

EASEMENT AGREEMENT FOR UNDERGROUND PARKING FACILITY

This EASEMENT AGREEMENT FOR UNDERGROUND PARKING FACILITY (this “Agreement” and/or this “Easement”) is made and entered into as of this ____ day of _____, 2016 (the “Effective Date”), by the City of Columbus, Ohio, an Ohio municipal corporation (“Grantor”), and Nationwide Children’s Hospital, an Ohio non-profit corporation (“Grantee”).

RECITALS

A. Grantor is the owner of certain real property identified as Franklin County Tax Parcel 010-066806 that is a historic, public park owned by the Grantor since 1839, comprised of approximately 8.3 acres and known as “Livingston Park” (as depicted on Exhibit A attached hereto, the “Park Property” and/or “Burdened Property”).

B. Grantee is a pediatric health care facility and the owner of the benefited real property bordering and abutting the Park Property to the west and north of Children’s Drive (as depicted on Exhibit A attached hereto, the “Hospital Property” and/or “Benefited Property”).

C. In support of Grantee’s expansion of its facilities pursuant to Grantee’s Long Range Master Plan (the “NCH Master Plan”), a copy of which has been provided to Grantor, and Grantee’s ongoing services to the public, and in exchange for the mutual covenants and conditions set forth herein, Grantor has agreed, and desires hereby, to grant to Grantee, an appurtenant non-exclusive easement for the construction, use, maintenance, operation, repair and replacement of an underground parking facility and associated improvements, including, parking facility access, ingress and egress ramps, ventilation apparatus and an underground connection to the Hospital Property, under the portion of the Park Property depicted on Exhibit B attached hereto and more particularly described on Exhibit C attached hereto, as the same may be modified pursuant to Section 2 of this Agreement (the “Easement Area”), under the terms set forth herein.

D. Grantee acknowledges and agrees that it is necessary to preserve in perpetuity the character of Livingston Park and maintain its utility and purpose in serving the needs of neighborhood residents and park users. Therefore, in consideration of the easements rights granted herein, Grantee agrees to complete improvements to the Park Property contained in Grantee’s master plan for the Park Property, known as the Livingston Park Draft Master Plan dated January 2009 (the “LP Master Plan”), a copy of which is attached hereto as Exhibit D, in accordance with the provisions of Section 6 of this Agreement and certain other terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, for themselves and their successors and assigns, and intending to be legally bound hereby, Grantor and Grantee hereby agree as follows:

1. Grant of Easements. For so long as Grantee owns and continues to use the Hospital Property for hospital related purposes, and subject to the terms of this Agreement, Grantor hereby grants to Grantee the following easements (collectively, the “Easements”):

a. An appurtenant non-exclusive easement beginning ten (10) feet below the surface and under the Easement Area for the construction, use, maintenance, operation, repair, and replacement of a subterranean parking facility and related improvements for the purpose of providing parking for hospital visitors, invitees and staff, including, without limitation, ventilation apparatus, and an underground pedestrian walkway connecting the subterranean parking facility to the Hospital Property along with ingress and egress access ramp or ramps and stairwell(s) for vehicular and pedestrian access to and from the Grantee’s subterranean parking facility to the surface (collectively, the “Improvements”), which shall be subject to the following:

(i) Grantee’s completion of a public process to gather community input prior to the initial design of the Improvements and Grantor’s approval of the final design plan;

(ii) Grantee’s final design, construction plan and implementation of the Improvements shall not result in a net loss of green space in the Park Property except as may be required in connection with the construction and operation of the Improvements and subject to the provisions of Section 12 hereof;

(iii) Grantee’s rights herein are subordinate to the Cultural Project Cooperative Agreement, dated September 2, 2010, by and between Grantor and the State of Ohio and Grantee must comply with the terms thereof while it remains in effect, including but not limited to obtaining prior approval of the State of Ohio for any and all changes to the Park Property;

(iv) the eastern portion of the Park Property, including the play area, shelter, basketball courts, and other amenities shall be maintained and remain open during the initial construction, repair, or maintenance of the garage;

(v) prior to Grantee’s commencement of construction of its subterranean parking facility, Grantee’s shall complete, at its sole cost and expense, the relocation and construction of the basketball courts and play area as generally described in the LP Master Plan and as approved by the Grantor’s Department of Recreation and Parks;

(vi) Grantee’s compliance with the City of Columbus Executive Order 2015-01, effective December 8, 2015, for the protection of trees on Park Property during construction, replacement of any trees removed from the Park Property to facilitate construction of Grantee’s subterranean parking facility, or trees damaged during such construction; and

(vii) Grantee's prohibition from Grantee's placement of signage or advertising on Park Property for any purpose not directly associated with the Improvements.

b. Notwithstanding the non-exclusivity of the easement rights granted herein, Grantee shall not convey to any other person or entity the right to build an underground parking facility in the Easement Area or convey or grant to any other person or entity, except for utilities, any subsurface rights in the Easement Area, provided this Easement has not otherwise been terminated.

c. An non-exclusive temporary access and construction easement upon, across, over and under the Park Property during the term of the initial construction and installation of the Improvements, together with the rights of access, ingress and egress over and upon the identified areas of the Park Property in order to commence and complete the construction and installation of the Improvements; provided, however, that the Park Property shall not be used for the storage of construction materials, including soil from any source, without the prior written approval of Grantor. Grantee shall obtain any and all required approvals from the Department of Public Service for establishing any temporary access locations to the public right of way.

d. Notwithstanding anything to the contrary herein, Grantee hereby acknowledges and agrees that, prior to the commencement of construction of the Improvements, Grantor shall retain the sole right to use and enjoy the Easement Area for its current public park purposes and to further improve the Easement Area with additional landscaping and/or other improvements, provided that such improvements shall not extend for more than ten (10) feet beneath the surface of the Easement Area.

2. Easement Area; Legal Descriptions. Grantor hereby acknowledges that, as of the Effective Date, the plans for the Improvements as contemplated herein have not been fully developed and finalized and are conceptual in nature, and Grantee hereby acknowledges and agrees that the plans to be developed and finalized for the Improvements shall provide for vehicular and pedestrian ingress and egress to the subterranean parking facility from Children's Drive. The draft and final plans for the Improvements are subject to the Grantor's review and final approval. Such approval shall be at Grantor's sole discretion. After the final plans for the Improvements are approved by Grantor and Grantee, Grantee shall at its sole cost prepare a final metes and bounds legal description, including all appropriate subterranean elevations and a plat of the Easement Area, subject to Grantor's review and approval, such approval shall be at Grantor's sole discretion. Thereafter, the parties hereto shall execute and record an amendment to this Agreement for the purpose of acknowledging and agreeing that the legal description(s) of the Easement Area attached to such amendment shall thereafter be the Easement Area for the purposes of this Agreement and further modify this Agreement as needed, including designating certain portions of the amended Easement Area as being exclusive to the Grantee. No work shall occur under or on the Park Property or Easement Area, until the final plans are approved and this Agreement is amended as contemplated herein.

3. Construction; Plans and Specifications; Approvals, Costs. Grantee shall be solely responsible for all costs and expenses of designing, constructing and installing the Improvements and for obtaining any and all necessary permits and approvals for the same.

4. Ongoing Maintenance of Improvements. Grantee is required, at Grantee's sole cost and expense, to maintain the Improvements in first-class condition and repair for the life of this Easement, and to maintain the Easement Area pursuant to the terms and conditions of the Grounds Maintenance Agreement (as defined in Section 8 hereof). Following the construction of the Improvements, if Grantee abandons the Improvements or the Improvements are condemned for any reason, Grantee will, at Grantee's sole cost and expense, remove the Improvements and restore the Easement Area to its original or better condition.

5. Restoration Following Completion of Improvements. Grantor hereby acknowledges and agrees that, due to the invasive nature of the construction of the Improvements, the surface of the Easement Area and other portions of the Park Property will necessarily be damaged or destroyed, including, without limitation, the destruction and removal of certain trees and other improvements presently located on the Park Property.

a. Generally. Subject to the terms and conditions of this Agreement and in compliance with the LP Master Plan for, Grantee shall, at its sole cost, in conjunction with Grantee's completion of construction of the Improvements promptly replace and restore all lawn areas, walks, site furnishings, park lighting, water features, and other amenities of the Park Property disturbed by the construction of the Improvements to their original or better condition.

b. Trees. With respect to trees, Grantee hereby agrees to comply with all requirements of the City of Columbus Executive Order 2105-01, effective December 8, 2015, a copy of which is attached hereto as Exhibit E. Grantee, at Grantee's sole cost and expense, will complete the replacement of trees removed to facilitate construction of the Improvements or damaged during such construction within the first advisable planting season following the completion of the Improvements.

c. Timeline. Grantee shall complete the restoration of the Park Property at the completion of Improvements without any unreasonable delay.

6. Improvements to Park Property; LP Master Plan. Grantor and Grantee hereby acknowledge and agree that the work identified as Phase 1 in the LP Master Plan has been completed. As additional consideration for this Agreement, Grantee hereby agrees to make and perform, at its sole cost and expense, the improvements to the Park Property called for in the LP Master Plan, generally in accordance with the general phasing plan provided for therein. Grantee shall restore all lawn areas, walks, site furnishings, park lighting, water features, and other amenities promptly in conjunction with Grantee's completion of construction of its Improvements and shall commence the additional work as provided for in the LP Master Plan, and as approved by Grantor's Department of Recreation and Parks, and Grantee shall diligently pursue the work to completion.

At the time that this Agreement is executed, Grantee shall make a one-time contribution of \$250,000.00 to the Columbus Foundation to be deposited in an endowment account established for the City of Columbus Recreation and Parks Department. The funds and associated interest shall be used for the replacement and repair of the park improvements and equipment within the Park Property, as contemplated in the LP Master Plan, which will be utilized and expended in a manner as determined as necessary and appropriate by Grantor.

7. Reversion; Term. Grantor expressly reserves a reversionary interest in this Agreement for the benefit of the City of Columbus, Ohio. The initial term of this Agreement shall commence on the Effective Date and continue for a period of ten (10) years thereafter (the "Initial Term"). The Initial Term shall automatically extend for three (3) successive periods of five (5) years each (each an "Extension Term"). In the event that (a) any Grantee Certificate (as hereinafter defined) fails to comply with the provisions of Section 11 hereof, (b) Grantee leases, sells, conveys, or transfers any of the Easement Area or rights granted by this Agreement without the prior written consent of Grantor, or (c) fails to abide by the terms and conditions of this Agreement, and such failure is not cured within sixty (60) days after Grantee's receipt of written notice of such failure from Grantor, Grantor shall have the right to request that the Columbus City Council terminate this Agreement and extinguish the rights granted herein; provided, however, that notwithstanding the foregoing, if any such failure by Grantee under Section 7(c) above is of a nature that cannot reasonably be cured within a sixty (60) day period, Grantor shall not have the right to terminate this Agreement for such failure if Grantee begins to cure such failure within the sixty (60) day period and diligently completes the cure, provided, further, that under no circumstances shall such cure period exceed one hundred eighty (180) days without Grantor's written approval.

Notwithstanding the foregoing or anything herein to the contrary, Grantor hereby acknowledges and agrees that, provided Grantee commences the construction of the Improvements within the Initial Term or an Extension Term, the Easements and rights herein granted to Grantee shall thereafter automatically and without further action by either party be and become (y) exclusive to Grantee and (z) perpetual and shall run with the land for the benefit of and as a burden to, and be enforceable by and against, each party hereto and their successors and assigns. Grantee hereby covenants and agrees that, if and when Grantee commences construction of the Improvements, Grantee shall diligently pursue the completion thereof. In the event any utilities are installed by the Grantor or authorized by easement or otherwise by the Grantor to a third party prior to Grantee commencing construction of the Improvements, Grantee shall be solely responsible for any and all costs associated with relocating said utilities.

Notwithstanding the foregoing or anything herein to the contrary, in the event the Grantee has not commenced construction of the Improvements within twenty-five (25) years of the Effective Date, this Agreement shall automatically terminate and the Grantee shall have no rights to the Easement Area or under this Agreement. Grantee acknowledges and agrees to provide the Grantor with an acceptable and recordable Acknowledgement and Release within sixty (60) days of any termination. Furthermore, in the event the Grantee fails to provide said

Acknowledgement and Release, the Grantor may file an Affidavit on Facts Relating to Title for the purpose of memorializing and giving public notice of such termination of this Agreement.

8. Continuation of Grounds Maintenance Agreement. Notwithstanding anything contained herein, Grantee shall continue to maintain the Park Property pursuant to the terms and conditions of that certain Grounds Maintenance Agreement for Livingston Park dated February 1, 2010 by and between Grantor and Grantee (the "Grounds Maintenance Agreement").

9. Indemnity & Insurance. Grantee shall indemnify, defend, and hold Grantor and Grantor's agents, employees, and representatives harmless from and against all claims, damages, losses, suits, and actions, including attorney's fees, solely to the extent that any of the foregoing arise or result from the acts or omissions of Grantee or Grantee's agents, representatives, or employees in their use of the Easement Area or their exercise of any rights under this Agreement. Additionally, (a) Grantee's contractors entering in the easement areas pursuant to the rights granted in this Easement are required to be fully bonded in respect to the performance of the project, and (b) Grantee shall at all times hereunder possess and maintain commercial comprehensive general liability insurance for loss of or damage to property and injury to or death of third parties with a combined single limit of not less than Five Million and 00/100 U.S. Dollars (\$5,000,000.00) per occurrence and Ten Million and 00/100 U.S. Dollars (\$10,000,000.00) in the aggregate, provided that such coverage may be maintained by Grantee through a combination of self-insurance and multiple excess commercial general liability policies.

10. Liens & Taxes. Grantee shall keep the Park Property free from any and all liens arising out of any work performed, materials furnished or obligations incurred by or from Grantee, and agrees to bond against or discharge any mechanic's or materialmen's lien within thirty (30) days after notice thereof. The Park Property is currently exempt from real property taxes and assessments. To the extent the Improvements or Grantee's use of the easement rights granted herein cause the Park Property to be subject to any real property taxes or assessments, Grantee shall be solely responsible for the timely and full payment of said real property taxes or assessments.

11. NCH Master Plan; Grantee Certificates. A copy of the NCH Master Plan has been provided to Grantor with the execution of this Agreement, and Grantee hereby represents and warrants to Grantor that the Improvements and the rights granted to Grantee in this Agreement are an essential element of the NCH Master Plan. At any time during the Initial Term or any Extension Term, but not more than once every 2 years, Grantor may request in writing that Grantee certify to Grantor in writing that the Improvements and the rights granted to Grantee in this Agreement remain an essential part of its then current form of the NCH Master Plan (each a "Grantee Certificate"). After any such written request, if Grantee fails to deliver a Grantee Certificate within sixty (60) days or if, when given, any Grantee Certificate contains qualifications or conditions on Grantee's continuing need for the Improvements and the rights granted in this Agreement that Grantor reasonably deems unsatisfactory or in contravention of

the spirit of this Agreement, then such Grantee Certificate shall be deemed to fail to comply with this Section 11 for purposes of Section 7.a. hereof.

12. Replacement Green Space. Upon Grantor's approval of the final plans for the Improvements, Grantor and Grantee shall mutually determine the net amount of green space from the Park Property that will be lost as a result of the construction and operation of the Improvements (the "Lost Green Space"). Grantee hereby covenants and agrees to maintain as open green space for the use and enjoyment of the public an amount of green space equal to two (2) times the Lost Green Space (the "Replacement Green Space"). Such Replacement Green Space shall be generally located proximate to the western border of the Park Property in the area labeled "Covenant Area" on Exhibit F attached hereto. Although not required, Grantee further agrees that it shall, upon a request for Grantor, provide and record a separate restrictive covenant including the accompanying legal description(s), at Grantee's sole cost, for the benefit of the Grantor and the purpose of identifying the specific area to be maintained as open green space for the use and enjoyment of the public.

13. Assignment. This Agreement shall not be assigned by Grantee without the prior written approval of the Grantor.

14. Covenants. The rights, duties, and obligations set forth in this Easement are covenants benefitting, burdening, and running with the land of the servient estate. This Easement and its terms and conditions are forever binding and inuring to the benefit and detriment of Grantor and Grantee and permitted successors and assigns. As a result, Grantee's exercise of any rights in this Easement or recordation of this Easement, or both, are each deemed Grantee's acceptance of all terms, conditions, restrictions, specification, limitations, and reservations contained in this Easement

15. Non-waiver. Grantor's failure or refusal to exercise any rights reserved in this Easement is not a waiver of any rights Grantor possesses to enforce Grantee's obligations through any rights and remedies Grantor has at law or in equity for the enforcement of Grantee's obligations.

16. Notices. All notices, which are required for either party to serve upon the other, are effectively served if personally delivered, sent by reliable courier, or by certified U. S. mail, return receipt requested, and addressed as follows below. Either party may, with timely written notice given to the other party, specify a new address where further Notice will be sent.

If to Grantor:

City of Columbus, Ohio
Columbus Recreation & Parks Department
Attention: Director
1111. E. Broad Street
Columbus, Ohio 43205

WITH A COPY TO:

Columbus City Attorney, Real Estate Division
Attention: Chief Real Estate Attorney
77 N. Front Street, 4th floor,
Columbus, Ohio 43215

If to Grantee:

Nationwide Children's Hospital
Attention: Senior Vice President for Strategic and Facilities Planning
700 Children's Drive
Columbus, Ohio 43205

WITH A COPY TO:

Nationwide Children's Hospital
Attention: General Counsel
700 Children's Drive
Columbus, Ohio 43205

17. Severability. Each provision of this Agreement and the application thereof to the property described herein are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement.

18. Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Ohio.

19. Exhibits. Each Exhibit referred to in this Agreement is hereby incorporated herein by reference.

20. Counterpart Execution. This Agreement may be executed in any number of counterparts, each constituting an original by collectively constituting one document.

21. Modifications. This Agreement may be amended, terminated, rescinded, released or otherwise modified in whole or in part, at any time and from time to time, only by a written document executed and acknowledged by Grantee and Grantor's authority as authorized by an ordinance of Columbus City Council and recorded in the Recorder's Office, Franklin County, Ohio.

22. Remedies. In the event of any breach, violation or threatened breach of violation of any easement or rights granted or created under this Agreement, all parties hereto, their permitted successors and assigns, shall, in addition to any and all other remedies available, be entitled to enforce the provisions of this Agreement by injunctive relief or otherwise.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed and acknowledged by its duly authorized representative to be effective as of the Effective Date.

GRANTOR:

CITY OF COLUMBUS, OHIO, an Ohio
municipal corporation

By: _____
Tony A. Collins, Director
Department of Recreation and Parks
Pursuant to City Council Ordinance
xxxx -2016

GRANTEE:

NATIONWIDE CHILDREN'S HOSPITAL,
an Ohio non-profit corporation

By: _____
Name: _____
Its: _____

(Acknowledgements Follow)

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____, the Director of the Department of Recreation and Parks of the City of Columbus, Ohio, a municipal corporation, on behalf of such corporation.

Notary Public

Commission Expiration: _____

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____, the _____(title) of Nationwide Children’s Hospital, an Ohio non-profit corporation, on behalf of such corporation.

Notary Public

Commission Expiration: _____

This instrument prepared by: Christopher D. Adkinson, Esq., Vorys, Sater, Seymour and Pease LLP, 52 East Gay Street, Columbus, Ohio 43215.

APPROVED AS TO FORM:

Richard C. Pfeiffer, City Attorney

Date: _____

Exhibit A

The Park Property and the Hospital Property

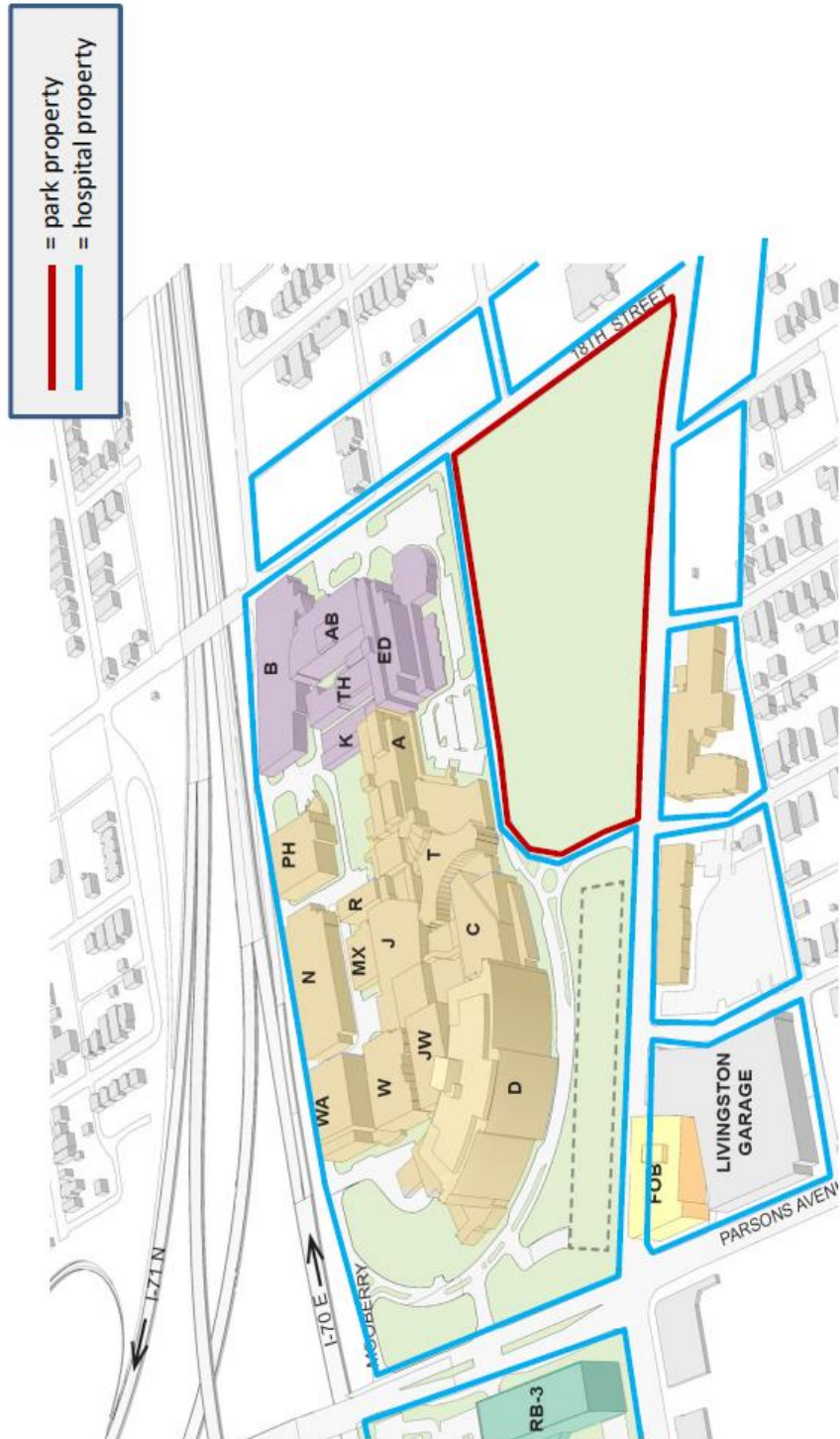


Exhibit B

Drawing of the Easement Area

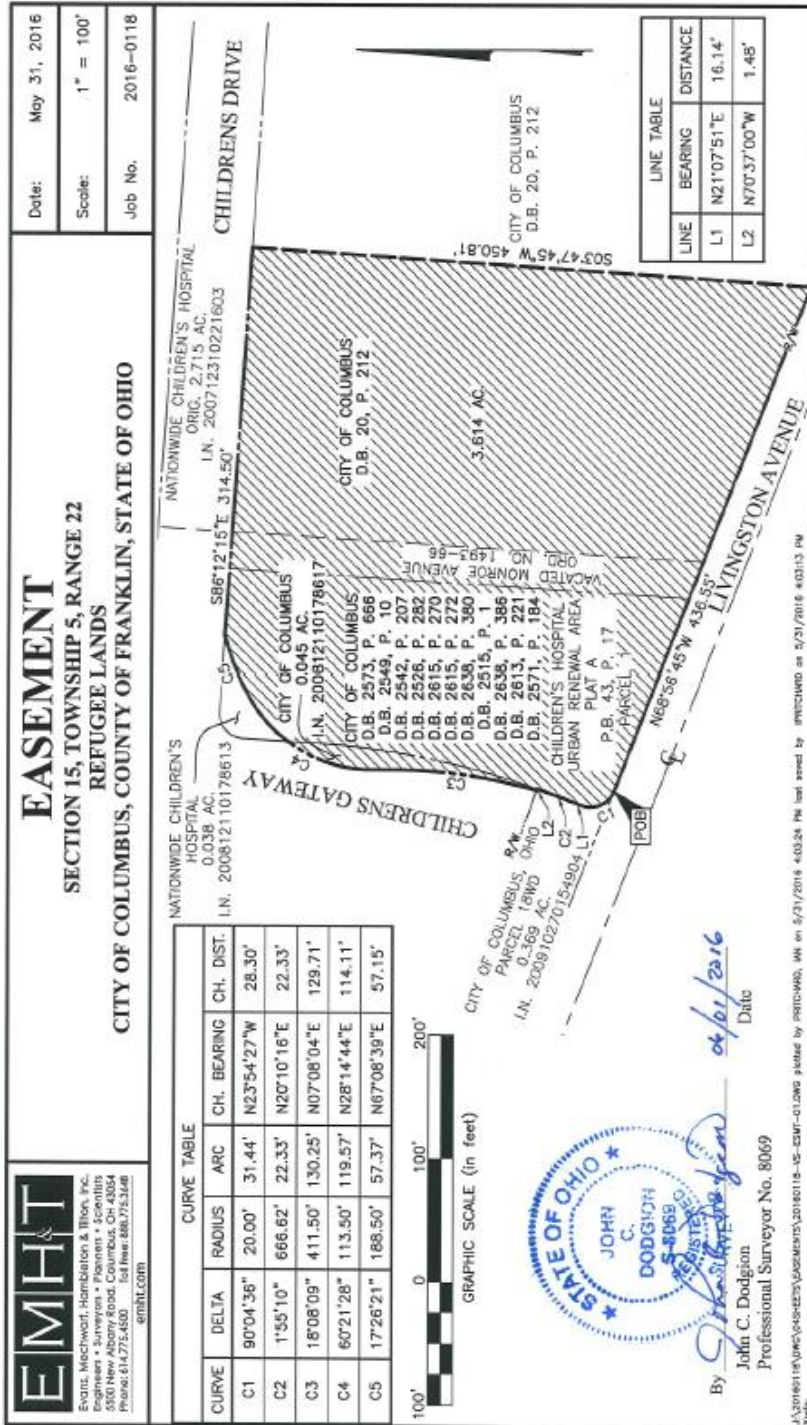


Exhibit C

Legal Description of the Easement Area

**EASEMENT
3.614 ACRES**

Situated in the State of Ohio, County of Franklin, City of Columbus, Section 15, Township 5, Range 22, Refugee Lands, being on, over and across Parcel 1 of that subdivision entitled "Children's Hospital Urban Renewal Area Plat A" of record in Plat Book 43, Page 17, as conveyed to the City of Columbus by deeds of record in Deed Books 2573, Page 666, 2549, Page 10, 2542, Page 207, 2526, Page 282, 2615, Page 270, 2615, Page 272, 2638, Page 380, 2515, Page 1, 2638, Page 386, 2613, Page 221 and 2571, Page 184, that tract conveyed to the City of Columbus by deed of record in Deed Book 20, Page 212 and that 0.045 acre tract conveyed to the City of Columbus by deed of record in Instrument Number 2008121101178617 (all references are to the records of the Recorder's Office, Franklin County, Ohio) and being more particularly described as follows:

Beginning in the southerly line of said Parcel 1, being the southeasterly corner of that 0.369 acre tract conveyed to the City of Columbus, Ohio by deed of record in Instrument Number 200910270154904 and at an angle point of the northerly right-of-way line of Livingston Avenue;

thence with the line common to said Parcel 1 and 0.369 acre tract, being said northerly right-of-way line, the following courses and distances:

with the arc of a curve to the right, having a central angle of $90^{\circ} 04' 36''$, a radius of 20.00 feet, an arc length of 31.44 feet, a chord bearing of North $23^{\circ} 54' 27''$ West and chord distance of 28.30 feet;

North $21^{\circ} 07' 51''$ East, a distance of 16.14 feet; and

with the arc of a curve to the left, having a central angle of $01^{\circ} 55' 10''$, a radius of 666.62 feet, an arc length of 22.33 feet, a chord bearing of North $20^{\circ} 10' 16''$ East and chord distance of 22.33 feet to the southeasterly corner of said 0.045 acre tract;

thence North $70^{\circ} 37' 00''$ West, with the line common to said 0.369 and 0.045 acre tract, being said northerly right-of-way line, a distance of 1.48 feet to a current southeasterly corner of that Original 2.715 acre tract conveyed to Nationwide Children's Hospital by deed of record in Instrument Number 200712310221603;

thence with the westerly line of said 0.045 acre tract, being a current easterly line of said 2.715 acre tract, with the arc of a curve to the left, having a central angle of $18^{\circ} 08' 09''$, a radius of 411.50 feet, an arc length of 130.25 feet, a chord bearing of North $07^{\circ} 08' 04''$ East and chord distance of 129.71 feet;

thence continuing partially with said westerly line of the 0.045 acre tract, partially with said easterly line of the 2.715 acre tract, partially with the southeasterly line of that 0.038 acre tract conveyed to Nationwide Children's Hospital by deed of record in Instrument Number 200812110178613 and partially across said Parcel 1, with the arc of a curve to the right, having a central angle of $60^{\circ} 21' 28''$, a radius of 113.50 feet, an arc length of 119.57 feet, a chord bearing of North $28^{\circ} 14' 44''$ East and chord distance of 114.11 feet;

thence continuing with said southwesterly line and across said Parcel 1, with the arc of a curve to the right, having a central angle of $17^{\circ} 26' 21''$, a radius of 188.50 feet, an arc length of 57.37 feet, a chord bearing of North $67^{\circ} 08' 39''$ East and chord distance of 57.15 feet to the northeasterly corner of said 0.038 acre tract, in a southerly line of said 2.715 acre tract;

thence South $86^{\circ} 12' 15''$ East, with said southerly line of the 2.715 acre tract, being the northerly lines of said Parcel 1 and City of Columbus (D.B. 20, P. 212) tracts, a distance of 314.50 feet;

thence South $03^{\circ} 47' 45''$ West, across said City of Columbus (D.B. 20, P. 212) tract, a distance of 450.81 feet to said northerly right-of-way line;

thence North $68^{\circ} 56' 45''$ West, with said northerly right-of-way line, a distance of 436.55 feet to the *Point of Beginning*, containing 3.614 acres, more or less.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

John C. Dodgion
Professional Surveyor No. 8069

Date



06/01/2016

JCD:jp
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Exhibit D

Livingston Park Master Plan

Exhibit E

Executive Order 2015-01



Office of the Mayor
City of Columbus
Ohio

EXECUTIVE ORDER

2015-01

Michael B. Coleman, Mayor

December 8, 2015

WHEREAS, the City of Columbus is committed to combating climate change, becoming a more sustainable city, and increasing the quality of life of the Columbus community; and

WHEREAS, trees contribute to improved human health, water and air quality, temperature reduction, pollution abatement, storm water retention, carbon sequestration, energy savings, and have various other benefits; and

WHEREAS, the Mayor and the City of Columbus believe that protecting and expanding the current urban tree canopy should be a priority in the movement toward becoming a more sustainable community; and

WHEREAS, in furtherance of the "Branch Out Columbus: 300,000 Trees by 2020" initiative and the Columbus Green Community Plan - Green Memo III established goal to preserve the current tree canopy and increase the urban tree canopy by 1% annually; and

NOW, THEREFORE, I, Michael B. Coleman, Mayor of the City of Columbus, declare and institute this Executive Order implementing the following Tree Protection and Mitigation Policy:

- This policy applies to all professional service and construction contracts for projects on City property or in the City right-of-way that include a scope of work funded solely with public dollars (i.e. traditional city capital improvement projects with no private sector contributions). This policy does not apply to routine maintenance activities undertaken by the City.
- In the design phase, the design professional shall take care to design the project to minimize the number of trees disturbed or removed. In the construction phase, the contractor shall take care not to damage trees within the project boundaries. Attachments A and B include template language that shall be included in the scope of work for professional service contracts and construction contracts, respectively, that involve construction on City property and in the City right-of-way.
- If removing trees are necessary in a construction project, the project's scope shall include replacement of trees removed. Replacement shall occur on the site of the project, if practical. For projects where on-site replacement is not practical, the funding department(s) shall provide separate payment to the Department of Recreation and Parks' tree fund (058511-0819 Fund 234). Attachments C through E detail the City's Tree Protection and Mitigation Policy.

This order shall be in full force and effect on projects for which a design Notice to Proceed is issued after the date my signature is affixed to this document.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the Mayor of the City of Columbus Ohio to be hereto affixed this 8th day of December, 2015

Michael B. Coleman
Mayor

Effective date: December 8, 2015

EO14-1



Black Walnut	<i>Juglans nigra</i>	U, R	70' x 70'
Sweetgum	<i>Liquidambar styraciflua</i>	P	45'+
Tulip Tree	<i>Liriodendron tulipifera</i>	L, R	60' x 30'
Cucumbertree	<i>Magnolia acuminata</i>	R	70' x 30'
American Sycamore	<i>Platanus occidentalis</i>	Open, massive crown	75' x 75'
White Oak	<i>Quercus alba</i>	S	45'+
Swamp White Oak	<i>Quercus bicolor</i>	L, O	45' x 45'
Scarlet Oak	<i>Quercus coccinea</i>		50' x 40'
Red Oak	<i>Quercus rubra</i>	L, R	50' x 40'
Overcup Oak	<i>Quercus lyrata</i>	L/M, O/R	50' x 45'
Shingle Oak	<i>Quercus imbricaria</i>	L, O	50' x 40'
Bur Oak	<i>Quercus macrocarpa</i>	L, B/S	55' x 45'
Chinkapin Oak	<i>Quercus muehlenbergii</i>	Open, globular	40' x 50'
Pin Oak	<i>Quercus palustris</i>	P	45'+
Willow Oak	<i>Quercus phellos</i>		45'+
Northern Red Oak	<i>Quercus rubra</i>	R	45'+
Shumard Oak	<i>Quercus shumardi</i>	P, S	45'+
Post Oak	<i>Quercus stellata</i>	R	40' x 40'
Black Oak	<i>Quercus velutina</i>	Globular, S	55' x 55'
Sassafras	<i>Sassafras albidum</i>	I	45'+
Baldcypress	<i>Taxodium distichum</i>	P	60' x 25'
Evergreen tree/shrub (Arborvitae)	<i>Thuja occidentalis</i>	U	30'
Boulevard American Linden (American basswood)	<i>Tilia americana</i> "Boulevard"	L, N/P	50' x 25'
Sterling Silver Linden	<i>Tilia tomentosa</i> "Sterling"	L, O	45' x 35'
Jefferson American Elm	<i>Ulmus americana</i> "Jefferson"	L, B/V	70' x 50'
Slippery Elm	<i>Ulmus rubra</i>	Vase	
Shade Trees - Medium Class	-	-	-



Attachment E

LIST OF APPROVED TREE SPECIES FOR REPLACEMENT

The table below is a list of suggested species for tree replacement planting on City property and in the City right-of-way. Under the authority of Columbus City Code Chapter 912, the City of Columbus Tree Sub Commission is charged with guiding tree plantings within the City's right of ways. The Department of Recreation and Parks' Forestry Section is interested in nurturing a well-diversified urban tree canopy and encourage selecting a variety of tree species listed below. Alternative suggestions to those listed below shall be considered on a case by case basis and shall be approved by the City Forester prior to final construction plan approval.

Shade Trees - Large Class	-	-	-
Common Name	Botanical Name	Shape	Size
Sienna Glen Freeman Maple	<i>Acer x freemanii</i> "Sienna"	L, O/P	50' x 35'
Commemoration Sugar Maple	<i>Acer saccharum</i> "Commemoration"	L, O/R	50' x 35'
Armstrong Red Maple	<i>Acer rubrum</i> "Armstrong"	L, N	40' x 15'
Black Maple	<i>Acer nigrum</i>		40' x 15'
Yellow Buckeye	<i>Aesculus flava</i>	UO	80'
Ohio Buckeye	<i>Aesculus glabra</i>	R	60'
American Chestnut	<i>Castanea dentata</i>	B, R	60' x 80'
Magnifica Hackberry	<i>Celtus occidentalis</i> "Magnifica"	L, O	50' x 40'
Persimmon	<i>Diospyros virginiana</i>	O/R	30' x 50'
Black Locust, Honeylocust	<i>Robinia pseudoacacia</i> , <i>Gleditsia tricanthos</i>	U/S	25' x 50'
American Beech	<i>Fagus grandifolia</i>	R-S	45'+
Imperial Honeylocust	<i>Gleditsia triacanthos</i> var. <i>inermis</i> "Impeole" (avoid fruitless male cultivars)	L, R	35' x 35'
Espresso Kentucky Coffeetree	<i>Gymnocladus dioicus</i> "Espresso"	L, B	50' x 35'
Bitternut Hickory	<i>Carya cordiformis</i>	Slender	35' x 70'
Pignut Hickory	<i>Carya glabra</i>		(80 to 90 ft) tall
Mockernut Hickory	<i>Carya tomentosa</i>	R'	60' x 40'
Butternut	<i>Juglans cinerea</i>	R	60'



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Attachment D

FEES FOR TREE REPLACEMENT

The fees for tree replacements is defined in the current edition in effect at the time the professional services contract is executed of the *Guide for Plant Appraisal* authored by the Council of Tree and Landscape Appraisers, which is the professional plant appraiser's how-to manual for determining size, species, condition, and location factors that influence the value of plants.

The guide can be found for reference at the Department of Recreation and Parks Forestry Section office at:

Department of Recreation and Parks, Forestry Section
1533 Alum Industrial Dr. W
Columbus, Ohio 43209
614-645-6640

Or can be purchased online.



Attachment C

CITY OF COLUMBUS TREE PROTECTION AND MITIGATION POLICY

In the design and construction of all projects on City property or in the City right-of-way that include a scope of work funded solely with public dollars (i.e. traditional city capital improvement projects with no private sector contributions), the City of Columbus will endeavor to avoid removing trees, including street trees.

If it is not practical to avoid tree removal, the funding department shall provide separate payment to the Department of Recreation and Parks' tree fund (058511-0819 Fund 234).

Prior to commencement of any tree removal or plantings on City property or in the City right-of-way, the scope of work and/or plan needs to be approved by the Department of Recreation and Parks.

All plant material guidelines shall be in accordance with the most recent "American Standard for Nursery Stock (ANSI Z60.1)" standard in effect at the time the professional services contract is executed.

1. All replacement trees shall have a minimum trunk diameter of two and one-half inches (measured at 4 feet up from the base of the tree).
 - a. Impacted trees having a trunk diameter up to twelve inches are to be replaced on a one-for-one basis;
 - b. Impacted trees having a trunk diameter of greater than twelve inches up to eighteen inches are to be replaced on a two-for-one basis;
 - c. Impacted trees having a trunk diameter of greater than eighteen inches up to twenty-four inches are to be replaced on a three-for-one basis;
 - d. Impacted trees having a trunk diameter of greater than twenty-four inches up to thirty inches are to be replaced on a four-for-one basis; and
 - e. Impacted trees having a trunk diameter of greater than thirty inches and over are to be replaced on a five-for-one basis (meaning that if a tree greater than thirty inches is removed, it must be replaced by five trees having at least a trunk diameter of two and one-half inches).
2. Tree replacement shall occur on the project site, if practical. If it is not practical to replace the trees on site, the funding department(s) shall pay a fee per tree in accordance with the attached fee schedule (Exhibit D) to the Department of Recreation & Parks Tree Fund (058511-0819 Fund 234).
3. All replacement trees shall be from the attached list of tree species that are approved by the City Forester, or approved by a case by case basis. Diversity of tree species is critical to the future sustainability of the tree canopy. The Department of Recreation and Parks may update the approved list annually, and upon doing so, will provide the updated list to the Departments.



Attachment B

CONSTRUCTION CONTRACT LANGUAGE FOR TREE PROTECTION AND MITIGATION DURING CONSTRUCTION

The following instructions shall be included in the construction documents for all construction contracts for construction projects on City property or in City the right-of-way that include a scope of work funded solely with public dollars (i.e. traditional city capital improvement projects with no private sector contributions) and the City's Tree Protection and Mitigation Policy shall be included in the executed construction contract:

TREE PROTECTION DURING CONSTRUCTION

Trees, tree roots and limbs included within the construction limits of the project shall be protected against injury or damage during the course of Work. Special attention shall be paid to branches, trunks, and roots during construction.

The contractor shall follow the most recent edition of the "American National Standards Institute" (ANSI) A300 standards in effect at the time the contract is executed, which are the generally accepted industry standards for tree care practices. Any work involving tree care shall be supervised by an "International Society of Arboriculture" (ISA) certified arborist.

Any trees damaged or destroyed due to contractor negligence shall be treated or removed at the contractor's expense. The contractor shall, at the contractor's expense, replace the destroyed trees per the City's Tree Protection and Mitigation Policy as part of the Work.

The standards can be found for reference at the Department of Recreation and Parks Forestry Section office at:

Department of Recreation and Parks, Forestry Section
1533 Alum Industrial Dr. W
Columbus, Ohio 43209
614-645-6640

Or can be purchased online.



Attachment A

PROFESSIONAL SERVICES CONTRACT LANGUAGE FOR TREE PROTECTION AND MITIGATION DURING DESIGN

The following instructions shall be included in the scope of services for all professional service and contracts for construction projects on City property or in the City right-of-way that include a scope of work funded solely with public dollars (i.e. traditional city capital improvement projects with no private sector contributions) and the City's Tree Protection and Mitigation Policy shall be included in the executed professional service contract.

TREE PROTECTION DURING DESIGN

It is the policy of the City of Columbus to preserve trees. Development of heavily wooded sites should be avoided when possible. In the site survey work performed pursuant to this contract, the Consultant shall also include the species, location, and size of trees within the construction limits of the project. The preliminary and final design plans shall minimize the removal of the trees identified in the site survey. If removal is necessary, the Consultant or the Contracting Department shall prepare a tree replacement plan that is consistent with the City's Tree Protection and Mitigation Policy. The tree replacement plan shall be reviewed and approved by the City Forester or designee prior to final construction plan approval.



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Common Hoptree	Ptelea trifoliata	R	15' x 15'
Common pricklyash	Zanthoxylum americanum	R	15' x 10'
<u>Fruit and Nut Trees*</u>			
<u>Common Name</u>	<u>Botanical Name</u>	<u>Shape</u>	<u>Size</u>
Paw-Paw	Asimina triloba	S, U/P	25' x 25'
American Elderberry	Sambucus canadensis	S, R	12' x 12'
Apple; numerous cultivars	Malus domestica		12' -15'
Shag Bark Hickory	Carya ovata	L, O	70' x 50'
Shellbark Hickory; Kingnut Hickory	Carya laciniosa	L, N/O	80' x 40'

Size descriptions:

- S – Small** **O - Oval**
M – Medium **P - Pyramidal**
L – Large **U - Upright**
B – Broad **S - Spreading**
N – Narrow **V - Vase Shaped** **R- Round**

***Fruit and Nut Trees are not to be planted in the city right of way.**



<u>Common Name</u>	<u>Botanical Name</u>	<u>Shape</u>	<u>Size</u>
Red Pointe Red Maple	Acer rubrum "Frank Jr."	M, O/P	45' x 35'
Sun Valley Red Maple	Acer rubrum "Sun Valley"	M, O	40' x 35'
Grey alder or speckled alder	Alnus incana	R/I	(49-66 ft tall)
River, Black, Yellow, Sweet, Gray Birch	Betula nigra, lenta, alleghaniensis, lenta, populifolia	P/O, P/R, R	30' x 45'
Prarie Sentinel Hackberry (common hackberry)	Celtus occidentalis "Prairie Sentinel"	M, N	45' x 12'
Yellowwood	Cladrastis kentukea	M, R	30' x 40'
Street Keeper Honeylocust	Gleditsia triacanthos var. inermis "Draves"	M, N	45' x 20'
Red cedar	Juniperus virginiana		30' x 8'
Black Gum/Black Tupelo	Nyssa sylvatica	U, O	30' x 45'
American Hop Hornbeam/ Ironwood	Ostrya virginiana	M, U/O	40' x 25'
Crimson Spire Hybrid Oak	Quercus robur x Q. alba "Crimschmidt"	M, N	45' x 15'
<u>Flowering or Ornamental Trees</u>	-	-	-
<u>Common Name</u>	<u>Botanical Name</u>	<u>Shape</u>	<u>Size</u>
Downy Serviceberry, smooth Serviceberry	Amelanchier arborea, laevis	U	15' x 30'
Moonglow Sweetbay Magnolia	Magnolia virginiana "Jim Wilson"	M, U/S	30' x 15'
American Crabapple	Malus coronaria	S	25' x 35'
Lustre Serviceberry	Amelanchier laevis "Lustre"	S, U	20' x 15'
Franz Fontain European Hornbeam	Carpinus betulus "Franz Fontaine"	S, N, P	35' x 15'
Eastern Redbud	Cercis canadensis	S, S	25' x 30'
Flowering dogwood	Cornus florida	B, P	15' x 30'
Cockspur Hawthorn	Crataegus crus-galli	R	15' x 30'
<u>Small Trees</u>			
American Hornbeam (blue beech) (ironwood)	Carpinus caroliniana	Globular	20' x 20'
Fringe tree	Chionanthus virginicus		12' x 12'
Eastern Red Cedar	Juniperus virginiana	Conical	30' x 8'

Exhibit G – Greenspace Covenant 2:1 Area



Exhibit F

Replacement Green Space, "Covenant Area"

