

City of Cincinnati

CHM



An Ordinance No. _____

- 2021

AUTHORIZING the City Manager to execute a *Grant of Encroachment Easements* in favor of Ingalls Hotel, LLC, pursuant to which the City of Cincinnati will grant encroachment easements to permit a subsurface air intake system, two out-swinging doors, a cornice projection, and basement/subbasement space to encroach upon portions of the Vine Street and East Fourth Street public rights-of-way in the Central Business District.

WHEREAS, Ingalls Hotel, LLC (“Grantee”) owns the building located at 6 East Fourth Street in the Central Business District; and

WHEREAS, the City of Cincinnati owns the adjoining Vine Street and East Fourth Street public rights-of-way, which are under the management of the City’s Department of Transportation and Engineering (“DOTE”); and

WHEREAS, Grantee has requested encroachment easements from the City, as more particularly depicted and described in the *Grant of Encroachment Easements* attached to this ordinance as Attachment A and incorporated herein by reference, to permit a subsurface air intake system, two out-swinging doors, an existing cornice projection, and existing basement/subbasement space to encroach upon portions of the Vine Street and East Fourth Street public rights-of-way; and

WHEREAS, the City Manager, in consultation with DOTE, has determined (i) that granting the easements to Grantee is not adverse to the City’s retained interest in the public right-of-way, and (ii) that granting the easements will not have an adverse effect on the usability or accessibility of any existing public right-of-way facilities; and

WHEREAS, pursuant to Section 331-5 of the Cincinnati Municipal Code, Council may authorize the encumbrance of City-owned property without competitive bidding in those cases in which it determines that it is in the best interest of the City; and

WHEREAS, the City’s Real Estate Services Division has determined by appraisal that the fair market value of the easements is approximately \$24,860, which Grantee has deposited with the City Treasurer; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the easements at its meeting on June 19, 2020; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute a *Grant of Encroachment Easements* in favor of Ingalls Hotel, LLC (“Grantee”), owner of the building located at 6 East Fourth Street in the Central Business District, in substantially the form attached to this ordinance as Attachment A and incorporated herein by reference, pursuant to which the City of Cincinnati will grant to Grantee five encroachment easements over, across, and under portions of the Vine Street and East Fourth Street public rights-of-way to permit a subsurface air intake system, two out-swinging doors, an existing cornice projection, and existing basement/subbasement space to encroach upon the Vine and East Fourth Street public rights-of-way.

Section 2. That granting the easements to Grantee (i) is not adverse to the City’s retained interest in the Vine Street and East Fourth Street public rights-of-way, and (ii) will not have an adverse effect on the usability or accessibility of any existing Vine Street or East Fourth Street public right-of-way facilities.

Section 3. That it is in the best interest of the City to grant the easements without competitive bidding because, as a practical matter, no one other than Grantee would have any use for the easements.

Section 4. That the fair market value of the easements, as determined by appraisal by the City’s Real Estate Services Division, is approximately \$24,860, which Grantee has deposited with the City Treasurer.

Section 5. That the proceeds from the grant of easements shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City’s Real Estate Services Division in connection with the easements, and that the City’s Finance Director is hereby

authorized to deposit amounts in excess thereof, if any, into Miscellaneous Permanent Improvement Fund 757.

Section 6. That the City's Finance Director is authorized to transfer and appropriate such excess funds from Miscellaneous Permanent Improvement Fund 757 into Capital Improvement Program Project Account No. 980x233xYY2306, "Street Improvements," in which "YY" represents the last two digits of the fiscal year in which the closing occurs and the proceeds are received, referencing the latter fiscal year if the events occur in different fiscal years.

Section 7. That the City Manager and other City officials are authorized to take all necessary and proper actions to carry out the provisions of this ordinance and to fulfill the terms of the *Grant of Encroachment Easements*, including, without limitation, executing any and all ancillary agreements, plats, and other real estate documents.

Section 8. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

ATTACHMENT A

[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF ENCROACHMENT EASEMENTS

(building basement encroachment, subsurface air intake encroachment, door swing encroachments, and aerial encroachment upon Fourth and Vine Streets at 6 East Fourth Street)

This Grant of Encroachment Easements is made this ____ day of _____, 2021 by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in favor of **INGALLS HOTEL, LLC**, a North Carolina limited liability company, the tax-mailing address of which is 5113 Piper Station Drive, Suite 300, Charlotte, NC 28277 ("**Grantee**").

Recitals:

A. By virtue of a Deed recorded in Official Record 13699, Page 2486 Hamilton County, Ohio Recorder's Office, Grantee owns the real property located at 6 East Fourth Street, Cincinnati, Ohio, generally located at the northeast corner of the intersection of East Fourth and Vine Streets in the Central Business District of Cincinnati, as more particularly described on Exhibit A – (*Legal Description – Benefitted Property*) hereto (the "**Benefitted Property**").

B. The City owns the adjoining East Fourth Street and Vine Street public rights-of-way, which are under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

C. Grantee has requested five (5) encroachment easements from the City for improvements that encroach upon portions of the East Fourth Street and Vine Street rights-of-way (namely, a subsurface encroachment for an air intake system, two door swing encroachments, an aerial encroachment for a cornice projection, and a building encroachment for basement/subbasement space; collectively, the "**Improvements**" and each an "**Improvement**", as applicable).

D. The City Manager, in consultation with DOTE, has determined (i) that the easements will not have an adverse effect on the City's retained interest in the public right-of-way, and (ii) that granting the easements will not have an adverse effect on the usability of, or accessibility in, any existing public right-of-way facilities.

E. The City's Real Estate Services Division has determined that the fair market value of the easements, as determined by appraisal, is \$24,860, which has been deposited with the Real Estate Services Division.

F. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the easements at its meeting on June 19, 2020.

G. Cincinnati City Council approved the easements by Ordinance No. ____-2021, passed on _____, 2021.

NOW THEREFORE, the parties do hereby agree as follows:

1. Grant of Encroachment Easements. The City does hereby grant to Grantee, on the terms and conditions set forth herein, as an appurtenance to and for the benefit of the Benefitted Property, the following five non-exclusive easements for the maintenance of the Improvements: (i) an encroachment easement for air intake facilities and appurtenances that encroach into the Vine Street public right-of-way, as depicted on Exhibit B (Site Survey – Air Intake Easement) and described on Exhibit C (Legal Description – Air Intake Easement) hereto (the “**Air Intake Easement**”); (ii) an encroachment easement for a door and its swing radius that encroaches into the Vine Street right-of-way, as depicted on Exhibit D (Site Survey – Door Swing Easements) and described on Exhibit E (Legal Description – Door Swing Easements) hereto (“**Door Swing Easement 1**”); (iii) an encroachment easement for a door and its swing radius that encroaches into the East Fourth Street right-of-way, as depicted on Exhibit D and described on Exhibit E hereto (“**Door Swing Easement 2**”); (iv) an aerial encroachment easement for a cornice projection that encroaches into the East Fourth Street and Vine Street rights-of-way, as depicted on Exhibit F (Site Survey – Cornice Easement) and described on Exhibit G (Legal Description – Cornice Easement) hereto (the “**Cornice Easement**”; and, (v) an encroachment easement for building subspace that encroaches into the East Fourth Street and Vine Street rights-of-way, as depicted on Exhibit H (Site Survey – Subterranean Space Easement) and described on Exhibit I (Legal Description – Subterranean Space Easement) hereto (the “**Subterranean Space Easement**”, and together with the Air Intake Easement, Door Swing Easement 1, Door Swing Easement 2, and the Cornice Easement, the “**Encroachment Easements**” and each an “**Encroachment Easement**”, as applicable). Grantee shall not make any modifications to the Improvements without the City’s prior written consent. Notwithstanding anything herein to the contrary, the Encroachment Easements shall automatically terminate upon (i) the complete demolition of the building; (ii) any permanent alteration of the building that entails the elimination of an Improvement within an easement area such that any Encroachment Easement would be rendered unnecessary; or (iii) upon written notice from the City if the City determines that it needs the easement areas or any portions thereof for a municipal purpose, including, without limitation to the implementation of Americans with Disabilities Act (“**ADA**”) regulations compliance or accessibility standards; (iv) or upon written notice from the City if the City determines that the Improvements are creating a public safety issue, such as noncompliance with ADA accessibility regulations, contributing to adverse impacts on the usability of, or accessibility in, any public right-of-way facilities.

2. Maintenance and Repairs. Grantee, at no cost to the City, shall at all times maintain the Improvements in a continuous state of good and safe condition and repair. Grantee acknowledges that there may be existing easements, utility lines and related facilities in the vicinity of the easement areas (“**Third Party Utility Lines**”). In connection with Grantee’s activities within the easement areas, Grantee shall not interfere with the access of any relevant utility company to maintain and repair the Third Party Utilities Lines, and shall, at Grantee’s expense, promptly repair any and all damage to the Third Party Utility Lines caused by Grantee, its agents, employees or contractors. Any relocation of Third Party Utility Lines necessitated by Grantee’s activities shall be handled entirely at Grantee’s expense. All work undertaken by Grantee hereunder shall be in compliance with all applicable codes, laws, and other governmental standards, policies, guidelines and requirements.

3. Insurance; Indemnification. At all times during which Grantee is undertaking construction activities within the easement areas, and in addition to whatever other insurance and bond requirements as the City may from time to time require, Grantee shall maintain a policy of Commercial General Liability insurance, with an insurance company reasonably acceptable to the City and naming the City as an additional insured, in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, or in such greater amount as the City may from time to time require. Grantee

shall furnish to the City a certificate of insurance evidencing such insurance upon the City's request and, in any event, prior to undertaking any construction activities within the easement areas. Grantee hereby waives all claims and rights of recovery against the City, and on behalf of Grantee's insurers, rights of subrogation, in connection with any damage to the Improvements, no matter how caused. Grantee shall defend (with counsel reasonably acceptable to the City), indemnify, and hold the City harmless from and against any and all claims, actions, losses, costs (including without limitation reasonable attorneys fees), liability and damages suffered or incurred by, or asserted against, the City in connection with the construction, maintenance, repair or other matters associated with the Improvements.

4. Covenants Running with the Land. The provisions hereof shall run with the land and shall inure to the benefit of the City and be binding upon Grantee and its successors-in-interest with respect to the Benefitted Property.

5. Coordinated Report Conditions (CR #42-2019). The following additional conditions shall apply:

(a) DOTE:

(i) Grantee is responsible for existing and future sidewalk/ right-of-way repairs and responsibilities in accordance with the Cincinnati Municipal Code.

(ii) The City's grant of the Encroachment Easements shall not limit in any way the City's access to existing traffic signal pole utilities, utility facilities, or foundations.

(iii) The air intake facilities and associated appurtenances located in the Air Intake Easement shall meet ADA and the City's Street Restoration Manual for cellar doors, designed for ASHTO H-20 truck load.

6. Exhibits. The following exhibits are attached hereto and made a part hereof:

Exhibit A – *Legal Description - Benefitted Property*

Exhibit B – *Site Survey – Air Intake Easement*

Exhibit C – *Legal Description – Air Intake Easement*

Exhibit D – *Site Survey – Door Swing Easements*

Exhibit E – *Legal Description – Door Swing Easements*

Exhibit F – *Site Survey – Cornice Easement*

Exhibit G – *Legal Description – Cornice Easement*

Exhibit H – *Site Survey – Subterranean Space Easement*

Exhibit I – *Legal Description – Subterranean Space Easement*

Executed on the date of acknowledgement indicated below.

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

Approved by:

John S. Brazina, Director
Department of Transportation and Engineering

Approved as to Form by:

Assistant City Solicitor

Acknowledged and Accepted:

INGALLS HOTEL, LLC,
a North Carolina limited liability company

By: _____

Printed name: _____

Title: _____

Date: _____, 2021

This instrument prepared by:
City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, OH 45202

EXHIBIT A

to Grant of Encroachment Easements

LEGAL DESCRIPTION - BENEFITTED PROPERTY

Property Address: 6 East Fourth Street, Cincinnati, Ohio 45202

Auditor's Parcel No.: 083-0001-0074-00

Situated in the City of Cincinnati, County of Hamilton, State of Ohio, described as follows:

Situate in the City of Cincinnati, County of Hamilton and State of Ohio and being part of In Lot 189 upon the original plan of the City of Cincinnati and further identified as being parts of Lots 3, 4 and 5 as laid out upon the Sheriff's Plat of Subdivision of the lands of George W. Jones recorded in Deed Book 101, Page 394, in the Offices of the Recorder, Hamilton County, Ohio and being more particularly described as follows:

**Beginning at a point at the Northeast corner of Fourth and Vine Streets and running
thence Northwardly with Vine Street 100 feet;
thence Eastwardly parallel with Fourth Street 50 feet, 6 - 7/8 inches;
thence Southwardly parallel with Vine Street 100 feet;
thence westwardly with Fourth Street 50 feet, 6 - 7/8 inches to the place of beginning.**

EXHIBIT B

to Grant of Encroachment Easements

Site Survey – Air Intake Easement

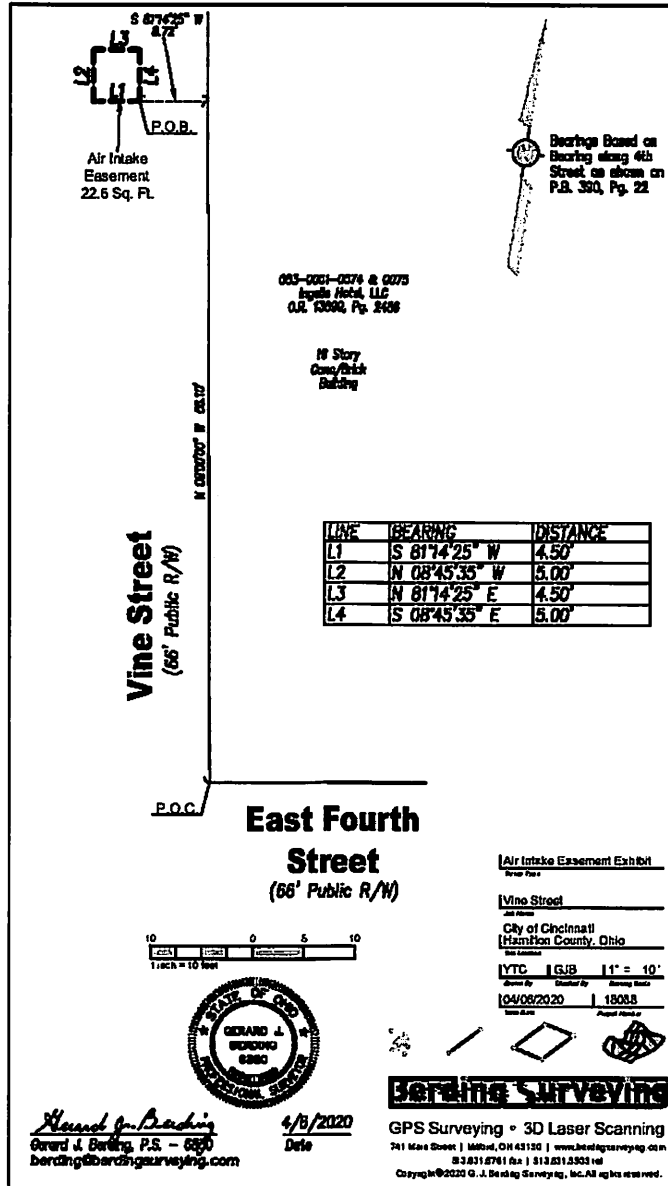
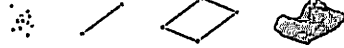


EXHIBIT C

to Grant of Encroachment Easements

Legal Description – Air Intake Easement

Berding Surveying



GPS Surveying • 3D Laser Scanning

**Air Intake Easement
Vine Street**

Situated in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

COMMENCING at the north line of East Fourth Street and the east line of Vine Street; Thence with the east line of said Vine Street, North 09°00'00" West, 66.10 feet; Thence leaving the east line of said Vine Street, South 81°14'25" West, 6.72 feet to the **POINT OF BEGINNING**;

Thence South 81°14'25" West, 4.50 feet;

Thence North 08°45'35" West, 5.00 feet;

Thence North 81°14'25" East, 4.50 feet;

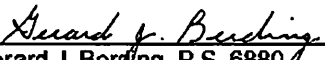
Thence South 08°45'35" East, 5.00 feet to the **POINT OF BEGINNING**.

CONTAINING 22.5 Square Feet.

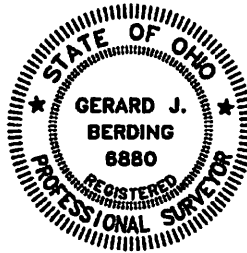
Being located in the public right of way of Vine Street

Bearings are based on Fourth Street as shown on Plat Book 390, Page 22 of the Hamilton County Recorder's Office.

Prepared by G.J. BERDING SURVEYING, INC. on April 6, 2020. Based on an Easement Exhibit prepared by G.J. BERDING SURVEYING, INC. on April 6, 2020.


Gerard J. Berding, P.S. 6880

04-06-2020
Date



G.J. Berding Surveying, Inc.

741 Main Street • Milford, OH 45150 • 513 831 5505 tel • 513 831 6761 fax • www.berdingsurveying.com

EXHIBIT D

to Grant of Encroachment Easements

Site Survey – Door Swing Easements

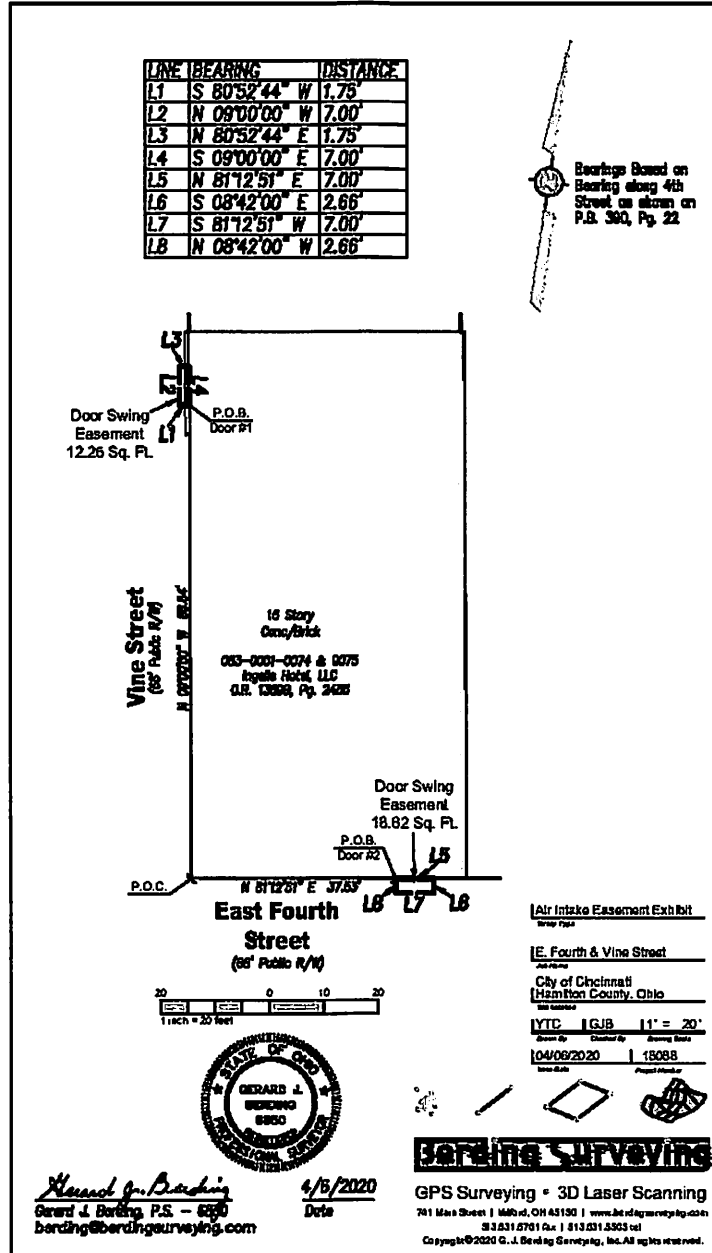
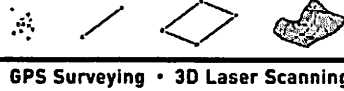


EXHIBIT E

to Grant of Encroachment Easements

Legal Description – Door Swing Easements

Berding Surveying



**Door #1
Swing Easement
Vine Street**

Situated in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

COMMENCING at the north line of East Fourth Street and the east line of Vine Street; Thence with the east line of said Vine Street, North 09°00'00" West, 86.64 feet to the **POINT OF BEGINNING**;

Thence leaving the east line of said Vine Street, South 80°52'44" West, 1.75 feet;

Thence North 09°00'00" West, 7.00 feet;

Thence North 80°52'44" East, 1.75 feet to the east line of said Vine Street;

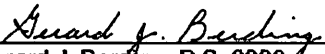
Thence South 09°00'00" East, 7.00 feet to the **POINT OF BEGINNING**.

CONTAINING 12.25 Square Feet.

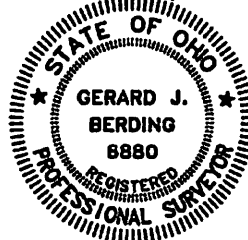
Being located in the public right of way of Vine Street

Bearings are based on Fourth Street as shown on Plat Book 390, Page 22 of the Hamilton County Recorder's Office.

Prepared by G.J. BERDING SURVEYING, INC. on April 6, 2020. Based on an Easement Exhibit prepared by G.J. BERDING SURVEYING, INC. on April 6, 2020.


Gerard J. Berding, P.S. 6880

04-06-2020
Date



G.J. Berding Surveying, Inc.

741 Main Street • Milford, OH 45150 • 513 831 8565 tel • 513 831 6761 fax • www.berdingsurveying.com

**Door #2
Swing Easement
East Fourth Street**

Situated in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

COMMENCING at the north line of East Fourth Street and the east line of Vine Street; Thence with the north line of said East Fourth Street, North 81°12'51" East, 37.53 feet to the **POINT OF BEGINNING**;

Thence with the north line of said East Fourth Street, North 81°12'51" East, 7.00 feet;

Thence leaving the north line of said East Fourth Street, South 08°42'00" East, 2.66 feet;

Thence South 81°12'51" West, 7.00 feet;

Thence North 08°42'00" West, 2.66 feet to the **POINT OF BEGINNING**.

CONTAINING 18.62 Square Feet.

Being located in the public right of way of East Fourth Street

Bearings are based on Fourth Street as shown on Plat Book 390, Page 22 of the Hamilton County Recorder's Office.

Prepared by G.J. BERDING SURVEYING, INC. on April 6, 2020. Based on an Easement Exhibit prepared by G.J. BERDING SURVEYING, INC. on April 6, 2020.

Gerard J. Berding
Gerard J. Berding, P.S. 6880



04-06-2020
Date

G.J. Berding Surveying, Inc.

741 Main Street • Milford, OH 45150 • 513 831 8805 tel • 513 831 6761 fax • www.berdingsurveying.com

EXHIBIT F

to Grant of Encroachment Easements

Site Survey – Cornice Easement

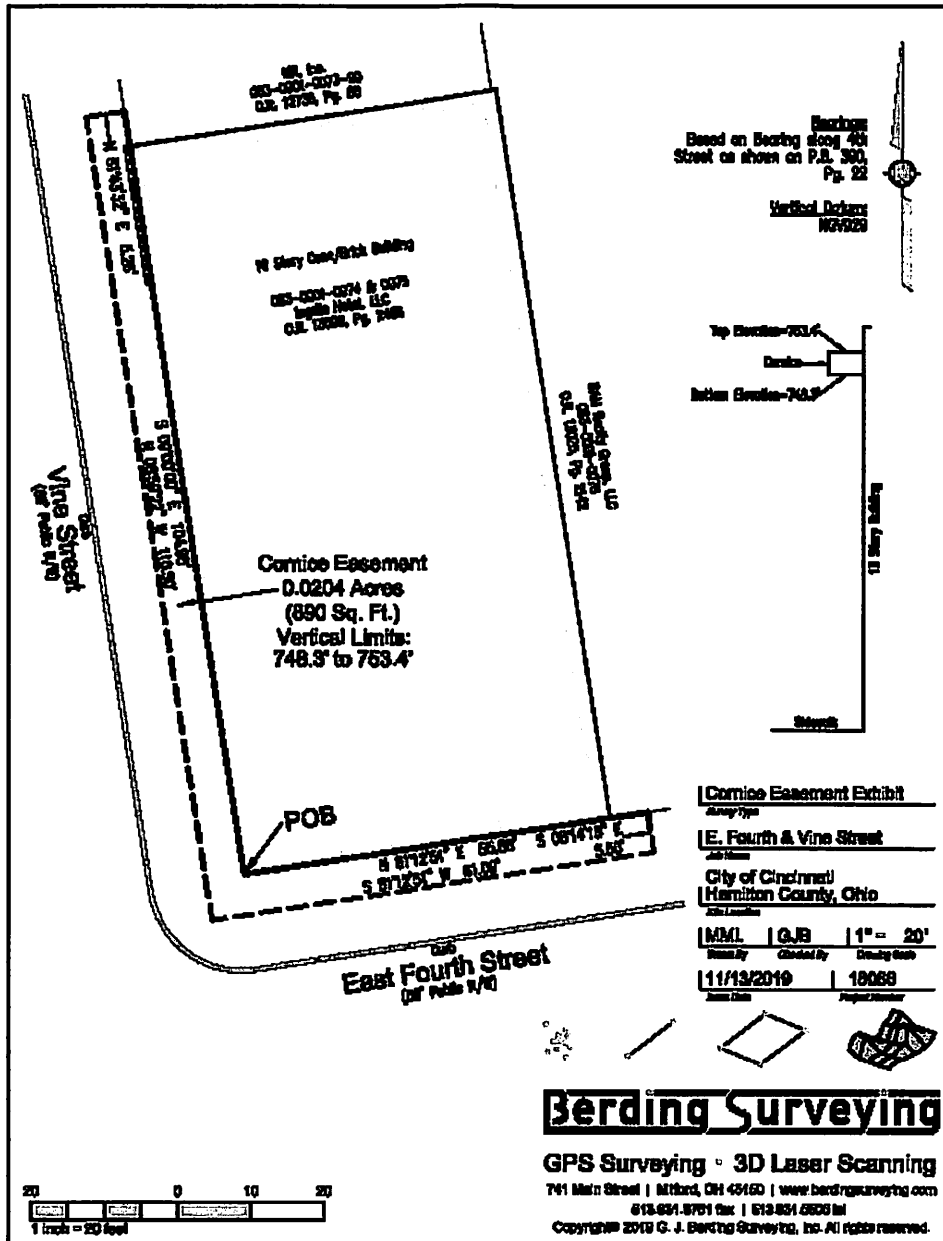
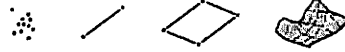


EXHIBIT G

to Grant of Encroachment Easements

Legal Description – Cornice Easement

Berding Surveying



GPS Surveying • 3D Laser Scanning

**Description for: SREE, Ingalls Hotel, 0.0204 Acre Cornice Easement
Location: E. Fourth & Vine Street**

Situated in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

BEGINNING at the intersection of the north line of East Fourth Street and the east line of Vine Street.

Thence along said north line of East Fourth Street, North 81°12'51" East, 55.88 feet;

Thence through the existing right of way of said East Fourth Street and Vine Street, the following four courses (4):

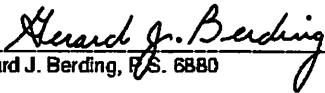
1. South 08°14'18" East, 5.50 feet;
2. South 81°12'51" West, 61.09 feet;
3. North 08°59'22" West, 110.50 feet;
4. North 81°43'32" East, 5.26 feet to a point in the aforesaid east line of Vine Street;

Thence along said east line of Vine Street, South 09°00'00" East, 104.95 feet to the **POINT OF BEGINNING**.

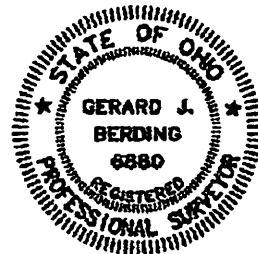
CONTAINING 0.0204 Acres and being a portion of the right-of-way of East Fourth Street and Vine Street between elevations of 748.3 feet and 753.4 feet.

The bearings are based on Bearing along 4th Street as shown on P.B. 390, Pg. 22. The Vertical Datum is NGVD29.

Prepared by G.J. BERDING SURVEYING, INC. on November 13, 2019. Based on an Easement Exhibit prepared by G.J. BERDING SURVEYING, INC. on November 13, 2019.


Gerard J. Berding, P.S. 6880

11-13-19
Date



Printed on 11/13/2019 11:50 AM • P:\160001\6066 SREE Hotels - Fourth & Vine\Word Documents\16066 0.0204 Ac. Cornice Easement Legal Description.doc • By: Michele

G.J. Berding Surveying, Inc.

741 Main Street • Millford, OH 45150 • 513 831 5505 tel • 513 831 6761 fax • www.berdingsurveying.com

EXHIBIT H

to Grant of Encroachment Easements

Site Survey – Subterranean Space Easement

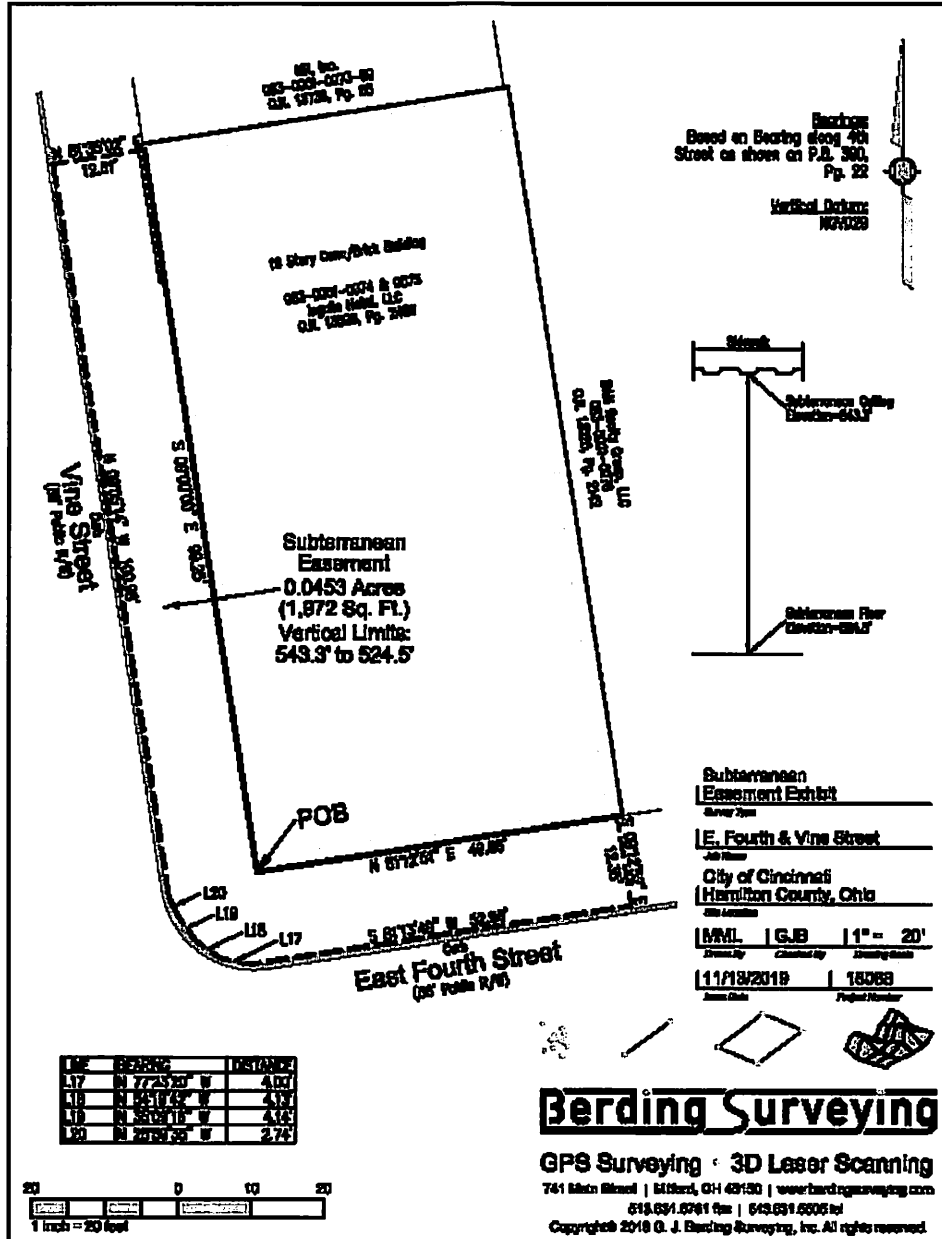
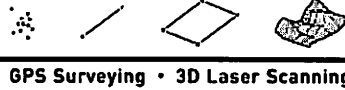


EXHIBIT I

to Grant of Encroachment Easements

Legal Description – Subterranean Space Easement

Berding Surveying



Description for: SREE, Ingalls Hotel, 0.0453 Acre Subterranean Easement
Location: E. Fourth & Vine Street

Situated in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

BEGINNING at the intersection of the north line of East Fourth Street and the east line of Vine Street.

Thence along said north line of East Fourth Street, North 81°12'51" East, 49.86 feet;

Thence through the existing right of way of said East Fourth Street and Vine Street, the following eight (8) courses:

1. South 09°12'52" East, 12.35 feet;
2. South 81°13'49" West, 52.98 feet;
3. North 77°23'20" West, 4.00 feet;
4. North 54°19'42" West, 4.13 feet;
5. North 35°09'16" West, 4.14 feet;
6. North 25°59'35" West, 2.74 feet;
7. North 09°05'14" West, 100.98 feet;
8. North 81°35'02" East, 12.51 feet to a point in the aforesaid east line of Vine Street;

Thence along said east line of Vine Street, South 09°00'00" East, 99.25 feet to the **POINT OF BEGINNING**.

CONTAINING 0.0453 Acres. Encompasses the described physical space underneath Vine Street and East Fourth Street from an elevation of 543.3 feet to 524.5 feet. The intent of easement is to encompass the vertical space beneath the public sidewalk, extending from sidewalk to the lowest level of the building subterranean space below. Depth of easement is approximately 18.8 feet+/- . Refer to Easement Exhibit.

The bearings are based on Bearing along 4th Street as shown on P.B. 390, Pg. 22. The Vertical Datum is NGVD29.

Prepared by G.J. BERDING SURVEYING, INC. on November 13, 2019. Based on an Easement Exhibit prepared by G.J. BERDING SURVEYING, INC. on November 13, 2019.

Gerard J. Berding
Gerard J. Berding, P.S. 6880

11-13-19
Date



Printed on 11/13/2019 11:51 AM • P:\16000\16066 SREE Hotels - Fourth & Vine\Word Documents\16066 0.0453 Ac. Subterranean Easement Legal Description.doc • By: Michele

G.J. Berding Surveying, Inc.

741 Main Street • Millford, OH 45150 • 513 831 5505 tel • 513 831 6761 fax • www.berdingsurveying.com