

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

RESOLUTION NO. 9061-19

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 Clifton Park Trustees, governing the rights of the parties relative to a parcel located at Beach Road, Lakewood, Ohio 44107 (PPN#311-02-001) which grants the City of Lakewood access to the parcel for the placement of an emergency generator to serve the Waste Water Treatment Plant and ongoing maintenance of the generator for a payment of \$1.00.

WHEREAS, the city administration wishes to enter into an easement agreement with Clifton Park Trustees, governing the rights of the parties relative to a parcel of land located on Beach Road, Lakewood, Ohio 44107 (PPN#311-02-001); 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 placement of the emergency generator is necessary for upgrades that are being constructed at the Waste Water Treatment Plant and installation should occur immediately; now, therefore

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

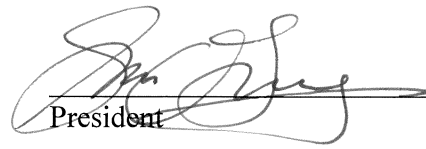
Section 1. The Mayor is hereby authorized to enter into an easement agreement in substantially the form as the agreement attached hereto as Exhibit A with Clifton Park Trustees.

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: 4/1/2019




President

Marianne M. Back

Clerk

Approved: April 2 2019



Mayor

Exhibit A

Agreement for a Permanent Easement

THIS AGREEMENT made and concluded at Lakewood, Ohio, this ____ day of _____, 2019 by and between the CITY OF LAKEWOOD, Ohio, 12650 Detroit Avenue, Lakewood, Ohio and/or its agents (hereinafter referred to as "City") and Clifton Park Trustees, C/O Nancy Graves, 17889 Lake Road, Lakewood, Ohio 44107 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. 311-02-001, located at Beach Road, 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 an emergency generator 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 (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.

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

3. The Owner shall not be permitted to construct and 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.

Exhibit A

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

OWNER:

Date: _____

Clifton Park Trustees
Ryan Meany, President

CITY OF LAKEWOOD:

Date: _____

Michael P. Summers, Mayor

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

Date: _____

Jennifer L. Swallow, Chief Assistant Law Director



November 20, 2018

**DESCRIPTION OF EASEMENT
FOR THE INSTALLATION AND MAINTENANCE
OF AN ELECTRIC GENERATOR
FOR
THE CITY OF LAKEWOOD**

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio and known as being an easement over, through, and upon a part of the Clifton Park Land and Improvement Company's Allotment No. 2 of part of Original Rockport Township Section No. 23 as shown by plat recorded in Volume 48, Page 3 of Cuyahoga County Map Records and more particularly being a part of the Private Park, reserved to owners of lots in Clifton Park, as shown by said plat and described as Parcel 7 in deed from The Clifton Park Land and Improvement Company to F.C. Case et al., Trustees recorded March 27, 1912 in Deed Book Volume 1382, Page 277 of Cuyahoga County Records and is bounded and described as follows:

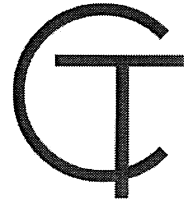
Beginning in the centerline of Parcel No. 1 of an easement granted by the Clifton Park Trustees to the City of Lakewood recorded November 16, 1970 in Volume 12754, Page 727 of Cuyahoga County Records and at an existing sanitary sewer pump station (referred to as "proposed pump station" within the description for said Parcel No. 1);

Thence South 71°55'30" East along the centerline of said easement Parcel No. 1 a distance of 15.60 feet to a point therein;

Thence North 18°04'30" East by a line which is perpendicular to said centerline of easement Parcel No. 1, a distance of 5.00 feet to the northerly line of said easement and the principal point of beginning;

COURSE I Thence continuing North 18°04'30" East a distance of 10.00 feet to a point;

COURSE II Thence North 71°55'30" West by a line which is parallel with the aforesaid centerline of easement Parcel No. 1, a distance of 15.00 feet to a point;

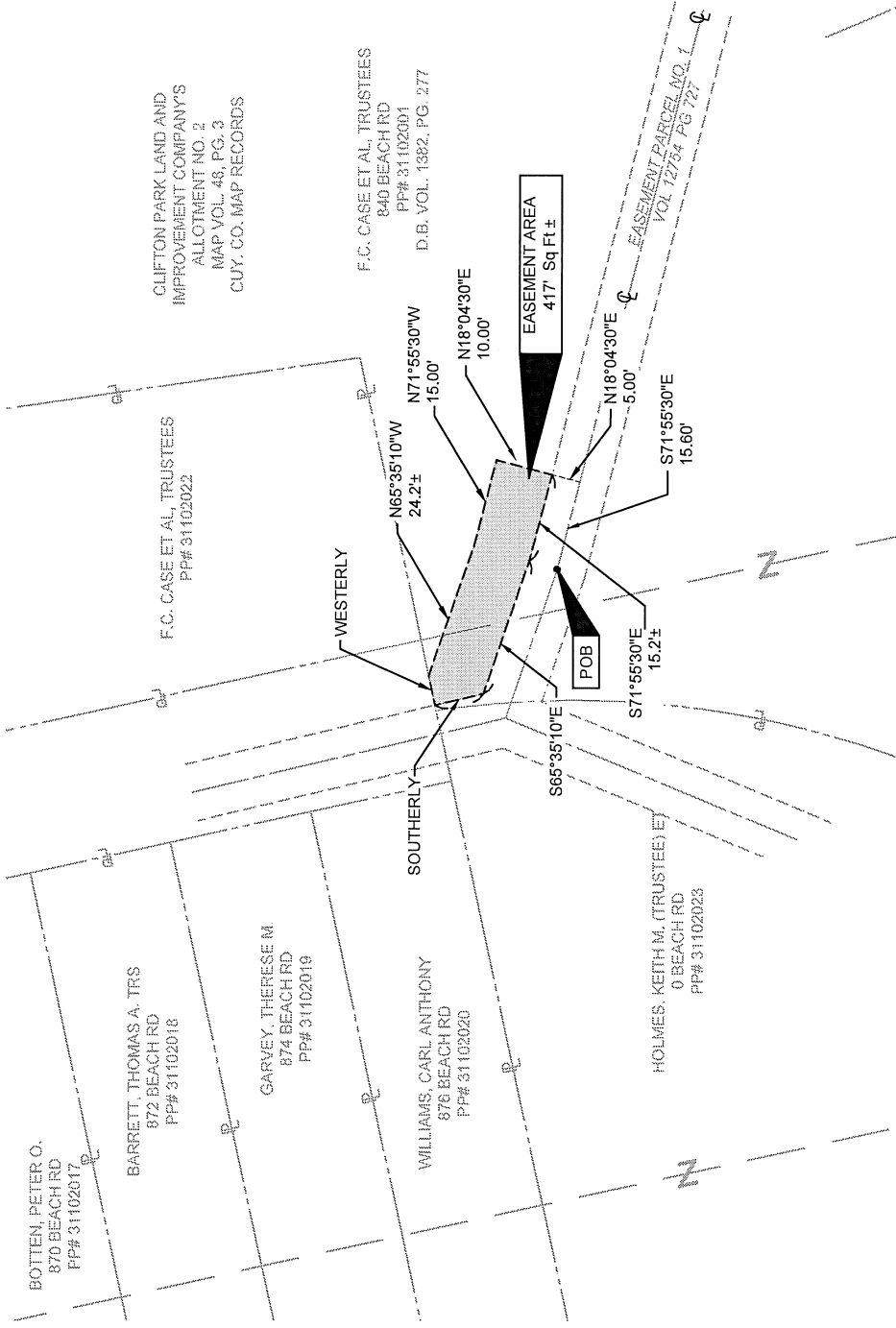
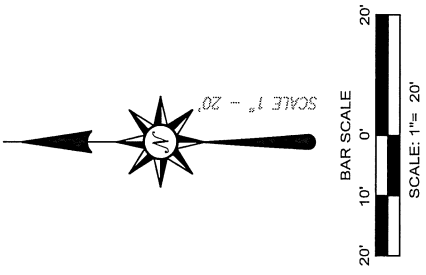


- COURSE III Thence North 65°35'10" West by a line which is parallel with the aforesaid centerline of easement Parcel No. 1, about 24.2 feet to the northerly line of the aforesaid land of F.C. Case et al., Trustees;
- COURSE IV Thence westerly along said northerly line of land of F.C. Case et al., Trustees to its intersection with an easterly line in the aforesaid easement Parcel No. 1;
- COURSE V Thence southerly along said easterly line of easement Parcel No. 1 to an angle therein;
- COURSE VI Thence South 65°35'10" East along a northerly line of said easement Parcel No. 1 to an angle therein;
- COURSE VII Thence South 71°55'30" East continuing along said northerly line of easement Parcel No. 1 about 15.2 feet to the principal point of beginning and containing about 417 Square Feet of land as calculated and described from existing records in November, 2018 by CT Consultants, Inc.

Bearings contained herein are based upon those found in Grant of Easement to the City of Lakewood, Ohio dated November 16, 1970 and recorded in Volume 12754, Page 727 of Cuyahoga County Records.

The above described easement burdens a portion of a larger parcel currently designated as Cuyahoga County Auditor's Permanent Parcel No. 311-02-001.

EASEMENT EXHIBIT
FOR
AN ELECTRIC GENERATOR
FOR
THE CITY OF LAKEWOOD



BEARINGS CONTAINED HEREIN ARE BASED UPON THOSE FOUND IN GRANT OF EASEMENT TO THE CITY OF LAKEWOOD, OHIO DATED NOVEMBER 16, 1970 AND RECORDED IN VOLUME 12754, PAGE 727 OF CUYAHOGA COUNTY RECORDS.



