

ATTACHMENT A

[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF ENCROACHMENT EASEMENTS

(a vault encroachment and aerial encroachment upon Vine Street at 1521 Vine Street)

This Grant of Encroachment Easements is made this ____ day of _____, 2020 by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in favor of **WILLKOMMEN HOLDING, LLC**, an Ohio limited liability company, the tax-mailing address of which is 1203 Walnut Street, Cincinnati, OH 45202 ("**Grantee**").

Recitals:

A. By virtue of a Deed recorded in Official Record ____, Page ____ Hamilton County, Ohio Recorder's Office, Grantee owns the real property located at 1521 Vine Street, Cincinnati, Ohio, in the Over-the-Rhine neighborhood of Cincinnati, as more particularly described on Exhibit A - (*Legal Description – Benefitted Property*) hereto (the "**Benefitted Property**").

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

C. Grantee has requested two (2) encroachment easements from the City for improvements that encroach upon portions of the Vine Street right-of-way (namely, an encroachment for a utility vault and an aerial encroachment for window projections; collectively, the "**Improvements**" and each an "**Improvement**", as applicable).

D. The City Manager, in consultation with DOT, has determined that the easements will not have an adverse effect on the City's retained interest in the public right-of-way.

E. The City's Real Estate Services Division has determined that the fair market value of the easements, as determined by appraisal, is \$1,520, 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. ____-2020, passed on _____, 2020.

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 two non-exclusive easements for the maintenance of the Improvements: (i) an encroachment easement for a utility vault and associated facilities and appurtenances that encroach into the Vine Street public right-of-way, as depicted on Exhibit B (Site Survey – Utility Vault Easement) and described on Exhibit C (Legal Description – Utility Vault Easement) hereto (the “**Utility Vault Easement**”); and, (ii) an aerial encroachment easement for window projections that encroach into the Vine Street right-of-way, as depicted on Exhibit D (Site Survey – Window Projection Easement) and described on Exhibit E (Legal Description – Window Projection Easement) hereto (the “**Window Projection Easement**” and together with the Utility Vault 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 or upon DOTE’s determination that the Improvements are creating a public safety issue.

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 #34-2020). The following additional conditions shall apply:

(a) DOTE:

(i) The vault shall be flush and not pose a tripping hazard in the sidewalk. If it is vented, the grate must meet ADA requirements.

(ii) 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.

(b) CINCINNATI BELL TELEPHONE: Existing Cincinnati Bell Telephone 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 a result of this request will be handled entirely at the property owner's expense.

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

Exhibit A – *Legal Description - Benefitted Property*

Exhibit B – *Site Survey – Utility Vault Easement*

Exhibit C – *Legal Description – Utility Vault Easement*

Exhibit D – *Site Survey – Window Projection Easement*

Exhibit E – *Legal Description – Window Projection Easement*

[Signature Page Follows]

Executed on the date of acknowledgement indicated below.

CITY OF CINCINNATI

By: _____
Patrick A. Duhaney, City Manager

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by Patrick A. Duhaney, City Manager 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:

WILLKOMMEN HOLDING, LLC,
an Ohio limited liability company

By: _____

Printed name: _____

Title: _____

Date: _____, 2020

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

PARCEL I:

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

All that certain lot in said City of Cincinnati, commencing on the east side of Republic (formerly Bremen) Street at a point 120 1/2 feet north of 15th Street thence north along the east side of Republic Street 40 feet thence east on a line parallel with 15th Street 74 feet to an alley thence south along the west line of said alley 40 feet thence west 74 feet to Republic Street, the place of beginning.

PPNS: 081-0004-0052-00 and 081-0004-0051-00
Commonly known as 1512 and 1514 Republic Street, Cincinnati, OH

PARCEL II:

Situated in the State of Ohio, County of Hamilton and City of Cincinnati, and being a lot of land on the East side of Republic (formerly Bremen) Street, between Fifteenth and Liberty Streets; beginning at the Southwest corner of a lot conveyed by Nicholas Longworth to Frederick Ditmeering by deed recorded in Deed Book 239, Page 207 of the Hamilton County Records; which point is two hundred seventy-two (272) feet South of Liberty Street according to the plat in the office of the Auditor of Hamilton County, Ohio, thence running Southwardly along Republic Street twenty (20) feet and back the same width 70 feet, more or less to an alley, being part of Out Lot No. Forty-three (43), be the same more or less.

PPN: 081-0004-0050-00
Commonly known as 1516 Republic Street, Cincinnati, OH

PARCEL III:

Situate in the City of Cincinnati, County of Hamilton and State of Ohio, beginning at a point in the East line of Republic Street (formerly Bremen Street) which said point is the northwest corner of a lot formerly leased by Nicholas Longworth and wife to Henry Goessmyer and being 272 feet south of the southwest corner of Republic and Liberty Streets thence north along the east line of Republic Street 22 feet thence eastwardly at right angles to Republic Street 70 feet more or less to an alley thence southwardly along the east line of said alley 22 feet, thence westwardly 70 feet more or less to the place of beginning.

PPN: 081-0004-0049-00
Commonly known as 1518 Republic Street, Cincinnati, OH

PARCEL IV:

Situated in the City of Cincinnati, County of Hamilton, State of Ohio and being part of out-lot 43 and being more particularly described as follows:

Beginning at a point in the east side of Republic Street 230 feet south of the south side of Liberty Street thence south along the east side of Republic Street 20 feet to a point thence from the first two mentioned points eastwardly at right angles to Republic Street to the west line of an alley being the same width in the rear as in front.

PPN: 081-0004-0048-00
Commonly known as 1520 Republic Street, Cincinnati, OH

PARCEL V:

Situate in Cincinnati Hamilton County Ohio, being part of Outlot 43 and more particularly described as follows:

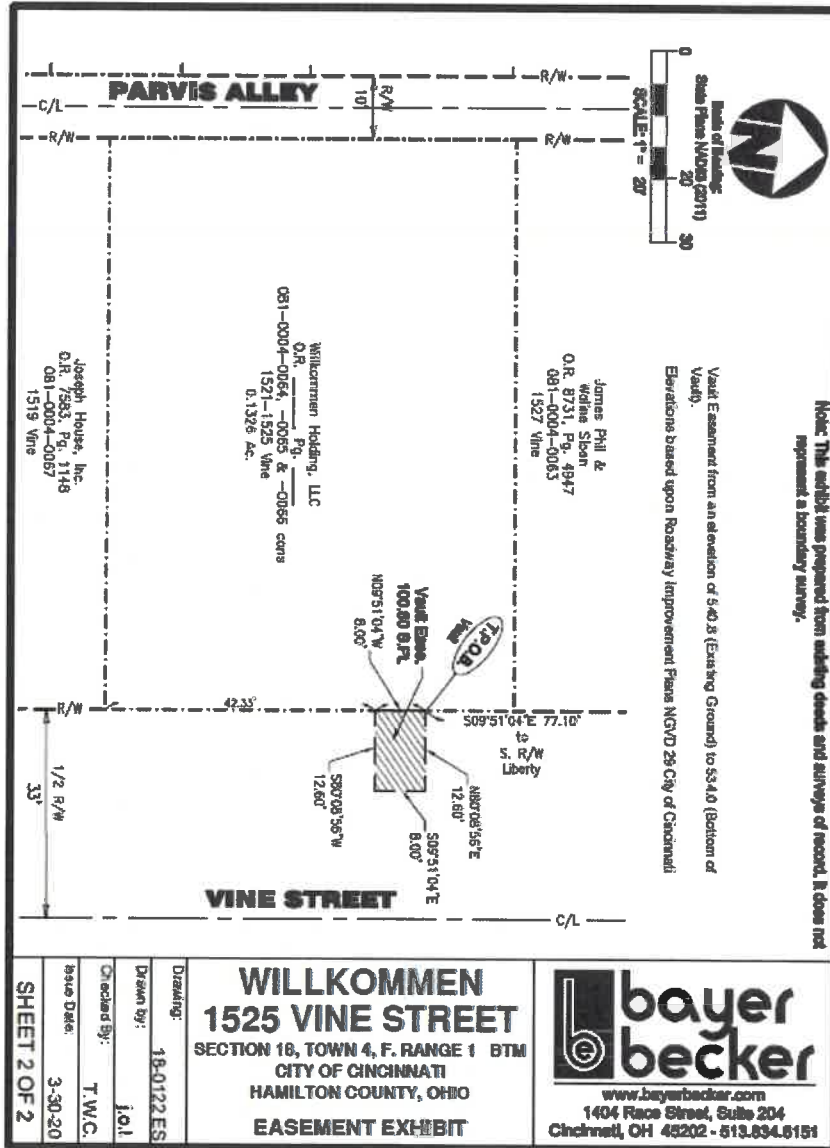
Beginning at a point in the west line of Vine Street 128 feet south of the southwest corner of Liberty and Vine Streets (63.10 feet South of the southwest corner of Liberty and Vine Streets as now constructed) said point being also 276.77 feet north of the northwest corner of Fifteenth and Vine Streets, thence South 16 deg. East 64.35 feet along the west line of Vine Street, thence South 74 deg. 10 west 90 feet to the east line of Parvis Alley, thence North 16 deg. West 64.35 feet along the east line of Parvis Alley thence North 74 deg 10 East 90 feet to the point of beginning.

PPN: 081-0004-0064-00 (0064 thru 0066 CONS.)
Commonly known as 1521-1525 Vine Street, Cincinnati, OH

EXHIBIT B

to Grant of Encroachment Easements

Site Survey – Utility Vault Easement



WILLKOMMEN
1525 VINE STREET
 SECTION 18, TOWN 4, F. RANGE 1 BTM
 CITY OF CINCINNATI
 HAMILTON COUNTY, OHIO
EASEMENT EXHIBIT

bayer becker
 www.bayerbecker.com
 1404 Race Street, Suite 204
 Cincinnati, OH 45202 • 513.834.8151

Drawing: 18-0122-ES
 Drawn by: j.o.l
 Checked by: T.W.C.
 Issue Date: 3-30-20
SHEET 2 OF 2

EXHIBIT C

to Grant of Encroachment Easements

Legal Description – Utility Vault Easement

Situated in Section 18, Town 4, Fractional Range 1 Between the Miamis, The City of Cincinnati, Hamilton County, Ohio being a Vault Easement from an elevation of 540.8 (Existing Ground) to 534.0 (Bottom of Vault) into the existing 66-foot-wide right-of-way of Vine Street and being further described as follows:

Begin at a point measuring from the intersection of the south right of way of West Liberty Street (Varies) and the west right of way of Vine Street (66'); thence, with the west right of way of said Vine Street, South 09° 51' 04" East, 77.10 feet to the True Point of Beginning;

thence, from the True Point of Beginning, thus found, through the lands of said Vine Street the following three courses: North 80° 08' 56" East 12.60 feet;

thence, South 09° 51' 04" East, 8.00 feet;

thence, South 80° 08' 56" West, 12.60 feet to the west right of way of said Vine Street;

thence, with the west right of way of said Vine Street North 09° 51' 04" West, 8.00 feet to the True Point of Beginning containing 100.80 Square Feet.

The above description was prepared from an easement exhibit made on March 30, 2020 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.

Basis of Bearings: NAD83(2011) Ohio State Plane Coordinates, South Zone (3402).

Vertical Elevations based upon Roadway Improvement Plans NGVD 29 City of Cincinnati

EXHIBIT D

to Grant of Encroachment Easements

Site Survey – Window Projection Easement

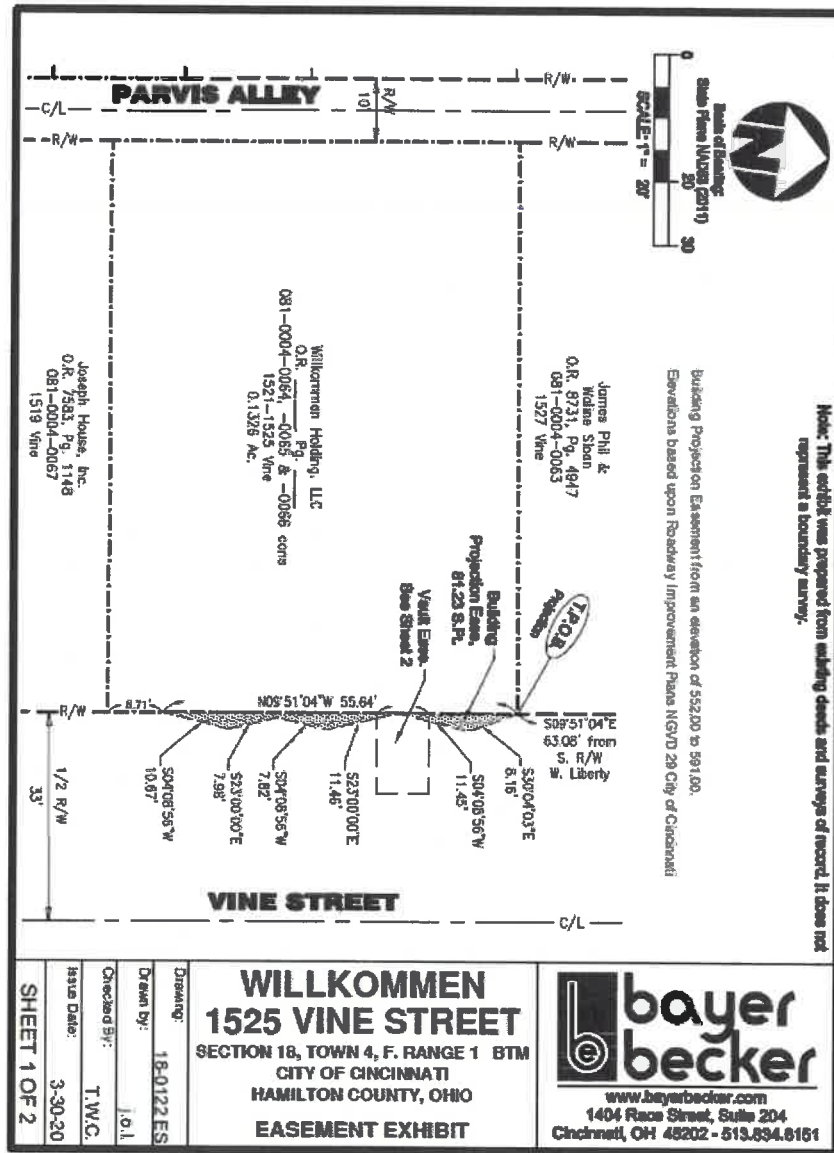


EXHIBIT E

to Grant of Encroachment Easements

Legal Description – Window Projection Easement

Situated in Section 18, Town 4, Fractional Range 1 Between the Miamis, The City of Cincinnati, Hamilton County, Ohio being a Building Projection Easement from an elevation of 552.00 to 591.00 into the existing 66-foot-wide right-of-way of Vine Street and being further described as follows:

Begin at a point measuring from the intersection of the south right of way of West Liberty Street (Varies) and the west right of way of Vine Street (66'); thence, with the west right of way of said Vine Street, South 09° 51' 04" East, 63.08' feet to the southeast corner of James Phil & Waline Sloan as recorded in Official Record 8731, Page 4947, said corner being the True Point of Beginning;

thence, from the True Point of Beginning, thus found, departing said James Phil & Waline Sloan and through the lands of said Vine Street the following six courses: South 30° 04' 03" East, 8.16 feet;

thence, South 04° 08' 56" West, 11.45 feet;

thence, South 23° 00' 00" East, 11.46 feet;

thence, South 04° 08' 56" West, 7.82 feet;

thence, South 23° 00' 00" East, 7.98 feet;

thence, South 04° 08' 56" West, 10.67 feet to the west right of way of said Vine Street;

thence, with the west right of way of said Vine Street North 09° 51' 04" West, 55.64 feet to the True Point of Beginning containing 81.23 Square Feet.

The above description was prepared from an easement exhibit made on March 30, 2020 under the direction of Jeffrey Q. Lambert, Professional Surveyor #7568 in the State of Ohio.

Basis of Bearings: NAD83(2011) Ohio State Plane Coordinates, South Zone (3402).

Vertical Elevations based upon Roadway Improvement Plans NGVD 29 City of Cincinnati.