

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT, made and entered into this ____ day of _____, 2020, by and between **John David Hardesty and Lois R. Hardesty, Co-Executors of the Estate of Frances Lorena Hardesty aka Lorena Hardesty**, hereinafter referred to as First Party, of 302 Pinecrest Drive, Elizabethtown, Kentucky 42701; and **John David Hardesty and Lois R. Hardesty, Co-Executors of the Estate of Frances Lorena Hardesty aka Lorena Hardesty**, of 302 Pinecrest Drive, Elizabethtown, Kentucky 42701, hereinafter referred to as Second Party;

W I T N E S S E T H :

WHEREAS, the First Party is the owner of property located in Meade County, Kentucky, located at 20 Hwy 376, Payneville, Kentucky and formerly known as Hardesty's Grocery, more particularly described as follows:

(HARDESTY GROCERY TRACT):

BEGINNING at a point on the West right of way line of Payneville-Frymire Road 21 feet S. from its intersection with the King-Wilson division line; running thence S. with the W. line of said road 100 feet to a point; thence W. 60 feet to a point; thence N 87 feet to said King-Wilson line; thence North Easterly with the same 30 feet to a point; thence E 33.8 feet to the beginning. The above description is according to a survey made by Tom McQuary, a licensed Land Surveyor, dated August 2, 1972.

Title derived by James Robert Hardesty and Lorena Hardesty, his wife, by deed dated August 4, 1972, from Earl Mattingly and Della Rose Mattingly, his wife, of record in Deed Book 119, page 555, in the office of the Meade County Clerk.

FRAZIER TO HARDESTY EXCHANGE TO ESTABLISH COMMON BOUNDARY:

BEING a 0.057 acre (2520 square foot) tract located west of KY Highway 376, near the intersection of KY Highway 144, in the community of Payneville, Meade County, Kentucky, more particularly described as follows:

BEGINNING at a found 5/8" rebar with cap stamped T. W. Smith LS 2373 corner to J. Hardesty (DB 121 PG 80) and S. Frazier (DB 674 PG

408 and DB 503 PG 101) also being the northwest corner of J. Hardesty (DB 119 PG 555); THENCE with J. Hardesty (DB 119 PG 555) S 17 deg. 39 min. 58 sec. W., 84.98' to a found 5/8" rebar with cap stamped T. W. Smith LS 2373 in the line of J. Hardesty (DB 133 PG 380); THENCE with J. Hardesty N 70 deg. 06 min. 24 sec. W., 34.79' to a set 5/8" rebar; THENCE leaving said J. Hardesty (DB 133 PG 380) with a new line in said S. Frazier N 19 deg. 44 min. 49 sec. E., 70.01' to a set 5/8" rebar in the line of said J. Hardesty (DB 121 PG 80); THENCE with J. Hardesty S 35 deg. 28 min. 54 sec E., 4.42' to a point in the center of a well; THENCE N 78 deg. 02 min. 06 sec. E., 33.00' to the POINT OF BEGINNING and CONTAINING 0.057 acres (2520 square feet) (more or less) according to a physical survey by Timothy W. Smith, PLS #2373, the completion date of the boundary survey being August 6, 2020, per Job No. 05-234A.

Unless stated otherwise, any monument referred to herein as a 5/8" rebar is a set 5/8" diameter steel concrete reinforcing rod, eighteen inches (18") in length, with a yellow plastic cap stamped T.W. Smith LS 2373" or set magnail is a set 2" magnail with shiner stamped T.W. SMITH LS 2373". The basis of bearing stated herein is based on GPS North, NAD 83, NAVD 88, GRS 80, GRID North.

NOTE: Deed Book references shown hereon were used for survey purposes only and may not be the complete legal title source. The above legal description is part of a plat illustrating said survey. This plat should be consulted concerning any additional information about said survey.

Title derived to the 0.057 acre parcel by John David Hardesty and Lois R. Hardesty, on behalf of the Estate of Frances Lorena Hardesty aka Lorena Hardesty, by Quitclaim Deed dated August 24, 2020, from Shelley Frazier, unmarried, of record in Deed Book 693, page 310, in the office of the Meade County Clerk.

Shelley Frazier acquired title by Commissioner's Deed dated May 9, 2019, by and through Douglas P. Vowels, Master Commissioner on behalf of Jerry L. Denney, Judy A. Brueck, and Olivia J. Hayes, of record in Deed Book 674 page 408 and by Deed from Anna Laverne Watters aka Anna La Verne Watters, single, and James William Watters, single, to Shelley Frazier, et. al., dated September 12, 2005, of record in Deed Book 503, page 101, both in the office of the Meade County Clerk.

THE NON-BUILDABLE 0.057 ACRE (2520 SQUARE FOOT) TRACT DESCRIBED HEREINABOVE WAS MERGED WITH THE PROPERTY ACQUIRED BY JAMES ROBERT HARDESTY AND LORENA HARDESTY, HIS WIFE, FROM EARL MATTINGLY AND DELLA ROSE MATTINGLY, HIS WIFE, BY DEED DATED AUGUST 4, 1972, OF RECORD IN DEED BOOK 119, PAGE 555, AND THEREAFTER FORMED AND CONSTITUTED ONE PARCEL OF LAND.

WHEREAS, the Second Party is the owner of the property and improvements, which property is located adjacent to the Hardesty Grocery Tract, and known as Hardesty Hardware, more specifically described as follows:

(HARDWARE TRACT):

BEGINNING AT A STONE IN THE Sinking Creek Road corner of a lot formerly belonging to George W Vreeland running thence with said road S. 47 yards to a stone, thence S. 34 yards to a stone, thence N 47 yards to a stone, thence 34 yards to the beginning.

HARDESTY TO FRAZIER EXCHANGE TO ESTABLISH A COMMON BOUNDARY:

HOWEVER EXCEPTED OUT OF THE ABOVE CURL HARDWARE TRACT IS A 0.011 ACRE (519 SQUARE FOOT) TRACT CONVEYED TO SHELLEY FRAZIER, UNMARRIED, BY DEED DATED AUGUST 24, 2020, FROM THE ESTATE OF FRANCES LORENA HARDESTY, OF RECORD IN DEED BOOK 693, PAGE 305, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING a 0.011 acre (519 square foot tract) located west of KY Highway 376, near the intersection of KY Highway 144, in the community of Payneville, Meade County, Kentucky, more particularly described as follows:

BEGINNING at a point in a found 36" walnut in the line of St. Mary Magdalen of Pazzi Catholic Church (DB 673 PG 178) corner to S. Frazier (DB 674 PG 408 and DB 503 PG 101) and J. Hardesty (DB 133 PG 380); THENCE with S. Frazier N 16 deg. 44 min. 33 sec. E., passing a found 5/8" rebar with cap stamped WITNESS at 10.00', a total distance of 140.95' to a found 5/8" rebar; THENCE S 70 deg. 06 min. 24 sec. E., 7.39' to a set 5/8" rebar; THENCE leaving said S. Frazier with a new line in said J. Hardesty S 19 deg. 44 min. 49 sec. W., 140.74' to the POINT OF BEGINNING and CONTAINING 0.011 acres (519 square feet) (more or less) according to a physical survey by Timothy W. Smith, PLS #2373, the completion date of the boundary survey being August 6, 2020, per Job No. 05-234A.

Unless stated otherwise, any monument referred to herein as a 5/8" rebar is a set 5/8" diameter steel concrete reinforcing rod, eighteen inches (18") in length, with a yellow plastic cap stamped T.W. Smith LS 2373" or set magnail is a set 2" magnail with shiner stamped T.W. SMITH LS 2373". The basis of bearing stated herein is based on GPS North, NAD 83, NAVD 88, GRS 80, GRID North.

The above described tract is subject to any other easements, right-of-ways, restrictions, overlaps, vacancies, uncertainties, planning and zoning requirements either implied or of record.

NOTE: Deed Book references shown hereon were used for survey purposes only and may not be the complete legal title source. The above legal description is part of a plat illustrating said survey. This plat should be consulted concerning any additional information about said survey.

James R. Hardesty and Lorena Hardesty, his wife, acquired title from Jesse M. Curl, et al on February 28, 1976, by Survivorship Deed of record in Deed Book 133, page 380, in the office of the Meade County Clerk. Lorena Hardesty aka Frances Lorena Hardesty acquired title upon the death of James R. Hardesty pursuant to the above mentioned survivorship deed. Frances Lorena Hardesty died testate a resident of Meade County, Kentucky, on September 25, 2019.

John David Hardesty and Lois R. Hardesty were appointed Co-Executors of the Estate of Frances Lorena Hardesty aka Lorena Hardesty pursuant to her Last Will and Testament, of record in Will Book CC, page 258, in Meade District Court, Case No. 19-P-200, and given full power to sell and convey pursuant to KRS 395.

WHEREAS, the block building located on the hardware store property (DB 133 PG 380) owned by the Second Party encroaches _____ feet onto the First Party's property known as the grocery store building (DB 119/555) as shown on survey by Timothy W. Smith dated 8/31/2005.

WHEREAS, First Party desires to consent to the existing encroachment according to the terms and conditions contained in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties agree as follows:

1. First Party hereby consents to the encroachment according to the terms and conditions contained in this Agreement;
2. No alterations or additions are to be made to the structure constituting the encroachment which would increase the encroachment;
3. In the event the structure is abandoned or otherwise destroyed, it cannot be reconstructed on the Easement.
4. Second Party, and its successors in title, shall (a) make no claim against First Party for any losses or damages whatsoever sustained by it as a result of the encroachment or this Agreement, and (b) indemnify and hold harmless First Party from any and all damages for personal injury or property damage or other damage made by or on behalf of any third persons, or entities;
5. This Agreement and the obligations herein expressed shall be considered as running with the land and shall extend to, bind and inure to the benefit of the parties hereto and their respective heirs, assigns or successors in interest.

WITNESS the hands of the parties hereto this day and year first above written.

ESTATE OF FRANCES LORENA HARDESTY
AKA LORENA HARDESTY

By: John David Hardesty, Co-Executor
First and Second Party

By: Lois R. Hardesty, Co-Executor
First and Second Party

STATE OF KENTUCKY
COUNTY OF HARDIN

The foregoing ENCROACHMENT AGREEMENT was subscribed, sworn to and acknowledged before me by JOHN DAVID HARDESTY and LOIS R. HARDESTY, as Co-Executors of the Estate of FRANCES LORENA HARDESTY AKA LORENA HARDESTY, First and Second Parties herein, this ____ day of _____, 2020.

My commission expires: _____

NOTARY PRINTED NAME: _____

NOTARY PUBLIC ID# _____

This instrument prepared by:



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hardestyencroach.agr