its meeting on October 15, 2021; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute a *Grant of Easement* in favor of HTS Properties LLC, an Ohio limited liability company ("Grantee"), owner of the

property located at 1448 Bercliff Avenue in Northside, in substantially the form attached to this ordinance as Attachment A and incorporated herein by reference, pursuant to which the City of Cincinnati will grant to Grantee an easement to permit the improvement and use of pavement for a driveway, curbs, gutters, and apron on, under, over, and across a portion of Bercliff Avenue identified as Hamilton County, Ohio Auditor's Parcel Identification No. 221-0021-0028-90 (the "Property").

Section 2. That granting the easement to Grantee (i) is not adverse to the City's retained interest in the Property; and (ii) will not have an adverse effect on the usability or accessibility of any existing transportation facilities located on the Property.

Section 3. That it is in the best interest of the City to grant the easement without competitive bidding because, as a practical matter, no one other than Grantee, an adjoining property owner, would have any use for the easement.

Section 4. That the fair market value of the easement, as determined by appraisal by the City's Real Estate Services Division, is approximately \$540, which Grantee has agreed to pay.

Section 5. That the proceeds from the *Grant of Easement* shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City's Real Estate Services Division in connection with the easement, and that the City's Finance Director is hereby authorized to deposit amounts in excess thereof, if any, into Miscellaneous Permanent Improvement Fund 757.

Section 6. That the City's Finance Director is authorized to transfer and appropriate such excess funds from Miscellaneous Permanent Improvement Fund 757 into Capital Improvement Program Project Account No. 980x233xYY2306, "Street Improvements," in which "YY"

represents the last two digits of the fiscal year in which the closing occurs and the proceeds are received, referencing the latter fiscal year if the events occur in different fiscal years.

Section 7. That the City Manager and other City officials are authorized to take all necessary and proper actions to carry out the provisions of this ordinance and to fulfill the terms of the *Grant of Easement*, including, without limitation, executing any and all ancillary agreements, plats, and other real estate documents.

Section 8. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

ATTACHMENT A

[SPACE ABOVE FOR RECORDER'S OFFICE]

Property: Bercliff Avenue, Cincinnati, OH 45223

GRANT OF EASEMENT

This Grant of Easement is made as of the Effective Date, as defined by the signature page hereof, by the **CITY OF CINCINNATI**, an Ohio municipal corporation, with an address of 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in favor of **HTS PROPERTIES LLC**, an Ohio limited liability company, whose address is 3024 Kinmont Street, Cincinnati, OH 45208 ("**Grantee**").

Recitals:

A. By virtue of a *Deed* recorded on January 25, 1960, in Deed Book 3072, Page 73, Hamilton County, Ohio Records, the City owns a parcel of land used for transportation purposes and designated as Bercliff Avenue, which property is identified as Hamilton County, Ohio Auditor's Parcel ID No.: 221-0021-0028-90, as more particularly described on Exhibit A (Legal Description – Bercliff Avenue) and depicted on Exhibit B (Survey Plat – Bercliff Avenue) hereto ("**Bercliff Avenue**"). Bercliff Avenue is under the management of the City's Department of Transportation and Engineering ("**DOT**").

B. By virtue of a *Quitclaim Deed* recorded on February 14, 2019, in Official Record 13855, Page 926, Hamilton County, Ohio Records, Grantee owns certain real property that abuts an unimproved portion of Bercliff Avenue, namely, 1448 Bercliff Avenue, as more particularly described on Exhibit C (Legal Description - Benefitted Property) hereto (the "**Benefitted Property**"). The Benefitted Property is vacant land on which Grantee desires to build a single-family home (the "**Structure**").

C. Grantee has requested a non-exclusive easement to improve a portion of Bercliff Avenue with pavement for a driveway, curbs, gutters, and apron, as described on Exhibit D (Legal Description – Easement Area) and depicted on Exhibit E (Easement Plat) hereto (the "**Driveway Encroachment Easement**", and the "**Easement Area**", as applicable) for the benefit of the Benefitted Property.

D. The City Manager, in consultation with DOTE, has determined that (i) granting the Driveway Encroachment Easement will not have an adverse effect on the City's retained interest in Bercliff Avenue, and (iii) granting the Driveway Encroachment Easement will not have an adverse effect on the usability or accessibility of any existing Bercliff Avenue transportation facilities.

E. The fair market value of the Driveway Encroachment Easement, as determined by professional appraisal by the City's Real Estate Services Division, is \$540, which has been deposited with the City Treasurer.

F. The City Planning Commission, having the authority to approve the change in use of City-owned property, approved the Driveway Encroachment Easement at its meeting on October 15, 2021.

G. Execution of this instrument was authorized by Ordinance No. []-2021, passed by Cincinnati City Council on [], 2021.

NOW THEREFORE, for and in consideration of the amount hereinabove stated, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Grant of 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 on, under, over, and across those portions of Bercliff Avenue, as described on Exhibit D, and depicted on Exhibit E hereto for the excavation, grading, improvement, construction, installation, use, maintenance, repair, reconstruction, resurfacing, and removal of impervious surfaces, without limitation to, pavement, curbs, gutters, and apron in connection with a driveway to serve the Benefitted Property (the "**Improvements**").

2. **Permitted Use; Termination.**

(A) **Permitted Use.** Grantee, its successors-in-interest, and assigns shall have the non-exclusive right to use the Driveway Encroachment Easement for the sole and limited purpose of pedestrian and vehicular ingress and egress. Grantees shall not use or permit the use of the Driveway Encroachment Easement in any manner that (i) is inconsistent with the rights granted herein, (ii) interferes with or impairs the use of Bercliff Avenue by the City for municipal purposes, or (iii) impairs or interferes with the rights of members of the public to use Bercliff Avenue.

(B) **Termination.** Notwithstanding anything herein to the contrary, the Driveway Encroachment Easement shall automatically terminate (i) upon any permanent alteration or elimination of the Improvements within the Easement Area such that the Driveway Encroachment Easement would be rendered unnecessary, (ii) upon written notice from the City if the City determines that it needs the 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, or (iii) 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, contributing to adverse impacts on the usability or accessibility of any Bercliff Avenue transportation facilities.

3. **Construction; Alterations; Maintenance and Repairs; No Liens.**

(A) **Construction.** Grantee shall be solely responsible for all costs associated with the design and construction of the Improvements. Prior to construction, Grantee shall submit all drawings and obtain all permits as required by DOTE. Grantee shall ensure full compliance with all City standards, policies and guidelines and shall promptly remove and correct non-conforming work as directed by DOTE.

(B) **No Alterations.** Once installed, Grantee, its successors, and assigns shall not make any enlargements or other modifications to the Improvements without the prior written consent of the City.

(C) **Maintenance and Repairs.** Grantee, its successors-in-interest, and assigns, at no cost to the City, shall maintain the Improvements (and any and all other future improvements within the Easement Area that may be constructed by Grantee, its successors-in-interest, and assigns, with the City's prior written consent) in a continuous state of good and safe condition and repair as determined by DOTE, including, without limitation to, promptly repairing any and all damage thereto, no matter how

caused. Grantee acknowledges that there may be existing easements for utility lines and related facilities in the vicinity of the Easement Area ("**Third Party Utility Lines**"). In connection with Grantee's construction, maintenance, repair and use of the Improvements, Grantee shall not interfere with the access of utility companies to maintain and repair the Third Party Utility Lines and shall, at Grantee's expense, promptly repair any and all damage to Third Party Utility Lines caused by Grantee, its agents, employees, contractors, subcontractors, licensees or invitees. Any relocation of Third Party Utility Lines necessitated by Grantee's activities under this instrument shall be handled entirely at Grantee's expense. All activities undertaken by Grantee under this instrument shall be in compliance with all applicable codes, laws, and other governmental standards, policies, guidelines and requirements.

(D) **No Liens.** Grantee, its successors-in-interest, and assigns shall not permit any mechanics liens to attach to the Easement Area or any portion of Bercliff Avenue in connection with the Improvements.

4. **Insurance; Indemnification.** In addition to whatever other insurance and bond requirements as the City may from time to time require, before undertaking any construction activities within the Easement Area, Grantee, its successors-in-interest, and assigns 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, its successors-in-interest, and assigns hereby waive 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 attorney's fees), liability and damages suffered or incurred by, or asserted against, the City in connection with the Improvements.

5. **Default.** If Grantee, its successors-in-interest, or assigns fail to perform any required work under this instrument, and fails to address the same to DOTE's satisfaction within thirty (30) days after receiving written notice thereof from DOTE, 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 Benefitted 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.

6. **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 City, Grantee, and their respective successors-in-interest, and assigns.

7. **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.

8. **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 1448 Bercliff Avenue, Cincinnati, OH 45202, 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 {00350707-1}

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.

9. **Coordinated Report Conditions (#19-2021).** Notwithstanding anything in this instrument to the contrary, the following conditions shall apply:

(A) **DOTe:**

(i) [Intentionally Omitted].

(ii) A site plan must be included that shows the proposed dimensions and elevations of the driveway. The driveway width will be dependent on the number of residents it serves and fire access. The proposed driveway must not cause drainage problems that will impact the surrounding properties.

(iii) The driveway apron within the portion of the adjacent improved roadway right-of-way must be 7" thick concrete in accordance with City Standard Drawing Acc. No. 21436. The remainder of the driveway in the public right-of-way must be constructed with a hard surface such as concrete, asphalt or pavers.

(iv) [Intentionally Omitted].

(v) Access must be granted to all existing and future users that abut the paper street. Maintenance agreements must be negotiated with future driveway users.

(vi) [Intentionally Omitted].

(vii) A DOTE street opening permit, obtained by a DOTE licensed street contractor, is required for all work 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.

(viii) [Intentionally Omitted].

(B) **Metropolitan Sewer District of Greater Cincinnati ("MSDGC").**

(i) Site and area drainage issues should be addressed by the City of Cincinnati's Stormwater Management Utility of the Department of Greater Cincinnati Waterworks.

(ii) The manhole located in the Easement Area shall remain public, and any work over the sewer and the manhole will require an MSDGC Excavation & Fill permit.

(iii) Any adjustments to the casting to match the grade of the driveway will require MSDGC permits.

(iv) The manhole lid shall not be set low in the driveway in such a way as to allow storm water infiltration.

(C) **Greater Cincinnati Water Works.**

(i) Within or adjacent to the Easement Area, there is [x] an existing 6" public water main, [y] a public fire hydrant, and [z] a ¾-inch (H-146926) water service line. Grantee's contractor is responsible for contacting OUPS at 1-800-362-2764 at least 2 full working days prior to the start of any work. Grantee is responsible for contacting any owners of underground utilities not registered with OUPS prior to any work.

(ii) Any damage to existing public water system or water service branch must be repaired at petitioner's expense in the presence of a Water Works inspector.

10. 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.

11. Exhibits. The following exhibits are attached hereto and made a part hereof:

- Exhibit A – *Legal Description-Bercliff Avenue*
- Exhibit B – *Survey Plat-Bercliff Avenue*
- Exhibit C – *Benefitted Property*
- Exhibit D – *Legal Description -Easement Area*
- Exhibit E – *Easement Plat*

[Remainder of this Page is Intentionally Blank; Signature Pages to Follow]

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

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 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

ACKNOWLEDGED AND ACCEPTED BY:
HTS Properties LLC,
an Ohio limited liability company

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by _____, the _____ of **HTS Properties LLC**, an Ohio limited liability company, on behalf of the limited liability company. 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: _____

This instrument prepared by:

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

EXHIBIT A
Legal Description-Bercliff Avenue

Situated, lying and being in Section 22, Town 3, Fractional Range 2, Mill Creek Township in the City of Cincinnati, County of Hamilton, State of Ohio and being part of Lots 28 and 29 of J. C. Ludlow's Estate as recorded in Plat Book 2, page 122, Hamilton County Recorder's Office and being part of a private street known as Bercliff Avenue and being more particularly described as follows:

From the intersection of the west line of Dane Avenue (a 66 foot street) and the north line of Lot No. 49 of Weigold and Benz's Subdivision as recorded in Plat Book 27, page 57, Hamilton County Recorder's Office, measure North 6° 05' West along the west line of Dane Avenue a distance of 30.03 feet to a point in the southerly line of Bercliff Avenue for the place of beginning; thence north-westwardly along said southerly line, which is along a curve, deflecting to the left and having a radius of 100 feet, a distance of 157.05 feet, the chord of said curve bears North 51° 04' 30" West a distance of 141.40 feet; thence South 83° 56' West, along the southerly line of Bercliff Avenue and tangent to the last described curve, a distance of 450.03 feet to a point in the west line of Bercliff Avenue, which is also a point in the east line of the Board of Education property as recorded in Deed Book 2552, page 417, Hamilton County Records; thence North 6° 05' West, along said west line a distance of 50 feet to a point in the north line of Bercliff Avenue; thence North 83° 56' East, along said north line, a distance of 550 feet to a point in the west line of Dane Avenue as prolonged northwardly, which is also a point in the westerly line of the Board of Education property as recorded in Deed Book 2552, page 417, Hamilton County Records; thence South 6° 05' East, along the west line of Dane Avenue and its prolongation northwardly, a distance of 149.97 feet to the place of beginning.

{00350707-1}



EXHIBIT C
BENEFITTED PROPERTY

Lying and being in Section 22, Town 3, Fractional Range 2, in the City of Cincinnati, County of Hamilton and State of Ohio, and being more particularly described as follows:

Beginning at a point in the north line of a fifty (50) foot strip of ground reserved for street purposes, and to be known as "Bercliff Avenue" North 3 degrees 25 minutes West, three hundred fifteen (315) feet, and South 86 degrees 36 minutes West, four hundred ninety (490) feet from the intersection of the north line of Weigold Avenue and the west line of Dana Street; (the above mentioned 315 feet being measured along the west line of Dana Street produced northwardly); thence South 86 degrees 36 minutes west, along the north line of said proposed Bercliff Avenue, sixty-five (65) feet; thence north 3 degrees 25 minutes west, one hundred ten (110) feet; thence north 86 degrees 36 minutes East, sixty-five (65) feet; thence south 3 degrees 25 minutes east, one hundred ten (110) feet to the north line of proposed Bercliff Avenue and the place of beginning.

EXHIBIT D
LEGAL DESCRIPTION -EASEMENT AREA

Situate in Section 22, Town 3, Fractional Range 2, in the City of Cincinnati, Hamilton County, Ohio, being an easement for driveway purposes within the Bercliff Avenue right of way and being more particularly described as follows:

Commencing at the northwesterly terminus of said Bercliff Avenue; thence North $83^{\circ} 56' 00''$ East along the northerly right of way line of said Bercliff Avenue, a distance of 27.81 feet to the **REAL PLACE OF BEGINNING** for the following described easement; thence continuing North $83^{\circ} 56' 00''$ East along said northerly right of way line, a distance of 21.74 feet; thence southeastwardly along a curve deflecting to the left, having a radius of 20.00 feet, a distance of 29.42 feet (the chord of said curve bearing South $53^{\circ} 44' 35''$ East, a distance of 26.84 feet); thence North $84^{\circ} 06' 53''$ East, a distance of 10.98 feet; thence South $05^{\circ} 53' 07''$ East, a distance of 12.00 feet; thence South $84^{\circ} 06' 53''$ West, a distance of 17.99 feet; thence northwestwardly along a curve deflecting to the right, having a radius of 35.00 feet, a distance of 49.90 feet (the chord of said curve bearing North $55^{\circ} 02' 31''$ West, a distance of 45.78 feet) to the place of beginning. Containing 854.95 square feet of land, more or less.

April 6, 2021

Prepared by: John J. Duffy & Associates, Inc.

4838 Duff Drive, Suite "E"

Cincinnati, Ohio 45246

20-04

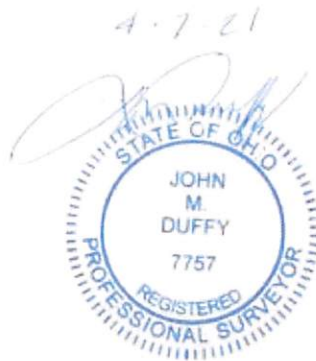


EXHIBIT E EASEMENT PLAT

