

City of Cincinnati

CHM

AWB

An Ordinance No. _____ - 2022

AUTHORIZING the City Manager to execute a *Grant of Easement* in favor of Fountain Place, LLC, pursuant to which the City of Cincinnati will grant an easement for an access ramp upon a portion of Fifth Street in the Central Business District.

WHEREAS, Fountain Place, LLC, an Ohio limited liability company (“Grantee”), holds title to certain real property located at 505 Vine Street in the Central Business District, which property contains the Foundry building, formerly known as the Macy’s-anchored Fountain Place building; and

WHEREAS, Grantee recently renovated the Fountain Place building into a 3.5-story mixed-use structure containing approximately 150,000 square feet of office space and 35,000 square feet of street-level retail and restaurant space (“Project”); and

WHEREAS, the City of Cincinnati owns the adjoining Fifth Street public right-of-way (“Property”), which Property is under the management of the City’s Department of Transportation and Engineering (“DOTTE”); and

WHEREAS, Grantee has requested an easement from the City to facilitate the construction and maintenance of an access ramp along the Fifth Street frontage of the Foundry building, as more particularly described in the *Grant of Easement* attached to this ordinance as Attachment A and incorporated herein by reference; and

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

WHEREAS, pursuant to Cincinnati Municipal Code Sec. 331-5, 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 an appraisal that the fair market value of the easement is approximately \$1,450; however, the City has agreed to grant the easement to Grantee for less than its fair market value, namely, \$1.00, because the City will receive benefits from the Project that equal or exceed the fair market value of the easement because the access ramp will enhance accessibility in the Project, and the Project will stimulate economic activity and growth in the Central Business District in and around Fountain Square; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the easement at its meeting on July 15, 2022; 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 Easement* in favor of Fountain Place, LLC, an Ohio limited liability company (“Grantee”), and the owner of the property located at 505 Vine 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 an easement to construct and maintain an access ramp upon a portion of the Fifth Street public right-of-way (“Property”).

Section 2. That granting the easement to Grantee (i) is not adverse to the City’s retained interest in the Property; and (ii) will not have an adverse effect on the usability or accessibility of any existing transportation facilities located within the public right-of-way.

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

Section 4. That the fair market value of the easement, as determined by a professional appraisal by the City’s Real Estate Services Division, is approximately \$1,450; however, the City has agreed to grant the easement to Grantee for less than its fair market value, namely, \$1.00, because the City will receive benefits from the Project that equal or exceed the fair market value of the easement because the access ramp will ensure accessibility to the Project, and the Project will stimulate economic activity and growth in the Central Business District in and around the vicinity of Fountain Square.

Section 5. That the proceeds from the *Grant of Easement* 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 *Grant of Easement*, 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 Easement*, 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: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF EASEMENT

(encroachment upon a portion of 5th Street)

This Grant of Easement is granted as of the Effective Date (as defined on the signature page hereof) by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in favor of **FOUNTAIN PLACE, LLC**, an Ohio limited liability company, with a tax mailing address of 1203 Walnut Street, Fourth Floor, Cincinnati, OH 45202 ("**Grantee**").

Recitals:

A. By virtue of a *Quitclaim Deed* recorded on December 24, 2019, in OR 14070, Page 848, Hamilton County, Ohio Records, Grantee holds title to certain real property located at 505 Vine Street, Cincinnati, OH 45202, as more particularly described on Exhibit A (*Legal Description – Benefitted Property*) hereto (the "**Benefitted Property**").

B. The City owns the adjoining Fifth Street public right-of-way, which is under the management of the City's Department of Transportation and Engineering ("**DOT**").

C. Grantee has requested the City grant an easement for an access ramp encroachment in and across a portion of the Fifth Street public right-of-way (the "**Encroachment**").

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

E. The City's Real Estate Services Division has determined that the fair market value of the easement, as determined by professional appraisal, is \$1,450; however, the City has agreed to grant the easement to Grantee for \$1.00, because the City will receive benefits from Grantee's renovation and adaptive reuse of the Benefitted Property that equal or exceed the fair market value of the easement because it will create jobs and stimulate economic activity and growth in the Central Business District in and around the vicinity of Fountain Square.

F. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the easement at its meeting on July 15, 2022.

G. Cincinnati City Council approved the easement by Ordinance No. []-2022, passed on August [], 2022.

NOW THEREFORE, the parties do hereby agree as follows:

1. Grant of Easement. 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, a non-exclusive encroachment easement to use, maintain, repair, reconstruct, replace, and remove an access ramp in and across the Fifth Street public right-of-way, as more particularly depicted on Exhibit B and described on Exhibit C (Legal Description-Access Ramp Easement) hereto (the “**Access Ramp Easement**” or “**Access Ramp Easement Area**”, as applicable). Grantee shall not make any modifications to the Encroachment within the Access Ramp Easement Area without the City’s prior written consent.

Grantee acknowledges and agrees that the City retains the unrestricted right for its employees and agents to enter upon Access Ramp Easement Area from time to time for any proper purpose. Grantee acknowledges and agrees that it has conducted its own due diligence to familiarize itself with the condition and characteristics of the Access Ramp Easement Area. The City has not made any representations or warranties concerning the title, condition, or characteristics of the Access Ramp Easement Area or the suitability or fitness of the Access Ramp Easement Area for its permitted use. Grantee acknowledges and agrees that it is not relying upon any such representations or warranties from the City. Without limitation of the foregoing, under no circumstances shall the City be responsible or liable for any pre-existing environmental conditions affecting the Access Ramp Easement Area.

2. Termination. Notwithstanding anything herein to the contrary, the Access Ramp Easement shall automatically terminate upon (i) the complete or respective partial demolition, without rebuilding within 1 year of such demolition, of the Encroachment within the Access Ramp Easement Area, such that the Access Ramp Easement would be rendered unnecessary; (ii) upon written notice from the City, if the City determines that it needs the Access Ramp Easement Area, or any portion thereof for a municipal purpose, including, without limitation to the implementation of Americans with Disabilities Act (“**ADA**”) regulations compliance or accessibility standards; (iii) or upon written notice from the City if the City determines that the Encroachment is creating a public safety issue, such as noncompliance with ADA accessibility regulations, contributing to adverse impacts on the usability or accessibility of any public right-of-way facilities, if Grantee does not abate or begin to take efforts to mitigate the public safety issue in a timely manner consistent with the degree of harm posed by the public safety issue.

3. Maintenance and Repairs. At no cost to the City, Grantee shall maintain the Encroachment 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 Access Ramp Easement Area (“**Third-Party Utility Lines**”). In connection with Grantee’s maintenance, repair, and use of the Encroachment, Grantee shall not interfere with the access of utility companies to maintain and repair the Third-Party Utility Lines and shall, at Grantee’s expense, promptly repair any and all damage to Third-Party Utility Lines caused by Grantee, its agents, employees, contractors, subcontractors, tenants, licensees, or invitees. Any relocation of Third-Party Utility Lines necessitated by the construction, maintenance, repair, reconstruction, or removal of the Encroachment under this instrument shall be handled entirely at Grantee’s expense. All activities undertaken by Grantee under this instrument shall be in compliance with all applicable codes, laws, and other governmental standards, policies, guidelines and requirements.

4. Insurance: Indemnification. At all times, and in addition to whatever other insurance and bond requirements as the City may from time to time require, Grantee shall maintain or cause to be maintained 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 Access Ramp Easement Area. 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 Encroachment, 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 use, construction, maintenance, repair, and all other matters associated with the Encroachment.

5. Default. If Grantee, its successors-in-interest, or assigns fail to perform any required work under this instrument and fails to address the same to DOTE's satisfaction within thirty (30) days after receiving written notice thereof from DOTE, the City shall have right to perform such work, at Grantee's expense, payable within ten (10) days after receiving an invoice from DOTE evidencing the amount due. Grantee, its successors-in-interest, or assigns shall be liable to DOTE for the payment of such work. Any outstanding amount due under this instrument shall create a lien on the Benefitted Property until fully paid. At the City's option, the City may file an affidavit in the Hamilton County, Ohio Recorder's office to memorialize any outstanding amounts due under this instrument.

6. Covenants Running with the Land. The provisions hereof shall run with the land and shall inure to the benefit of and be binding upon the City, Grantee, and their respective successors-in-interest and assigns.

7. Governing Law; Severability. This instrument shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. If any provisions hereof are determined to be invalid or unenforceable by a court of law, the remainder of this instrument shall not be affected thereby, and all other provisions of this instrument shall be valid and enforceable to the fullest extent permitted by law.

8. Notices. All notices given hereunder shall be in writing and shall be sent by U.S. certified or registered mail, return receipt requested, or delivered by a recognized courier service, or by personal delivery, to the parties at their respective addresses set forth in the introductory paragraph hereof, or such other address as either party may specify from time to time by notice given in the manner prescribed herein. All notices to the City shall be addressed to the Office of the City Manager, and a copy of each such notice shall simultaneously be delivered to: Department of Transportation and Engineering, Attn: Director, Room 450. In the event of an alleged breach by the City of this instrument, a copy of each notice of breach shall simultaneously be delivered to the Office of the City Solicitor, 801 Plum Street, Room 214, Cincinnati, OH 45202.

9. Coordinated Report Conditions (CR #27-2022). The following additional conditions shall apply:

- a. DOTE:
 - i. Grantee shall provide a clear pedestrian path of 8'-7 1/4" from the Encroachment to the tree well in the public right-of-way.
 - ii. The Encroachment must comply with all applicable building code provisions.
 - iii. A DOTE street opening permit, obtained by a DOTE-licensed street contractor, is required for all private improvements in the public right-of-way. All improvements in the public right-of-way must be built to City standards, policies, and guidelines. Application for permits may be made at Room 425, City Hall, 801 Plum Street. Please note that plan drawings (2 sets), to be reviewed by DOTE, must be attached to the permit application
- b. Altafiber: There are existing underground telephone facilities at this location. The existing facilities must remain in place, in service and able to be accessed. Any damage done to the

facilities, or any work done to relocate the facilities as a result as of this request will be handled entirely at Grantee's expense.

10. Counterparts and Electronic Signatures. This instrument may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original. This instrument may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

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

Exhibit A – *Legal Description - Benefitted Property*

Exhibit B – *Survey Plat*

Exhibit C – *Legal Description - Access Ramp Easement*

Executed by the parties on the respective date of acknowledgement listed below, effective as the later of such dates (the "Effective Date").

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 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

[Grantee Signature Page Follows]

ACCEPTED AND AGREED TO BY:

FOUNTAIN PLACE, LLC,
an Ohio limited liability company,

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by _____, the _____ of **FOUNTAIN PLACE, LLC**, an Ohio limited liability company, on behalf of the company. 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: _____

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

EXHIBIT A

to Grant of Easement

LEGAL DESCRIPTION - BENEFITTED PROPERTY

Situated in Section 18, Fractional Range 1, Town 4, in the City of Cincinnati, Cincinnati Township, Hamilton County, Ohio and being all of Lot 2 of the Foundry Subdivision as set forth in the Record Plat filed in Plat Book 488, Pages 27-39, of the Hamilton County, Recorder's Records.

PPN: 077-0002-0349-00

EXHIBIT B

to Grant of Easement

Survey Plat

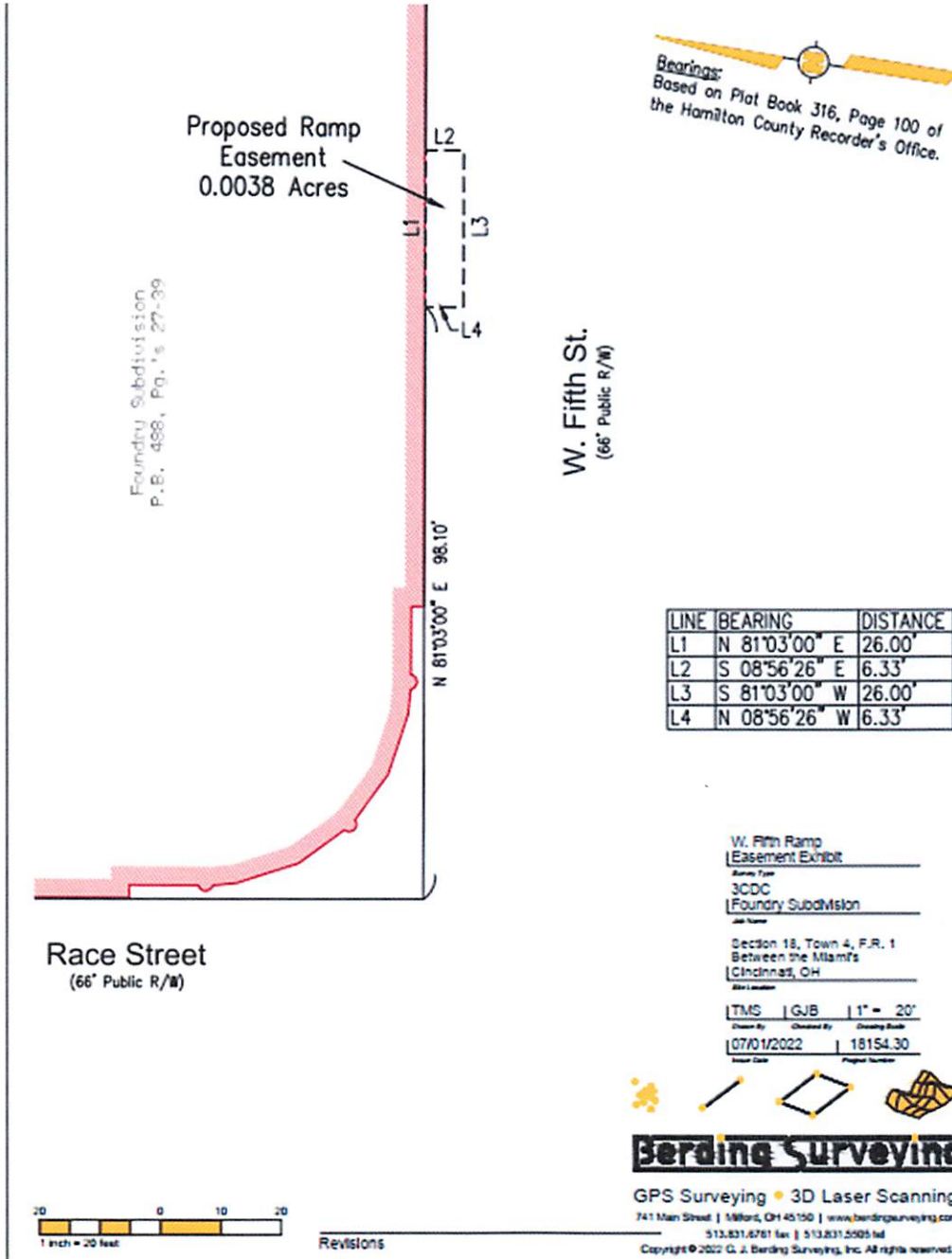


EXHIBIT C

to Grant of Easement

Legal Description – Access Ramp Easement

**Description for: 3CDC 0.0038 Acres - Ramp Easement
Location: City of Cincinnati, West Fifth Street**

Situated in Section 18, Town 4, Fractional Range 1, Between the Miami's, City of Cincinnati, Ohio and being more particularly described as follow:

BEGINNING at a point in the north right of way line of West Fifth Street, said point being North 81°03'00" East, 98.10 feet from the intersection of the north right of way line of West Fifth Street and the east right of way line of Race Street,

Thence along the north line of West Fifth Street, North 81°03'00" East, 26.00 feet;

Thence leaving said north line, South 08°56'26" East, 6.33 feet;

Thence South 81°03'00" West, 26.00 feet;

Thence North 08°56'26" West, 6.33 feet to the **POINT OF BEGINNING**.

CONTAINING 0.0038 ACRES. Subject to legal highways and easements of record.

The above-described parcel being part of the West Fifth Street right of way.

The bearings are based on Plat Book 316, Page 100 of the Hamilton County Recorder's Office.

Prepared by G.J. BERDING SURVEYING, INC. on July 1, 2022. Based on an Exhibit prepared by G.J. BERDING SURVEYING, INC. on July 1, 2022.