

----- space above for county recorder -----

Property: Hammond Street

GRANT OF EASEMENTS
(Access & Temporary Construction Easements)

This Grant of Easements is made 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 **FORT WASH HILLS, LLC**, an Ohio limited liability company, with a tax mailing address of 310 Culvert Street, Suite 500, Cincinnati, OH 45202 (the “**Grantee**”).

Recitals:

A. The City owns certain real property generally located north of Third Street and east of Main Street in the Central Business District, as more particularly described on Exhibit A (*Legal Description – Burdened Property*) hereto (the “**Burdened Property**”), which property is under the management of the City’s Department of Transportation and Engineering (“**DOT**”).

B. By virtue of a deed recorded in OR 13969, Page 2181, Hamilton County, Ohio Records, Grantee owns certain real property located at 312 Main Street, adjacent to the Burdened Property, as more particularly described on Exhibit B (*Legal Description – Benefitted Property*) hereto (the “**Benefitted Property**”).

C. Grantee has undertaken a redevelopment project involving the redevelopment of the Benefitted Property into an approximately 61,500 square foot, 100-room hotel, with an estimated aggregate development cost of \$16,830,000 (the “**Project**”). Grantee anticipates that the Project will create approximately 15 full-time equivalent permanent jobs, and 100 full-time temporary construction jobs during the construction period, and has requested the City to grant pedestrian and vehicular ingress and egress access rights across the Burdened Property to benefit the Project.

D. In connection with the Project, Grantee desires to use temporarily the Burdened Property for construction and construction staging purposes and has requested the City to grant a temporary construction easement over the Burdened Property.

E. The City Manager, in consultation with DOTE, has determined that (i) granting the easements will not have an adverse effect on the City’s retained interest in the Burdened Property, and (ii) granting the easements will not have an adverse effect on the usability or accessibility of any existing transportation-related facilities located on the Burdened Property.

F. The City’s Real Estate Services Division has determined that the approximate fair market value of the easements is \$62,325, however, the City is agreeable to grant the easements to Grantee for

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\$10,000, finding that the City will receive economic and noneconomic benefits from the Project equal to or exceeding the fair market value of the easements in that Grantee's redevelopment project will create numerous full-time equivalent permanent jobs and full-time temporary construction jobs, stimulate economic growth in the Central Business District of Cincinnati, and creatively redevelop three historic structures into a new hotel.

G. The City Planning Commission, having the authority to approve the change in use of City-owned property, approved the easements at its meeting on April 2, 2021.

H. Execution of this instrument was authorized by Ordinance No. [___]-[____], passed by Cincinnati City Council on [_____], 2021.

NOW THEREFORE, the City does hereby agree as follows:

1. Grant of Easements. The City does hereby grant to Grantee, on the terms and conditions set forth herein and subject to any and all existing easements, covenants, restrictions and other matters of record affecting the Burdened Property, as an appurtenance to and for the benefit of the Benefitted Property, the following easement rights: (i) a non-exclusive access easement on, over, and across the Burdened Property as more particularly described on Exhibit A hereto, (the "**Access Easement**", or the "**Access Easement Area**", as applicable); and (ii) a non-exclusive temporary construction easement on, over, and across the Burdened Property as more particularly described on Exhibit A hereto, (the "**Temporary Construction Easement**", or the "**Temporary Construction Easement Area**", as applicable).

2. Permitted Uses; Termination.

(A) Permitted Use of the Access Easement. Grantee, its successors, assigns, licensees, employees, agents, and invitees shall have the non-exclusive right to use the Access Easement for vehicular and pedestrian ingress and egress to and from the Benefitted Property to adjoining public rights-of-way. Grantee shall not use or permit the use of the Access Easement in any manner that is inconsistent with the rights granted herein or in a manner that impairs or unreasonably interferes with the rights of the City or others permitted by the City to the use of the Burdened Property, as determined by the City.

(B) Permitted Use of the Temporary Construction Easement. Grantee, its employees, agents, successors, assigns, contractors, and subcontractors shall have the non-exclusive right to use the Temporary Construction Easement for uses necessary and appropriate to undertake and complete construction of the Project on the Benefitted Property and restore the Burdened Property. Grantee shall not use or permit the use of the Temporary Construction Easement in any manner that is inconsistent with the rights granted herein or in a manner that impairs or unreasonably interferes with the rights of the City to the use of the Burdened Property.

(C) Termination. Notwithstanding anything herein to the contrary, the Access Easement shall automatically terminate (i) upon the complete demolition of the buildings on the Benefitted Property, or (ii) upon ninety (90) days written notice from the City if the City determines that it needs the Access Easement Area or any portion thereof for a municipal purpose. The Temporary Construction Easement shall automatically terminate upon the three-year anniversary of the Effective Date, or on such sooner date on which a certificate of occupancy for the Project is issued by the City's Department of Buildings and Inspections. Upon completion of the Project, and at the request by the City, Grantee shall execute and deliver to the City a release of Grantee's Temporary Construction Easement rights for recording in the Hamilton County, Ohio Records, at Grantee's sole expense.

3. Temporary Construction Easement & Public Safety.

(A) **Public Safety.** Grantee shall, and shall cause its employees, agents, contractors, and subcontractors to use commercially reasonable efforts to protect the safety and health of the public that may be impacted by or proximate to construction-related activities on the Burdened Property. Such efforts shall principally consist of installation by Grantee of site fencing, barricades, and protection of existing pedestrian and vehicular pathways in accordance with all applicable plan approvals issued by DOTE and the Department of Buildings and Inspections, as applicable. Grantee shall apply to DOTE for temporary street closures for areas outside installed site fencing or work within dedicated public right-of-way to accommodate construction activities, as necessary.

(B) **Demolition Cranes.** In the event that the Grantee resolves to use cranes as part of construction activities, Grantee shall provide plans for the location and operation of any cranes needed to complete such activities to the City before any cranes are installed or otherwise placed upon or operated on, above, or within the Burdened Property, including the air space above the Burdened Property. Grantee shall, and shall cause all of its employees, agents, contractors, and subcontractors to, install and at all times operate cranes in accordance with all applicable approvals issued by the Department of Buildings and Inspections or DOTE, as applicable. Grantee shall not locate any cranes until the Department of Buildings and Inspections has issued all necessary building permits approving of such location and shall at all times comply, and shall cause their employees, agents, contractors, and subcontractors to comply, with all requirements of any issued permit. Grantee shall provide to the City crane operation safety protocols, which shall be approved by the City. Grantee shall comply and shall ensure that its employees, agents, contractors, and subcontractors at all times comply with such crane operation safety protocols.

4. Sole Risk. Entry upon the Burdened Property shall be at the sole risk of Grantee, its employees, agents, contractors and subcontractors. While on the Burdened Property, except as otherwise provided within this Grant of Easements, Grantee shall not interfere with the rights of the City or anyone else having the right to be on the Burdened Property.

5. Maintenance and Repairs; Public Utilities. Grantee, at no cost to the City, shall maintain the Temporary Construction Easement Area in a continuous state of good and safe condition and repair during the construction period. Grantee acknowledges that there may be existing easements for utility lines and related facilities in the vicinity of the Temporary Construction Easement Area. Grantee is solely responsible for the identification and location of public utility facilities on, above, under, or adjacent to the Burdened Property. If Grantee's use of the Burdened Property causes damage to existing utility facilities belonging to a utility provider, Grantee shall immediately notify the appropriate utility provider. All costs of repairing such damage caused by Grantee, including without limitation, all costs of replacing any damaged utility facilities that are not capable of being properly repaired as determined by the applicable utility provider in its sole discretion, shall be borne by Grantee and shall be payable by Grantee within thirty (30) days after Grantee receives documentation substantiating such costs. 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.

6. Insurance; Indemnification. 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 additional insured, in an amount not less than \$1,000,000 per occurrence, combined single limit/\$2,000,000 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-related activities upon the Burdened Property. 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 or theft of Grantee's equipment or other property that may from time to time be on the Burdened Property, 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 construction-related activities, maintenance, repair, use, or other matters associated with the Burdened Property.

7. Coordinated Report Conditions (CR #28-2019). The following additional conditions shall apply:

(A) **DOTE**: DOTE permits will be required for all work on Hammond Street, Hammond Alley and Main Street.

(B) **SMU**: Grantee must maintain the existing SMU inlet infrastructure located on the Burdened Property during construction of the Project and shall not otherwise obstruct the existing SMU inlet infrastructure located on the Burdened Property through Grantee's use of the Burdened Property. Grantee's employees, agents, contractors, or subcontractors shall provide written notice to SMU (i.e., electronic communication) before undertaking any initial construction activities within the Temporary Construction Easement Area. Such written communication shall provide proposed date(s) for initial entry upon the Temporary Construction Easement Area, providing SMU not less than five (5) business days to assess the condition of existing SMU inlet infrastructure.

(C) **Cincinnati Bell**: Cincinnati Bell has 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 of Grantee's use of the Burdened Property will be handled entirely at the property owner's expense.

8. Restoration and Cleaning of the Burdened Property. The Burdened Property, adjacent streets, and publicly accessible areas are to be kept clean and free of dirt and debris caused by Grantee. Grantee shall, at no cost to the City, restore the Burdened Property affected by construction-related activities to the satisfaction of the City Manager, in his or her reasonable discretion.

9. No Liens. Grantee shall immediately remove, at Grantee's sole expense, any purported liens or encumbrances filed against the City or the Burdened Property as a result of Grantee's agents, contractors and subcontractors' entry upon the Burdened Property.

10. Default. If Grantee, its successors-in-interest, or assigns fail to perform any maintenance, repair, or other work obligation as set forth herein, and fails to address the same to the City's satisfaction within thirty (30) days after receiving written notice thereof from the City, the City shall have the right, but not the obligation, to perform such maintenance, repair, or other work, at Grantee's expense, payable within ten (10) days after receiving an invoice from the City evidencing the amount due. Any outstanding amount due under this instrument shall create a lien on the Benefitted Properties 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. All obligations of Grantee under this Grant of Easements that have accrued but have not been fully performed as of the termination of the Temporary Construction Easement, including without limitation indemnity obligations, shall survive such termination until fully performed.

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

12. 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.

13. 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. 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.

14. Representation of Authority. Grantee represents and warrants that it has full power and authority to execute and deliver this instrument and to carry out the transactions provided for therein. This instrument has by proper action been duly authorized, executed, and delivered by Grantee, and all actions necessary have been taken to so that this instrument, when executed and delivered, shall contain valid and binding obligations of Grantee.

15. 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.

- 16. Exhibits.** The following exhibits are attached hereto and made a part hereof:
Exhibit A – *Legal Description –Burdened Property*
Exhibit B – *Legal Description –Benefitted Property*

[City Signature Page Follows]

Executed by the City on the date of acknowledgement set forth below (the "Effective Date").

CITY OF CINCINNATI

By: _____

Printed name: _____

Title: _____

Date: _____

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 acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Recommended by:

Markiea L. Carter, Director
Department of Community and Economic Development

Approved by:

John S. Brazina, Director
Department of Transportation and Engineering

Approved as to Form:

Assistant City Solicitor

[*Grantee's Signature Page Follows*]

Acknowledged and agreed to by:

Fort Wash Hills, LLC,
an Ohio limited liability company

By: _____

Printed name: _____

Title: _____

Date: _____, 2021

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street, 214
Cincinnati, OH 45202

EXHIBIT A
to
Grant of Easements

Legal Description – Burdened Property

Auditor's Parcel No.: 083-0003-0009-00
Registered Land Certificate #73800

SITUATE IN SECTION 18, TOWN 4, FRACTIONAL RANGE 1 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF MAIN STREET AND THE SOUTH LINE OF FOURTH STREET; THENCE SOUTH 15° 30' EAST, ALONG THE EAST LINE OF MAIN STREET, 219.24 FEET TO THE PLACE OF BEGINNING FOR THIS DESCRIPTION; THENCE FROM SAID BEGINNING POINT, SOUTH 15° 30' EAST, ALONG THE EAST LINE OF MAIN STREET, 36.08 FEET; THENCE NORTH 74° 56' EAST, THROUGH A PARTY WALL OF A FOUR STORY BRICK BUILDING AND SAID LINE PRODUCED EASTWARDLY, 182.77 FEET TO THE WEST LINE OF HAMMOND STREET; THENCE NORTH 15° 32' WEST, ALONG THE WEST LINE OF HAMMOND STREET, 36.09 FEET; THENCE SOUTH 74° 56' WEST, 182.75 FEET TO THE EAST LINE OF MAIN STREET AND THE PLACE OF BEGINNING.

EXHIBIT B
to
Grant of Easements

Legal Description – Benefitted Property

Auditor's Parcel No.: 083-0003-0131-00

SITUATED IN SECTION 18, TOWN 4, FRACTIONAL RANGE 1 BETWEEN THE MIAMIS, THE CITY OF CINCINNATI, HAMILTON COUNTY, OHIO BEING PART OF LOTS 85 AND 86 OF THE ORIGINAL PLAN OF CINCINNATI AND BEING ALL OF FORT WASH HILLS, LLC AS RECORDED IN OFFICIAL RECORD 13813, PAGE 2043 OF THE HAMILTON COUNTY RECORDER'S OFFICE CONTAINING 0.2547 ACRES AND BEING FURTHER DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF SAID LOT 85 OF THE ORIGINAL PLAN OF CINCINNATI, SAID CORNER BEING ON THE INTERSECTION OF THE EAST RIGHT OF WAY OF MAIN STREET (66' RW) AND THE NORTH RIGHT OF WAY OF THIRD STREET (RW VARIES); THENCE, DEPARTING THE NORTH RIGHT OF WAY OF SAID THIRD STREET AND WITH THE EAST RIGHT OF WAY OF SAID MAIN STREET, NORTH 10° 04' 25" WEST, 67.90 FEET TO THE NORTHWEST CORNER OF 300 MAIN, LTD. AS RECORDED IN OFFICIAL RECORD 7238, PAGE 1629, SAID CORNER BEING REFERENCED BY A SET CROSS NOTCH BEING SOUTH 79° 55' 35" WEST, 3.00 FEET, SAID CORNER BEING THE TRUE POINT OF BEGINNING;

THENCE, FROM THE TRUE POINT OF BEGINNING THUS FOUND, DEPARTING SAID 300 MAIN, LTD AND WITH THE EAST RIGHT OF WAY OF SAID MAIN STREET, NORTH 10° 04' 25" WEST, 75.22 FEET TO THE SOUTHWEST CORNER OF CITY OF CINCINNATI LAND (KNOWN AS HAMMOND ALLEY, NOT DEDICATED), AS RECORDED IN PRIOR REGISTERED LAND CERTIFICATE #73800 AND BEING REFERENCED BY A SET CROSS NOTCH AT SOUTH 80° 24' 34" WEST, 3.00 FEET;

THENCE, DEPARTING THE EAST RIGHT OF WAY OF SAID MAIN STREET AND WITH THE SOUTH LINE OF SAID CITY OF CINCINNATI LAND, NORTH 80° 24' 34" EAST, 182.77 FEET TO A SET CROSS NOTCH ON THE WEST RIGHT OF WAY OF HAMMOND STREET;

THENCE, DEPARTING SAID CITY OF CINCINNATI LAND AND WITH THE WEST RIGHT OF WAY OF SAID HAMMOND STREET, SOUTH 10° 03' 55" EAST, 43.62 FEET TO THE NORTH LINE OF NAP WILLIAMS OFFICE BUILDING LLC AS RECORDED IN OFFICIAL RECORD 9392, PAGE 4745, AND BEING REFERENCED BY A SET CROSS NOTCH BEING NORTH 80° 22' 15" EAST, 6.00 FEET;

THENCE, DEPARTING THE WEST RIGHT OF WAY OF SAID HAMMOND STREET AND WITH SAID NAP WILLIAMS OFFICE BUILDING LLC THE FOLLOWING TWO COURSES: SOUTH 80° 22' 15" WEST, 82.68 FEET;

THENCE, SOUTH 10° 04' 25" EAST, 30.71 FEET TO THE NORTHEAST CORNER OF SAID 300 MAIN, LTD, SAID CORNER BEING REFERENCED BY A SET CROSS NOTCH BEING SOUTH 10° 04' 25" EAST, 3.00 FEET;

THENCE, DEPARTING SAID NAP WILLIAMS OFFICE BUILDING LLC AND WITH SAID 300 MAIN, LTD, SOUTH 79° 55' 35" WEST, 100.08 FEET TO THE TRUE POINT OF BEGINNING CONTAINING 0.2547 ACRES OF LAND, MORE OR LESS.

BASIS OF BEARINGS: STATE PLANE COORDINATES (3402) OHIO SOUTH ZONE, NAD83(2011).

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THE ABOVE DESCRIPTION WAS PREPARED FROM A CONSOLIDATION PLAT MADE ON JUNE 11, 2019 UNDER THE DIRECTION OF JEFFREY O. LAMBERT, PROFESSIONAL SURVEYOR #7568 IN THE STATE OF OHIO.