

BURIAL EASEMENT AND CEMETERY ACCESS AGREEMENT

This Burial Easement and Cemetery Access Agreement (“Agreement”) is made as of the ____ day of _____, 2017, between the City of Powell, an Ohio municipal corporation (“POWELL”) and Jill King (“MRS. KING”).

Background Information

- A. POWELL owns a parcel of land, which is identified as the Powell Cemetery located at 78 North Liberty Street, Powell, Ohio 43065 (the “Property”), Delaware County Auditor’s Parcel Number 31942513068000.
- B. MRS. KING desires to have access to the Property for the following purposes: (1) to make surveys, tests, and other site investigations; (2) to perform the site preparation work; and (3) to install a mausoleum upon a plot containing eighty-one (81) square feet, more or less, (“the Plot”), which is described in the attached Exhibit “A,” which is hereby incorporated by reference, for purposes of the perpetual interment of MRS. KING and her predeceased husband.
- C. POWELL and MRS. KING desire to enter into this Agreement in order to provide MRS. KING and her agents access to the Property for the purposes described in Paragraph B, above, upon and subject to the terms, conditions, and covenants contained in this Agreement.

Statement of Agreement

The parties hereby acknowledge the accuracy of the above “Background Information” and hereby agree as follows:

§1. MRS. KING’S Burial Easement. For the sum of One Thousand Dollars (\$1,000.00), representing payment for two burial plots at a price of five hundred dollars (\$500.00) each, and other good and valuable consideration as set forth herein, and pursuant to POWELL Ordinance No. _____, POWELL hereby grants to MRS. KING, her heirs, and assigns, a perpetual easement upon the Plot for purposes of the interment of MRS. KING and her predeceased husband, including ornamentation and erection of monuments under the terms set forth herein.

§2. MRS. KING’S Access Rights. At all reasonable times after the date of this Agreement and for the duration set forth below, MRS. KING, and her agents and representatives, shall have the right to enter upon the Property for the purpose of making surveys, tests, and other site investigations; performing the site preparation work; and installing a mausoleum upon the Plot; performing the Restoration Work described in §3; interring MRS. KING’s predeceased husband in said mausoleum; and, following MRS. KING’s passing, interring MRS. KING in said mausoleum.

The right of entry granted under this Section shall temporarily permit MRS. KING, her agents, and representatives to enter the Property with such equipment as is reasonably necessary to accomplish the purposes for which the right of entry is granted. In accessing the Plot for these purposes, MRS. KING, her agents, and representatives shall have a temporary right of entry upon paths of ingress and egress to access the Plot. MRS. KING, her agents, and representatives shall select paths of ingress and egress that are reasonably calculated to cause the minimum amount of disturbance to the land and other burial sites on the Property. The proposed paths of ingress and egress shall be submitted to a designated representative of POWELL for final approval. If the designated representative does not grant approval to a path of ingress and egress proposed by MRS. KING, her agents, and representatives, then the Parties will confer to select a mutually acceptable alternative path of ingress and egress.

In addition to any other conditions set forth in this Agreement, MRS. KING, her agents, and representatives are being granted access to the Property for the purposes set forth above, subject to the following conditions:

- (i) MRS. KING shall, at her sole cost and expense, obtain all necessary permits and approvals and comply with all applicable laws, ordinances, codes, and regulations;
- (ii) All work of MRS. KING, her agents, or representatives shall be performed in a good and workmanlike manner consistent with industry standards for similar work in the Central Ohio area and in accordance with the requirements of the Agreement; and
- (iii) All of the work shall be performed at MRS. KING's sole risk and cost.
- (iv) MRS. KING agrees that, prior to digging or erecting any structure upon the Plot, she will cause an examination to be made of the subsurface of the Plot to ensure that no human remains will be disturbed by the work done by MRS. KING, her agents, or representatives upon the Plot. If such remains are found, MRS. KING, her agents, or representatives will meet with POWELL and, if reasonably ascertainable, next of kin of the person whose remains are discovered, to determine appropriate next steps, which may include but are not limited to: disinterment and re-interment of the remains; relocation of the Plot; or termination of this Agreement and extinguishment of the easement for interment purposes granted in §1. Any remedy will be at the sole expense of MRS. KING.

§3. Restoration of Property. MRS. KING shall restore the Property as nearly as practical to the condition which it was in as of the date of the Agreement (with exception of the mausoleum structure), including, without limitation: the removal of any debris

from the Property; the compaction of all fill; the grading of the Property to assure proper drainage, including the avoidance of pooling; the replacement of any grass or other vegetation disturbed by MRS. KING, her agents, or representatives; the replacement or repair of any monument or burial site damaged by MRS. KING, her agents, or representatives; and the appropriate abandonment and/or backfilling of all wells (collectively, the "Restoration Work"). Completion of Restoration Work shall be approved by a designated representative of POWELL; such approval shall not be unreasonably denied.

§4. Maintenance. The maintenance of the mausoleum or any other monument, ornamentation, or vegetation installed upon the Plot by MRS. KING, her agents, or representatives, shall be the responsibility of POWELL.

§5. Liens and Encumbrances. Neither MRS. KING nor her agents or representatives shall permit any mechanic's liens or other liens or encumbrances to be filed or placed against the Property in connection with or related to the Work. If any such lien or encumbrance is filed or placed against the Property or such other property, then MRS. KING shall cause such lien or encumbrance to be discharged or otherwise secured to POWELL's complete satisfaction within thirty (30) days after the sooner of the filing or placement of such lien or encumbrance on the Property or the termination of this Agreement.

§6. Indemnification. MRS. KING shall indemnify and hold POWELL harmless from and against all liabilities, losses, damages, injuries, costs, and expenses, including attorneys' fees, caused by or related to any of the following by MRS. KING, or her agents or representatives:

- (a) Performing the work as described in §1;
- (b) Failing to complete the Restoration Work as described in §3;
- (c) Failing to perform or observe any other obligation or condition to be performed or observed by MRS. KING under this Agreement; or
- (d) MRS. KING's, her agents,' or her representatives' access to or entry upon the Property.

§7. Default. If MRS. KING fails to fully perform or observe any obligation or condition of this Agreement to be performed or observed by her and fails to correct such default to POWELL's reasonable satisfaction within ten (10) days after written notice thereof is received by MRS. KING from POWELL, then POWELL may terminate this Agreement at any time thereafter by giving written notice of termination to MRS. KING,

and MRS. KING's rights and interests under this Agreement shall immediately thereupon cease and terminate (except that MRS. KING shall have the right to enter upon the Property for the sole purpose of completing the Restoration Work). In the event of a failure to cure following notice of default, POWELL may, at its discretion, complete the Restoration Work and MRS. KING will be liable for all costs arising from POWELL's completion of the Restoration Work. All rights and remedies of POWELL under this agreement are cumulative and in addition to any other rights or remedies which may be available to POWELL from time to time.

§8. Term of Agreement. The right of entry granted under this Agreement shall take effect upon the date this Agreement is executed by both parties and will remain effect until the completion of the Restoration, subject to §6 herein.

§9. Miscellaneous. The rights and obligations of the parties under this Agreement shall be construed and resolved in accordance with the laws of the State of Ohio. MRS. KING acknowledges that this Agreement may be subject to release, in its entirety, if requested pursuant to Ohio Public Records Law. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective successors and assigns of the parties; provided, however, that this Agreement shall not be assignable by MRS. KING without prior consent given in writing by a designated representative of POWELL. This Agreement represents the entire agreement between the Parties, and no other promises have been made, express or implied, between the Parties with respect to the subject matter of this Agreement. No amendment shall be made to this Agreement except as executed in writing by authorized representatives of the respective Parties. This Agreement may be executed in one or more separate counterparts, which, when read together, shall be as fully-effective as a single, executed counterpart.

In Witness Whereof, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers, representatives or agents as the date set forth below.

CITY OF POWELL

JILL KING

By:

Steve Lutz
King

By: Jill
King

Its:

City Manager

Date: _____

Date: _____

EXHIBIT A —DESCRIPTION OF THE PLOT

Plot

Exhibit A

Situated in the State of Ohio, County of Delaware, City of Powell, being a part of the Cemetery Lot as delineated in the Case Addition in Plat Book 3, Page 99 and conveyed to **THE VILLAGE OF POWELL** by Volume 581, Page 120, all records herein are from the Recorder's Office, Delaware County, Ohio and being more particularly described as follows:

Beginning for Reference at a 5/8" diameter iron pin found with an unreadable cap at the intersection of the east Right of Way of North Liberty Street (50 foot) as delineated in said Plat Book 3, Page 99 and the northwest corner of said Cemetery Lot;

Thence, South 07°00'01" East, a distance of 89.52 feet along the east Right of Way of said North Liberty Street to a point;

Thence, North 87°14'14" East, a distance of 88.63 feet crossing said Cemetery Lot to the **True Point of Beginning**;

Thence, crossing said Cemetery Lot the following four courses:

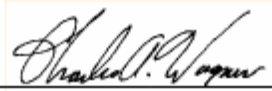
1. North 02°45'46" West, a distance of 8.50 feet to a point;
2. North 87°14'14" East, a distance of 9.50 feet to a point;
3. South 02°45'46" East, a distance of 8.50 feet to a point;
4. South 87°14'14" West, a distance of 9.50 feet to the **Point of Beginning** containing **81 square feet**, more or less, subject to legal highways, easements, leases and restriction of record and of records in the respective utility offices.

The bearings described herein are based on the Ohio State Plane Coordinate System, North Zone, NAD83 (2011). Said bearings originated from a field traverse which was referenced to said coordinate system by GPS observations and observations of selected stations in the Ohio Department of Transportation Virtual Reference Station Network.

The described tract is a part of Auditor's Tax Parcel Number 31942513068000 and is based on Plat Book 3, Page 99.

I hereby certify this description was based field survey conducted by CW Design Group, LLC under my guidance in October 2016 and to the best of my knowledge depicts the boundary lines.

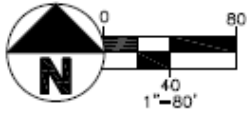
CW Design Group, LLC



Charles A. Wagner - Professional Surveyor 8091

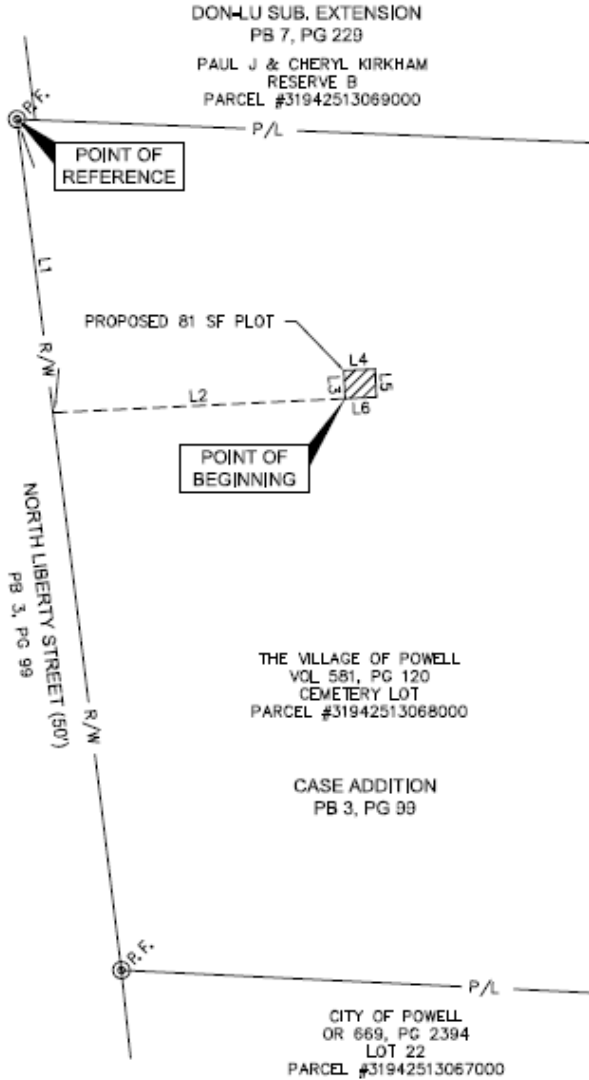
10/20/2016
Date





CASE ADDITION
CITY OF POWELL
COUNTY OF DELAWARE
STATE OF OHIO

EXHIBIT B



LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	S07°00'01"E	89.52
L2	N87°14'14"E	88.63
L3	N02°45'46"W	8.50
L4	N87°14'14"E	9.50
L5	S02°45'46"E	8.50
L6	S87°14'14"W	9.50

BASIS OF BEARINGS
THE BEARINGS SHOWN ON THIS PLAT ARE BASED ON THE OHIO STATE PLANE COORDINATE SYSTEM, NORTH ZONE, NAD83 (2011).
HEREBY CERTIFY THIS PLAT WAS BASED FIELD SURVEY CONDUCTED BY CW DESIGN GROUP, LLC UNDER MY GUIDANCE IN OCTOBER 2016 AND TO THE BEST OF MY KNOWLEDGE REFLECTS THE BOUNDARY LINES.


CHARLES A. WAGNER, PS-8091 DATE 10/20/2016
CW DESIGN GROUP, LLC



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CW Design Group
ENGINEERING SURVEYING
PHONE: 614-846-8279
872 Linkfield Drive
Worthington, Ohio 43085

PLOT

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