

QUIT-CLAIM ENCROACHMENT EASEMENT

A. **CITY OF COLUMBUS OHIO**, a municipal corporation (“Grantor”), and **ABC LLC, an Ohio limited liability company** (“Grantee”), determined that a sidewalk vault associated with Grantee’s real property encroaches into and under the public right-of-way (“Encroachment”);

B. Grantee understands Grantor is concerned about protecting the general public and maintaining the public right-of-way in a manner that safely allows for pedestrian and vehicular traffic;

C. Grantee requests for the Encroachment to remain in the public right-of-way as opposed to removing the Encroachment;

D. Grantor reviewed Grantee’s request and determined the Encroachment is permitted to encroach into the right-of-way as a matter of convenience to Grantee so long as Grantee complies with all provisions of this instrument (collectively, “Easement”) and adequately maintains the Encroachment pursuant to Grantor’s specifications and all provisions described in this Easement; &

NOW, THEREFORE, **CITY OF COLUMBUS, OHIO**, a municipal corporation (*i.e.* Grantor), for consideration given by **ABC LLC, an Ohio limited liability company** (*i.e.* Grantee), does quit claim grant to Grantee and Grantee’s successors and assigns a nonexclusive, appurtenant, encroachment easement in, under, through, and burdening the following described tract of real property (“Easement Area”) for so long as the Easement Area is only used exclusively to operate, maintain, control, repair, and secure an existing underground sidewalk vault and associated appurtenances (*i.e.* Encroachment) for the sole benefit of Grantee’s building improvement on Grantee’s adjacent real property (“Dominant Estate,” which is described in the attachment, **Exhibit-B**, and fully incorporated into this Easement for reference); however, this Easement is subject to (i) Grantor’s reversionary rights, (ii) Grantee’s compliance of all provisions described in this Easement, and (iii) any previously and properly recorded right(s), covenant(s), condition(s), reservation(s), easement(s), servitude(s), restriction(s), and other applicable matter(s) in the servient estate’s title:

Easement Area: 0.000 Acre +/-

The legal description of the sidewalk vault encroachment should be included here.

The Easement Area for the Encroachment is depicted on the attachment, **Exhibit-A**, which is fully incorporated into this Easement for reference.

Franklin County Tax Parcel(s): N/A [Adj. **010-123456**];
Prior Instrument Reference(s): **P.B. 1, Pg. 2**;
Recorder's Office, Franklin County, Ohio;
Address(es): N/A [Adj. **1 High St., Columbus, OH 43215**].

TERMS & CONDITIONS

1. **EASEMENT APPURTENANT, SUCCESSORS & ASSIGNS.** This Easement and all of its provisions are forever binding and inuring to the benefit and detriment of Grantor and Grantee and their respective successors and assigns. Grantee’s exercise of any rights in this Easement or recordation of this Easement is deemed Grantee’s acceptance of all provisions described in this Easement.

2. **INDEMNIFICATION.** Grantee, its successors and assigns, agrees to indemnify, release, defend, and hold Grantor and all of Grantor’s agents, employees, and representatives harmless from and

against all claims, damages, losses, suits, and actions, which include attorney's fees, arising or resulting from Grantee and Grantee's agent(s), contractor(s), subcontractor(s), representative(s), or employee(s) (i) use of the Easement Area, (ii) operation, maintenance, control, repair, or securing of the Encroachment, and (iii) exercise of any rights in this Easement. In the event the Encroachment or the Grantee's use of the Easement Area causes any damage, cracking, settling, or disrepair to any of Grantor's right of way or improvements, including but not limited to the sidewalk, poles, signs or roadway, Grantee, at Grantee's sole cost, shall immediately notify Grantor in writing and thereafter immediately repair and restore the right of way or improvements according to Grantor's written specifications and approval. The promises made in this Easement are required to survive any termination or release of the Easement as to Grantee's successors and assigns.

3. RELEASE. Grantee, its successors and assigns, agrees to forever indemnify, release, defend, and hold Grantor and all of its agent(s), employee(s), and representative(s) harmless from and against all claims, damages, losses, suits, and actions, which include attorney's fees, arising or resulting from Grantor and its agent(s), contractor(s), subcontractor(s), representative(s), or employee(s) causing damage or injury to Grantee's property or persons within the Easement Area. This indemnification shall not apply to damages determined to be solely caused by the negligence or willful misconduct of Grantor, or its successors or assigns.

4. ENCUMBRANCES, TAXES & ASSESSMENTS. Grantee is prohibited from creating, causing, or allowing any other person or entity to create any debts, liens, mechanics liens, materialmen liens, mortgages, charges, or encumbrances against the Easement Area or servient estate. Grantee is otherwise exclusively responsible to pay to the appropriate authorities all applicable real estate taxes, assessments, or other charges levied against the Easement Area or Grantor's residue servient estate by any public authority relating to Grantee's rights in this Easement.

5. USE & RESTRICTIONS.

5.1. MAINTENANCE. Grantee is required to solely operate, maintain, control, repair, and secure the Encroachment in good repair and in a safe condition consistent with all applicable building and safety codes and practices.

5.2. LEGAL COMPLIANCE. Pursuant to Grantee's exercise of any rights in this Easement, Grantee is required to conduct all of its activity regarding the Encroachment or restoration of the Easement Area in strict compliance with all applicable federal, state, and local laws, rules, and regulations.

5.3. INSPECTION & RIGHT-OF-ENTRY. Grantor is permitted to access the Encroachment at any time and for any reason via the Public right-of-way adjacent to the Easement Area. Furthermore, Grantee agrees to allow Grantor's engineering staff, employees, contractors, or other authorized personnel a reasonable access to inspect the Encroachment via the Dominant Estate to ensure of the Encroachment's safety and integrity and Grantee's compliance with this Easement.

5.4. ENGINEER REPORTING. At any time upon a request by Grantor or at least once every five (5) years from the date of this Easement's execution by Grantor, even if Grantor does not make a request, Grantee is required to provide a written report to Grantor by an engineer licensed in the state of Ohio certifying that the Encroachment is (i) in good repair, (ii) does not need to be filled, and (iii) poses no risk of injury to persons or damage to the adjacent public right-of-ways, sidewalks, and roadways ("**Engineer Report**").

5.5. EXISTING UTILITIES & SURFACE CONDITION. Grantee's operation, maintenance, control, repair, and securing of the Encroachment in the Easement Area is strictly prohibited, in any manner, directly or indirectly, from (i) affecting any portions of any public or private utilities, including but not limited to water, storm and sanitary sewer, electric, traffic and gas utilities, existing in the Easement (collectively, "**Existing Utilities**") or located in, on, over, under, or adjacent to the Easement, and (ii) causing any type of surface settling or dipping that affects the surface condition, grade, or water drainage or retention in, on, over, or under, the Easement Area and adjacent areas thereto (collectively, "**Surface Condition**"). Accordingly, Grantee is required to (a) obtain all permits, approvals, and authorizations from any utility or public agency, including but not limited to Grantor; and (b) take all reasonable precautions to avoid impacting, in any manner, directly or indirectly, the Existing Utilities. In the event Grantee does impact the Existing Utilities or the Surface Condition, Grantee, at Grantee's sole cost and expense, is required to promptly restore the Existing Utilities and Surface Condition to the condition existing prior to Grantee's impact from exercising any rights from this Easement according to Grantor's written specification and satisfaction.

5.6. **RESTORATION.** As soon as practicable after any of Grantee's entries into the Easement Area to exercise any rights in this Easement, at Grantee's sole cost and expense, Grantee is required to (i) forever restore all of the Easement Area, including but not limited to Grantor's real property improvement(s), Existing Utilities, and Surface Condition located in, on, over, under, or adjacent to the Easement Area, to conditions aesthetically compatible with the existing public right-of-way and public sidewalk according to Grantor's written specifications and approval; or (ii), at Grantor's sole option and discretion, Grantee is required to monetarily compensate Grantor for all repair or restoration costs of the Easement Area, including but not limited to any of Grantor's real property improvement(s) and associated appurtenances, Existing Utilities, and Surface Condition located in, on, over, under, or adjacent to the Easement Area, which repair or restoration costs occurred or resulted from Grantee's exercise of any rights in this Easement in order to restore or repair the Easement Area to conditions aesthetically compatible with the existing public right-of-way and public sidewalk.

6. **TERMINATION.**

6.1. **GENERAL.** Grantor is permitted to terminate this Easement at any time and for any reason. Furthermore, Grantee is prohibited from releasing this Easement without obtaining Grantor's prior, written consent.

6.2. **REMOVAL.** Upon termination of this Easement and as necessary and appropriate to minimize any detrimental impacts to the Easement Area, at Grantee's sole cost and expense, Grantee is required to remove, abandon, and fill the Encroachment according to Grantor's written specifications and approval in order to not adversely affect the adjacent public right-of-way, public sidewalks, or Grantor's other real property improvement(s) and appurtenances in, on, under, or over, the Easement Area and adjacent areas thereto.

6.3. **REVERSION.** Grantor expressly reserves a reversionary interest in the Easement Area if Grantee performs any of the following: (i) shares, leases, sells, conveys, or transfers any of the Easement Area or any rights in this Easement without first obtaining Grantor's prior, written consent; however, nothing restricts Grantee's right to assign this Easement to Grantee's successors or assigns for the identical uses and purposes provided in this Easement; (ii) fails to abide by any provision described this Easement; (iii) fails to abide by any applicable federal, state, and local laws and regulations; (iv) removes the Encroachment; (v) removes, razes, or substantially destroys the abutting building-improvement located on the Dominant Estate, which is the basis of the Encroachment; (vi) fails to adequately maintain the Encroachment; or (vii) fails to timely provide the Engineer Report to Grantor. If Grantee violates any of the reversionary clauses in subsections (i), (ii), (iii), (iv), (v), (vi), or (vii), or all, of this section, then this Easement and all rights connected with this Easement terminate and revert to Grantor, and Grantor is permitted to execute and record an Affidavit on Facts Relating to Title in the public land records of the Dominant Estate and servient estate's titles giving public notice of the termination and reversion of this Easement. Furthermore, upon this Easement's termination and reversion, Grantee is required to execute and deliver a recordable instrument of conveyance, as approved by the Columbus City Attorney, to Grantor returning the Easement Area to Grantor and releasing all rights to this Easement.

7. **RIGHTS & REMEDIES.** Grantor is entitled to injunctive relief described in this section in addition to any other relief Grantor is entitled, including but not limited to specific performance of any provision of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Where injunctive relief or specific performance does not appropriately remedy Grantor, Grantor is entitled to recover damages from Grantee for the violation of any provision of this Easement. Furthermore, Grantee is responsible for all costs incurred by Grantor in enforcing the provisions of this Easement against Grantee, including but not limited to costs and expenses of suit and attorney's fees, and any costs of restoration necessitated by Grantee's violation of any provision of this Easement. Grantor's remedies described in this section are cumulative and are in addition to any present or future remedies existing at law or in equity.

8. **NON-WAIVER.** Grantor or Grantee's failure or refusal to exercise any rights reserved in this Easement is not a waiver of any rights Grantor or Grantee possess to enforce the other party's obligations through any rights and remedies Grantor or Grantee has at law or in equity for the enforcement of the other party's obligations. Accordingly, no waiver of any kind is valid against Grantor or Grantee unless (i) reduced to writing, (ii) approved and executed by Grantor or Grantee's authorized authority and personnel, and (iii) recorded in the public land records of the Dominant Estate and servient estate's titles.

9. **NONEXCLUSIVE; PUBLIC USE.** Grantee's rights in this Easement are nonexclusive and are not construed to disrupt, interfere, or restrict Grantor's paramount rights to utilize any portion the Easement Area or Encroachment for any public purpose or to construct and maintain Grantor's other real property improvements in, on, upon, around, over, under, across, and through the Easement Area or Encroachment.

10. **NOTICE.** All notices, which are required for either party to serve upon the other, are only effectively served if personally delivered or sent by certified mail, return receipt requested, and addressed as follows; however, either party is permitted, with timely written notice given to the other party, to specify a new address where further notice will be sent:

GRANTOR:

City of Columbus, Ohio
Department Of Public Service
111 N. Front St., Columbus, OH 43215
Attn: Director

& Copies to:

Columbus City Attorney, Real Estate Division
77 N. Front St., 4th Fl., Columbus, OH 43215
Attn: Chief Real Estate Attorney

GRANTEE:

11. **COUNTERPARTS.** This Easement may be signed in counterpart, each signed counterpart will be deemed an original, and all counterparts together will constitute one and the same easement instrument.

12. **SEVERABILITY.** If for any reason any provision of this Easement is held invalid or unenforceable under law, then the remaining provisions of this Easement will be unaffected and remain valid and enforceable to the full extent permitted by law.

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GRANTOR'S EXECUTION

IN WITNESS WHEREOF, Grantor, **CITY OF COLUMBUS, OHIO**, by its duly authorized representative, **<Name>**, **Director**, Department of Public Service, pursuant to **Ordinance Number** _____, which passed on _____, **20**____, does voluntarily acknowledge this Easement on behalf of Grantor on the effective date below.

CITY OF COLUMBUS, OHIO,
a Municipal Corporation

By: _____
<Name>, **Director**
Department of Public Service

Effective Date: _____

State of _____)

County of _____) SS:

BE IT REMEMBERED ON _____, **20**____, I affixed my seal evidencing this instrument was acknowledged before me by **<Name>**, **Director**, Department of Public Service, on behalf of Grantor, **CITY OF COLUMBUS, OHIO**, a municipal corporation.

(seal)

Notary Public
Commission Expiration Date: _____

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GRANTEE'S EXECUTION

IN WITNESS WHEREOF, Grantee, **ABC LLC, an Ohio limited liability company**, by its duly authorized representative, _____, _____, who represents and warrants possessing legal authority and capacity to acknowledge this Easement on behalf of Grantee, does voluntarily acknowledge this Easement on behalf of Grantee on the effective date below.

ABC LLC,
an Ohio limited liability company

By: _____
Print Name: _____
Print Title: _____
Effective Date: _____

State of _____)
County of _____) SS:

BE IT REMEMBERED ON _____, 20__, I affixed my seal evidencing this instrument was acknowledged before me by _____, _____, on behalf of Grantee, **ABC LLC, an Ohio limited liability company**.

(seal)

Notary Public
Commission Expiration Date: _____

THIS INSTRUMENT PREPARED BY: (2.09.2018)
COLUMBUS CITY ATTORNEY, REAL ESTATE DIVISION
BY: JEFF BENNINGTON, ASSISTANT CITY ATTORNEY
FOR: DPS (DOUG ROBERTS)
RE: SIDEWALK VAULT EASEMENT TEMPLATE

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EXHIBIT-A (PG. 1/)

Attach Exhibit showing the Easement Area

EXHIBIT-B (PG. 1/)

Dominant Estate

Insert legal description.

Franklin County Tax Parcel(s): 010-123457;
Prior Instrument Reference(s): D.B. 1, Pg. 2;
Recorder's Office, Franklin County, Ohio;
Street Address(es): 1 High St., Columbus, OH 43215.

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