

Anderson, Bullock, George, Litten,
O'Leary, O'Malley, Rader

RESOLUTION NO. 9050-19

BY:

A RESOLUTION to take effect immediately provided it receives the vote of at least two thirds of the members of Council, or otherwise to take effect at the earliest period allowed by law, authorizing the Mayor to enter into an easement agreement with JAMES A. BROWN and THERESE R. BROWN, governing the rights of the parties relative to a parcel located at Erie Cliff Drive, Lakewood, Ohio 44107 (PPN#311-13-096) which grants the City of Lakewood access to the parcel for construction and ongoing maintenance of the underlying sewer lines for a payment of \$1.00.

WHEREAS, the city administration wishes to enter into an easement agreement with James A. Brown and Therese R. Brown, governing the rights of the parties relative to a parcel of land located on Erie Cliff Drive, Lakewood, Ohio 44107 (PPN#311-13-096); and

WHEREAS, all contracts not specifically excepted by ordinance must be approved by Council pursuant to Section 111.02 of the Codified Ordinances; and

WHEREAS, as set forth in Section 2.12 of the Third Amended Charter of the City of Lakewood, this Council by a vote of at least two thirds of its members determines that this resolution is an emergency measure and that it shall take effect immediately, and that it is necessary for the immediate preservation of the public property, health, and safety and to provide for the usual daily operation of municipal departments, in that the construction of the replacement sewer line should occur immediately; now, therefore

BE IT RESOLVED BY THE CITY OF LAKEWOOD, STATE OF OHIO:

Section 1. The Mayor is hereby authorized to enter into an easement agreement in substantially the form as the agreement attached hereto as Exhibit A with James A. Brown and Therese R. Brown.

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were adopted in an open meeting of this council, and that all such deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

Section 3. This resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this resolution, and provided it receives the affirmative vote of at least two thirds of the members of Council this resolution shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the

earliest period allowed by law.

Adopted: 1/22/19



President



Clerk

Approved: January 22, 2019



Mayor

Exhibit A

Agreement for a Permanent Easement

THIS AGREEMENT made and concluded at Lakewood, Ohio, this ____ day of _____, 2018 by and between the CITY OF LAKEWOOD, Ohio, 12650 Detroit Avenue, Lakewood, Ohio and/or its agents (hereinafter referred to as "City") and JAMES A. BROWN and TERESE R. BROWN, 1055 Erie Cliff Drive, Lakewood, Ohio, together with their heirs, administrators, executors, successors and assigns (hereinafter referred to as the "Owner").

WHEREAS, Owner is the owner of real property, Permanent Parcel No. 311-13-096, located at 1055 ERIE CLIFF DRIVE, Lakewood, Ohio (hereinafter referred to as "Property"); and

WHEREAS the City desires to obtain a permanent access easement for purposes of ingress and egress, installing, constructing, operating, repairing, maintaining, replacing, extending and reconstructing any and all sewer lines and appurtenances.

WITNESSETH:

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Owner shall grant an access easement on the Property (further described in the legal description attached as Exhibit A) to City which the City shall cause to be recorded for record with the Cuyahoga County Recorder which shall be a permanent easement and will run with the land. The described property shall be the "Easement Area."

2. City shall compensate Owner \$1.00 for the easement.

3. The Owner shall not be permitted to construct structures, buildings, retaining walls or embankments on any part of the Easement Area.

4. This agreement embodies the entire agreement between the City and Owner with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral. Neither the City nor Owner has made nor relied upon any promises, representations or warranties in connection with this agreement that are not expressly set forth in

this agreement. In entering into this agreement, the City and Owner have relied on the recitals representation and warranties contained in this agreement.

5. This agreement may not be modified except by a written agreement executed by the City and Owner. No waiver of any condition or covenant in this agreement by either party shall be effective unless made in writing, nor shall any waiver be deemed to imply or constitute a future waiver of the same or any other condition or covenant of this agreement.

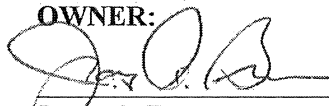
6. This agreement shall be construed and enforced in accordance with the laws of the State of Ohio.

7. Whenever a word appears here in its singular form, such word shall include the plural; and the masculine gender shall include the feminine and neuter genders. This agreement shall be construed without regard to any presumption or the rule permitting construction against the party causing this agreement to be drafted and shall not be construed more strictly in favor of or against either of the parties hereto.

8. If any term or provision of this agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS HEREOF, the parties have executed this agreement for the reasons stated herein and on the date(s) so noted below.

Date: 12-1-18

OWNER:


James A. Brown

Date: 12-1-18



Terese R. Brown

CITY OF LAKEWOOD:

Date: _____

Michael P. Summers, Mayor

**APPROVED AS TO LEGAL FORM
AND CORRECTNESS:**

Date: _____

Jennifer L. Swallow, Chief Assistant Law Director

EASEMENT DETAIL
 OF
ERIE CLIFF DRIVE
 P.P.N. 311-13-113
 P.P.N. 311-13-114
 CITY OF LAKEWOOD, OHIO

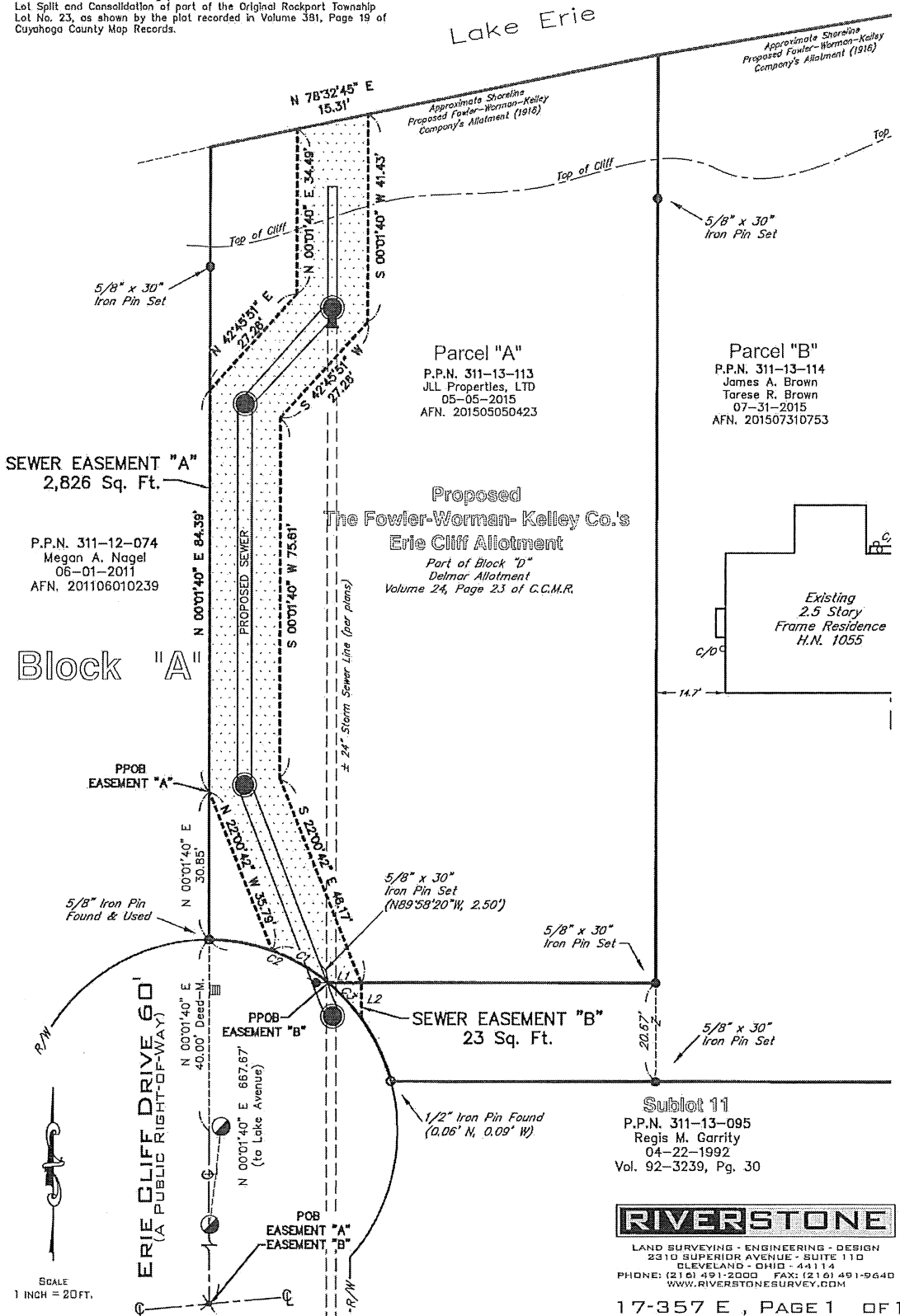
Situated in the City of Lakewood, County of Cuyahoga and State of Ohio and known as being part of Parcel "A" and "B" in the Plat of Lot Split and Consolidation of part of the Original Rockport Township Lot No. 23, as shown by the plat recorded in Volume 381, Page 19 of Cuyahoga County Map Records.

LINE TABLE

Line	Length	Bearing
L1	7.01'	S89°58'20"E
L2	7.41'	S00°01'40"E

CURVE TABLE

Curve	Radius	Arc	Delta	Tangent	Chord	Bearing
C1	40.00'	13.72'	019°38'42"	6.93'	13.65'	N60°32'01"W
C2	40.00'	27.41'	039°15'43"	14.27'	26.88'	N70°20'28"W
C3	40.00'	10.23'	014°39'17"	5.14'	10.20'	N43°22'59"W



SEWER EASEMENT "A"
 2,826 Sq. Ft.

P.P.N. 311-12-074
 Megan A. Nagel
 06-01-2011
 AFN. 201106010239

Block "A"

PPOR EASEMENT "A"

5/8" Iron Pin Found & Used

PPOR EASEMENT "B"

Parcel "A"
 P.P.N. 311-13-113
 JLL Properties, LTD
 05-05-2015
 AFN. 201505050423

Proposed
The Fowler-Worman-Kelley Co.'s
Erie Cliff Allotment
 Part of Block "D"
 Delmar Allotment
 Volume 24, Page 23 of C.C.M.R.

Parcel "B"
 P.P.N. 311-13-114
 James A. Brown
 Tarese R. Brown
 07-31-2015
 AFN. 201507310753

Existing
2.5 Story
Frame Residence
 H.N. 1055

SEWER EASEMENT "B"
 23 Sq. Ft.

5/8" x 30" Iron Pin Set (N89°58'20"W, 2.50')

5/8" x 30" Iron Pin Set

5/8" x 30" Iron Pin Set

Sublot 11
 P.P.N. 311-13-095
 Regis M. Garrity
 04-22-1992
 Vol. 92-3239, Pg. 30

1/2" Iron Pin Found (0.06' N, 0.09' W)

POB EASEMENT "A"
 EASEMENT "B"

SCALE
 1 INCH = 20 FT.

RIVERSTONE
 LAND SURVEYING - ENGINEERING - DESIGN
 2310 SUPERIOR AVENUE - SUITE 110
 CLEVELAND - OHIO - 44114
 PHONE: (216) 491-2000 FAX: (216) 491-9640
 WWW.RIVERSTONESURVEY.COM

RIVERSTONE

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EXHIBIT A
To
Agreement for a Permanent
Easement

LEGAL DESCRIPTION
OF
STORM SEWER EASEMENT
OVER
PARCEL "B"
P.P.N. 311-13-114
ERIE CLIFF DRIVE
LAKEWOOD, OHIO

Situated in the City of Lakewood, County of Cuyahoga and State of Ohio and known as being part of Parcel "B" of part of the Original Rockport Township Lot No. 23, as shown on the Plat of Lot Split and Consolidation of 1055 Erie Cliff Drive as recorded in Volume 381, Page 19 of Cuyahoga County Map Records and further bounded and described as follows:

Beginning at a p.k. nail set at the centerline intersection of Lake Avenue (100 feet wide) and Erie Cliff Drive (60 feet wide);

Thence North 00°01'40" East along the centerline of Erie Cliff Drive, 667.67 feet to a 5/8" iron pin found on the right of way of the cul-de-sac of Erie Cliff Drive at the southwesterly most corner of Parcel "A" as shown by the Plat of Lot Split and Consolidation of 1055 Erie Cliff Drive and recorded in Volume 381, Page 19 of Cuyahoga County Map Records;

Thence along the curved right of way of Erie Cliff Drive deflecting to the right, an arc of 27.41 feet, said curve having a radius of 40.00 feet and a chord that bears South 70°20'29" East, 26.88 feet to a point and the **Principal Place of Beginning** of the storm sewer easement;

Thence South 89°58'20" East along a southerly line of said Parcel "A", 7.01 feet to a point;



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Thence South $00^{\circ}01'40''$ East, 7.41 feet to a point on the right of way of the cul-de-sac of Erie Cliff Drive;

Thence along the curved right of way of Erie Cliff Drive deflecting to the left, an arc of 10.23 feet, said curve having a radius of 40.00 feet and a chord that bears North $43^{\circ}22'59''$ West, 10.20 feet to the **Principal Place of Beginning** and containing 23 square feet of land, as described by Peter J. Gauriloff, P. S. 8646 of The Riverstone Company in July of 2018.

Basis of Bearing:

The centerline of Erie Cliff Drive as North $00^{\circ}01'40''$ East as shown in the deed recorded in Auditor's File No. 201507310755 of Cuyahoga County Deed Records.

