

CROSS REFERENCE

In accordance with Indiana Code 32-5-2-2, this encroachment agreement is being created from real estate most recently transferred to Grantor in a deed recorded as Instrument Number _____, in the office of the Recorder of Hancock County, Indiana.

Encroachment Agreement

This agreement is made and entered into this 26th day of May, 2020 by and between the City of Greenfield (hereinafter "Greenfield") and **Richard & Beth Emmelman** (hereinafter "Landowner").

In consideration of Greenfield granting Landowner the right to encroach upon a drainage or utility easement previously platted and granted to Greenfield, Landowner agrees as follows:

1. **Scope and purpose of encroachment** – Landowner is granted the right to encroach upon the drainage or utility easement located at **1575 Bayberry Dr, Greenfield, Indiana** and more specifically described as follows: Oak Highlands, Sec 2, Lot 119.

The purpose of the encroachment is specifically limited to a 4' deck encroachment into the east drainage and utility easement.

Landowner may not change the scope or purpose of the encroachment without the specific written consent of Greenfield, which such consent may be withheld at Greenfield's sole discretion.

2. **No waiver of rights** - Landowner acknowledges that Greenfield does not, in any way, waive or forfeit its full right to use and enjoyment of the drainage or utility easement. Upon request by Greenfield, Landowner shall remove the encroachment for the purpose of allowing Greenfield, or any public utility access to the easement. Should Landowner fail to remove the encroachment within a reasonable period of time, Greenfield or any public utility may, at its discretion, remove the encroachment and assess Landowner the cost of removing the encroachment.

3. **Limitation of liability and Indemnification** – Landowners, jointly and severally, agree and acknowledge by their signature below that they knowingly, intentionally, and after either consulting with legal counsel of their choice or having the opportunity to consult with legal counsel of their choice, hereby waive, relinquish, and forgo any claim, of whatever nature including but not limited to property damage, personal injury, consequential damages or any other claim or cause of action that may arise as a result of either the encroachment or any activity conducted by the City within the easement in question. Furthermore, the landowners, jointly and severally, represent that they shall defend, indemnify, and hold the City harmless from any claim for loss, judgment and/or award of damages as well as any expense (including reasonable attorney's fees) incurred by the City as a result of the prosecution of any such claim or cause of action by any third party or by any person or entity by and through ownership of the subject real

estate by the current property owners and their legal successors in interest upon which this agreement as to indemnification shall be binding. Notwithstanding the foregoing, the City reserves the right to select legal counsel of their choice to defend their interest should any claim or cause of action arise out of this encroachment agreement and/or out of any activity of the City within the applicable easement the cost of which the property owners, and/or their legal successors in interest, shall repay to the City within 10 days of receiving an invoice regarding all or any portion of said cost of defense.

4. **Recording of Agreement** – Landowner shall cause this Encroachment Agreement to be recorded in the Office of the Recorder of Hancock County and return a copy of this agreement with its recorded instrument number to Zoning Administrator.

5. **Effective date** – This encroachment agreement shall be effective upon its recording in the office of the Recorder of Hancock County and shall remain in full force and effect until revoked by either party in writing. This agreement is binding on the heirs and successors-in-interest of Landowner. Any amendment to this agreement must be in writing, signed by the parties hereto.

City of Greenfield

Landowner(s)

Member, Board of Works

Printed: _____

Printed: _____

Member, Board of Works

Member, Board of Works

Member, Board of Works

Member, Board of Works

ATTEST:

Lori Elmore
Clerk-Treasurer

Notarization:

State of Indiana)
) SS:
County of Hancock)

Subscribed and sworn to before me,
a Notary Public, this _____ day of
_____, 20_____.

Notary Public
Printed: _____
My Commission Expires: _____
County of Residence: _____

This instrument was prepared by Gregg Morelock, Attorney, Greenfield Advisory Planning Commission, 10 South State Street, Greenfield, IN 46140