

## QUIT-CLAIM TEMPORARY EASEMENT

**City of Columbus, Ohio**, an Ohio municipal corporation (“**Grantor**”), for consideration given by the **Fischer Development Company**, a Kentucky for profit corporation (“**Grantee**”), does quit claim grant to Grantee and its successors and assigns **(A)** a nonexclusive, temporary sewer utility easement in, on, through, under, and burdening the following described tract of real property (“**Temporary Utility Easement Area**”) for so long as the Temporary Utility Easement Area is only used exclusively to use, operate, maintain, and control underground sewer facilities and associated appurtenances (collectively, “**Sewer**”), and **(B)** a nonexclusive, temporary construction easement in, on, through, under, and burdening the following described tract of real property (“**Construction Easement Area**”) for so long as the Construction Easement Area is only used exclusively to construct and install the Sewer; however, this temporary easement instrument (collectively, “**Temporary Easement**”) is subject to **(i)** Grantor’s reversionary rights, **(ii)** Grantee’s compliance of all provisions described in this Temporary Easement, and **(iii)** any previously and properly recorded right(s), covenant(s), condition(s), reservation(s), easement(s), servitude(s), restriction(s), and all other applicable matter(s) in the servient estate’s chain-of-title:

### Temporary Utility Easement Area: 0.269 Acre +/-

Temporary Utility Easement Area is situated in the state of Ohio, county of Franklin, city of Columbus, and being described in the one (1) page attachment, **Exhibit-A**, and depicted in the one (1) page attachment, **Exhibit-C**, and both of these attachments are fully incorporated for reference as if rewritten.

### Construction Easement Area: 0.538 Acre +/-

Construction Easement Area is situated in the state of Ohio, county of Franklin, city of Columbus, and being described in the one (1) page attachment, **Exhibit-B**, and depicted in the one (1) page attachment, **Exhibit-C**, and both of these attachments are fully incorporated for reference as if rewritten.

**Franklin County Tax Parcel(s):** 530-193324  
**Prior Record Reference(s):** Ins. 200208230207986;  
Recorder's Office, Franklin County, Ohio;  
**Street Address(es):** N/A [0000 Refugee Rd., Columbus, OH 43110]

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## TERMS & CONDITIONS

**1. TEMPORARY EASEMENT; SUCCESSORS & ASSIGNS.** This Temporary Easement and all of its provisions are covenants temporarily **(i)** benefitting, burdening, and running with the land of the servient estate, and **(ii)** binding and inuring to the benefit and detriment of Grantor and Grantee and their respective successors and assigns. Accordingly, Grantee’s exercise of any rights in this Temporary Easement or this Temporary Easement’s recording in the servient estate chain-of-title are each deemed Grantee’s acceptance of all provisions described in this Temporary Easement.

**2. DURATION.**

**2.1. TEMPORARY UTILITY EASEMENT AREA.** The duration of this Temporary Easement is temporary and automatically terminates and all of Grantee’s rights described in this Temporary Easement regarding the Temporary Utility Easement Area automatically revert to Grantor upon the earlier occurrence of the following: **(i)** Grantor’s Department of Public Utilities (DPU) written acceptance of assuming the Sewer’s maintenance responsibilities; or **(ii) June 30, 2026.**

2.2. **CONSTRUCTION EASEMENT AREA.** The duration of this Temporary Easement is temporary and automatically terminates and all of Grantee's rights described in this Temporary Easement regarding the Construction Easement Area automatically revert to Grantor upon the earlier occurrence of the following: (i) Grantee's completion of the Sewer's construction and all associated restoration; or (ii) **June 30, 2017.**

3. **INDEMNIFICATION & INSURANCE.** Grantee, its successors and assigns, agrees to forever 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 its agent(s), contractor(s), subcontractor(s), representative(s), or employee(s) (i) use of the Temporary Utility Easement Area and Construction Easement Area, (ii) constructing, installing, using, operating, maintaining, and controlling the Sewer, or (iii) exercise of any rights in this Temporary Easement. Furthermore, Grantee and its agent(s), contractor(s), subcontractor(s), representative(s), or employee(s) entering the Temporary Utility Easement Area and Construction Easement Area pursuant to the rights granted in this Temporary Easement are required to be (a) fully bonded as to performance of the project, and (b) possess and maintain commercial comprehensive general liability insurance in an amount not less than **Two Million and 00/100 U.S. (\$2,000,000.00) per occurrence and Six Million and 00/100 U.S. Dollars (\$6,000,000.00) aggregately.**

Grantee, prior to commencement of initial construction and installation of the Sewer and at any time thereafter upon demand by Grantor, is required to provide written proof to Grantor of Grantee's compliance with this section. Furthermore, Grantee represents and warrants that its existing insurance policy(ies) cover all damages caused by Grantee in the event it is unable to provide Grantor with the appropriate proof of insurance coverage described in this section.

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 Temporary Utility Easement Area, Construction Easement Area, or generally the 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 Temporary Utility Easement Area, Construction Easement Area, or generally the servient estate by any public authority relating to Grantee's use of the Temporary Utility Easement Area or Construction Easement Area.

5. **USE & RESTRICTIONS.**

5.1. **SEWER; COMPLIANCE.** Grantee, for the duration of this Temporary Easement, is required to exclusively install, construct, use, operate, maintain, and control the Sewer in good repair and in a safe condition according to all applicable building and safety codes and practices. Furthermore, Grantee, pursuant to its exercise of any rights in this Temporary Easement, is required to conduct all of its activity regarding the Sewer or restoration of the Temporary Utility Easement Area and Construction Easement Area in strict compliance with all applicable federal, state, and local laws, rules, and regulations.

5.2. **INSPECTION & RIGHT-OF-ENTRY.** Grantor is permitted to access the Temporary Utility Easement Area and Construction Easement Area to inspect the Sewer at any time and for any reason.

5.3. **WARNINGS & NOTICE.** Grantee, pursuant any of its entries into the Temporary Utility Easement Area and Construction Easement Area, is required to display appropriate warning and detour signs and provide flagging, as approved, in writing, by Grantor, giving the public notice of Grantee's exercise of any rights in this Temporary Easement. Additionally, Grantee is required to place fencing around any bore pits or open trench cuts located in the Temporary Utility Easement Area and Construction Easement Area.

5.4. **VEGETATION.** "**Vegetation**" is defined as any type of trees, bushes, brush, grass, sod, or flowers in the Temporary Utility Easement Area and Construction Easement Area. Grantee is strictly prohibited from cutting, trimming, treating, or removing any Vegetation in the Temporary Utility Easement Area and Construction Easement Area without first obtaining Grantor's prior, written consent, which consent will not be unreasonably withheld.

5.5. **EXISTING UTILITIES & SURFACE CONDITION.** Grantee's installation, construction, use, operation, maintenance, and control of the Sewer in the Temporary Utility Easement Area and Construction 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, and gas utilities (collectively, "**Existing Utilities**") located in, on, under, over, under, or adjacent to the Temporary Utility Easement Area and Construction Easement Area, and **(ii)** causing any type of surface settling or dipping that affects the surface condition, grade, or water drainage or retention in, on, over, under, or adjacent to the Temporary Utility Easement Area and Construction Easement Area (collectively, "**Surface Condition**"). 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 before, during, or after the Encroachment's construction. Accordingly, Grantee is required to promptly restore the Existing Utilities and Surface Condition to the condition existing prior to Grantee exercising any rights from this Temporary Easement to Grantor's written specification and satisfaction in the event Grantee does in fact impact the Existing Utilities or the Surface Condition,

5.6. **RESTORATION.** Grantee, at its sole cost and expense and as soon as practicable after any of its entries into the Temporary Utility Easement Area and Construction Easement Area to exercise any rights in this Temporary Easement, is required to perform the following at Grantor's sole option and discretion: **(i)** restore all of the Temporary Utility Easement Area, including but not limited to Grantor's real property improvement(s), Existing Utilities, Surface Condition, and Vegetation located in, on, over, under, or adjacent to the Temporary Utility Easement Area, to conditions aesthetically compatible with the residue servient estate according to Grantor's written specifications and approval; **(ii)** restore all of the Construction Easement Area, including but not limited to Grantor's real property improvement(s), Existing Utilities, Surface Condition, and Vegetation located in, on, over, under, or adjacent to the Construction Easement Area, to conditions aesthetically compatible with the residue servient estate according to Grantor's written specifications and approval; or **(iii)** monetarily compensate Grantor for all repair or restoration costs of the Temporary Utility Easement Area and Construction Easement Area, including but not limited to any of Grantor's real property improvement(s) and associated appurtenances, Existing Utilities, Surface Condition, and Vegetation located in, on, over, under, or adjacent to the Temporary Utility Easement Area and Construction Easement Area, which repair or restoration costs occurred or resulted from Grantee's exercise of any rights in this Temporary Easement in order to restore or repair the Temporary Utility Easement Area and Construction Easement Area to conditions aesthetically compatible with the resident servient estate.

Grantee is required to **(a)** complete all restoration described in this Temporary Easement regarding the Temporary Utility Easement Area by no later than **June 30, 2026**, **(b)** complete all restoration described in this Temporary Easement regarding the Construction Easement Area by no later than **June 30, 2017**, **(c)** warrant all restoration regarding the Temporary Utility Easement Area through **July 1, 2028**, and **(d)** warrant all restoration regarding the Construction Easement Area through **July 1, 2019**.

6. **NONEXCLUSIVE; PUBLIC USE.** Grantee's rights in this Temporary Easement are nonexclusive and not construed to disrupt, interfere, or restrict Grantor's paramount rights to utilize any portion the Temporary Utility Easement Area or Construction Easement Area for any public purpose or to construct and maintain Grantor's other real property improvement(s) in, on, upon, around, over, under, across, through, and adjacent to the Temporary Utility Easement Area or Construction Easement Area. Accordingly, Grantor possesses the absolute right to terminate this Temporary Easement upon ninety (90) days' notice to Grantee should Columbus City Council determine this Temporary Easement is necessary for any public purpose inconsistent or antagonistic to the purposes of this Temporary Easement.

7. **DISCLAIMER.** Grantee agrees to use the Temporary Utility Easement Area and Construction Easement Area in their "**as is**" and "**where is**" conditions together with all faults and without any implied or express warranties or representations by Grantor including, without limitation, the following conditions of the Temporary Utility Easement Area and Construction Easement Area: **(i)** suitability; **(ii)** fitness of Grantee's intended purposes of the Sewer; **(iii)** environmental site conditions; or **(iv)** defects in the servient estate's chain-of-title. Furthermore, Grantee agrees to indemnify, defend, release, and hold Grantor harmless for all conditions known or unknown to the Temporary Utility Easement Area and Construction Easement Area.

**8. TERMINATION.**

8.1. **RELEASE & REMOVAL.** Grantee is prohibited from releasing any rights in this Temporary Easement without first obtaining Grantor's prior, written consent. Furthermore, Grantee, at its sole cost and expense upon termination or release of this Temporary Easement, is required to exclusively remove the Sewer according to Grantor's written specifications and approval in order to not adversely affect the residue servient estate or Grantor's other real property improvement(s) and appurtenances located in, on, under, over, or adjacent to the Temporary Utility Easement Area and Construction Easement Area.

8.2. **REVERSION.** Grantor expressly reserves a reversionary interest in the Temporary Utility Easement Area and Construction Easement Area if Grantee performs any of the following: **(i)** shares, leases, sells, conveys, or transfers any of the Temporary Utility Easement Area, Construction Easement Area, or any rights in this Temporary Easement without first obtaining Grantor's prior, written consent; however, nothing restricts Grantee's right to assign this Temporary Easement to Grantee's successors or assigns for the identical uses and purposes provided in this Temporary Easement; **(ii)** fails to abide by any provision described this Temporary Easement; **(iii)** fails to abide by any applicable federal, state, and local laws and regulations; **(iv)** removes the Sewer after its initial construction and installation; **(v)** at any time abandons the Sewer's use and operation consistently for a period of not less than **two (2) years**; or **(vi)** fails to adequately maintain the Sewer for the duration of this Temporary Easement.

This Temporary Easement and all rights connected with this Temporary Easement automatically terminate and revert to Grantor, and Grantor is permitted to execute and record an "Affidavit on Facts Relating to Title" in the servient estate's chain-of-title giving public notice of the termination and reversion of this Temporary Easement in the event Grantee violates any of the reversionary clauses in subsections (i), (ii), (iii), (iv), (v), or (vi) of this section. Furthermore, Grantee, at its sole cost and expense and upon this Temporary Easement's termination and reversion, is required to **(a)** remove the Sewer from the Temporary Utility Easement Area, **(b)** restore the Temporary Utility Easement Area and Construction Easement Area pursuant to the provisions of this Temporary Easement or as otherwise to Grantor's written specifications, and **(c)** execute and deliver a recordable instrument of conveyance, as approved by the Columbus City Attorney, to Grantor returning the Temporary Utility Easement Area and Construction Easement Area to Grantor and releasing all rights to this Temporary Easement.

**9. RIGHTS & REMEDIES.** Grantor is entitled to the injunctive relief described in this section in addition to any other relief Grantor is entitled, included but not limited to specific performance of any provision of this Temporary Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantor, where injunctive relief or specific performance does not appropriately remedy Grantor, is entitled to recover damages from Grantee for the violation of any provision of this Temporary Easement. Grantor, in its sole discretion but without limiting Grantee's respective liabilities or rights under this Temporary Easement, is permitted to apply any damages recovered to the costs of undertaking any corrective action to the Temporary Utility Easement Area or Construction Easement area. Furthermore, Grantee is responsible for all costs incurred by Grantor in enforcing the provisions of this Temporary 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 Temporary 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.

**10. NON-WAIVER.** Grantor or Grantee's failure or refusal to exercise any rights reserved in this Temporary 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 personnel and authority, and **(iii)** publicly recorded in the servient estate's chain-of-title.

**11. SURVIVAL.** All of Grantee's covenants made in this Temporary Easement are required and intended to survive any termination, expiration, or release of this Temporary Easement and reversion of the Temporary Utility Easement Area and Construction Easement Area as to Grantee and its successors and assigns.





**EXHIBIT-A (PG. 1/1)**



Civil & Environmental Consultants, Inc.

**DESCRIPTION OF  
A 25 FOOT WIDE SANITARY EASEMENT  
LOCATED SECTION 6, TOWNSHIP 15, RANGE 20,  
CONGRESS LANDS  
CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO**

Situated in the State of Ohio, County of Franklin, City of Columbus, and in Section 6, Township 15, Range 20, Congress Lands, being a 25 feet wide Sanitary Easement that lies over and across the 20.509 acres as described in deed to City of Columbus, of record in Instrument Number 200208230207986, all being of record in the Recorder's Office, Franklin County, Ohio, and being more particularly described as follows:

**BEGINNING FOR REFERENCE**, at the common corner of 43.420 acres described in deed to Abbie Trails Investment, LLC, of record in Instrument No. 200811130165482 and Lot 25 of The Villages at Abbie Trails Section 1, of record in Plat Book 101, Pages 19 and 20, also being in the east line of a 37.067 acres described in deed to Reserve at Abbie Lakes, LLC, of record in Instrument No. 200205130120112;

Thence North 05°08'13" East, a distance of 270.24 feet, with the west line of said 43.420 acres and east line of said 37.067 acres, to a point;

Thence North 03°41'59" East, a distance of 408.00 feet, with the west line of said 43.420 acres and east line of said 37.067 acres, to a point;

Thence North 86°07'43" West, a distance of 590.00 feet, with a south line of said 43.420 acres and a north line of said 37.067 acres, to a common corner of said 43.420 acres and said 20.509 acres;

Thence North 03°52'17" East, a distance of 447.33 feet, with the east line of said 20.509 acres and the west line of said 43.420 acres, to the **TRUE POINT OF BEGINNING**;

Thence through said 20.509 acres, the following three (3) courses and distances:

North 86°47'55" West, a distance of 468.89 feet, to a point;

North 03°12'05" East, a distance of 25.00 feet, to a point;

South 86°47'55" East, a distance of 469.19 feet, to the common line of said 20.509 acres and said 43.420 acres;

Thence South 03°52'17" West, a distance of 25.00 feet, with the east line of said 20.509 acres and the west line of said 43.420 acres, to the **TRUE POINT OF BEGINNING**;

Containing 0.269 acre, more or less;

The bearings shown above are based on the bearing of North 66°24'11" West, for the centerline of Long Road, as shown within the record plat of The Villages at Abbie Trails Section 1, of record in Plat Book 101, Page 19-20.



CIVIL & ENVIRONMENTAL CONSULTANTS, INC.

*Mark Alan Smith*

*12/3/2015*

Mark Alan Smith, P.S.  
Registered Surveyor No. 8232

Date

**EXHIBIT-B (PG. 1/1)**



**DESCRIPTION OF  
A 50 FOOT WIDE TEMPORARY SANITARY EASEMENT  
LOCATED SECTION 6, TOWNSHIP 15, RANGE 20,  
CONGRESS LANDS  
CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO**

Situated in the State of Ohio, County of Franklin, City of Columbus, and in Section 6, Township 15, Range 20, Congress Lands, being a 50 feet wide Temporary Sanitary Easement that lies over and across the 20.509 acres as described in deed to City of Columbus, of record in Instrument Number 200208230207986, all being of record in the Recorder's Office, Franklin County, Ohio, and being more particularly described as follows:

**BEGINNING FOR REFERENCE**, at the common corner of 43.420 acres described in deed to Abbie Trails Investment, LLC, of record in Instrument No. 200811130165482 and Lot 25 of The Villages at Abbie Trails Section 1, of record in Plat Book 101, Pages 19 and 20, also being in the east line of a 37.067 acres described in deed to Reserve at Abbie Lakes, LLC, of record in Instrument No. 200205130120112;

Thence North 05°08'13" East, a distance of 270.24 feet, with the west line of said 43.420 acres and east line of said 37.067 acres, to a point;

Thence North 03°41'59" East, a distance of 408.00 feet, with the west line of said 43.420 acres and east line of said 37.067 acres, to a point;

Thence North 86°07'43" West, a distance of 590.00 feet, with a south line of said 43.420 acres and a north line of said 37.067 acres, to a common corner of said 43.420 acres and said 20.509 acres;

Thence North 03°52'17" East, a distance of 439.83 feet, with the east line of said 20.509 acres and the west line of said 43.420 acres, to the **TRUE POINT OF BEGINNING**;

Thence through said 20.509 acres, the following three (3) courses and distances:

North 86°47'55" West, a distance of 468.81 feet, to a point;

North 03°12'05" East, a distance of 50.00 feet, to a point;

South 86°47'55" East, a distance of 469.39 feet, to the common line of said 20.509 acres and said 43.420 acres;


Thence South 03°52'17" West, a distance of 50.00 feet, with the east line of said 20.509 acres and the west line of said 43.420 acres, to the **TRUE POINT OF BEGINNING**;

Containing 0.538 acre, more or less;

The bearings shown above are based on the bearing of North 66°24'11" West, for the centerline of Long Road, as shown within the record plat of The Villages at Abbie Trails Section 1, of record in Plat Book 101, Page 19-20.



CIVIL & ENVIRONMENTAL CONSULTANTS, INC.

 12/3/2015  
Mark Alan Smith, P.S. Date  
Registered Surveyor No. 8232

Date Prepared: July 1, 2015  
File Name: 141-729-DESC-ESMT-SAN-TEMP-0.docx

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EXHIBIT-C (PG. 1/1)

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