

# City of Cincinnati

## An Ordinance No. \_\_\_\_\_

- 2021

**AUTHORIZING** the City Manager to execute a *Grant of Encroachment Easements* in favor of 2445 Gilbert, LLC, pursuant to which the City of Cincinnati will grant encroachment easements for existing projections encroaching upon the Gilbert Avenue public right-of-way in the Walnut Hills neighborhood of Cincinnati.

WHEREAS, 2445 Gilbert, LLC, an Ohio limited liability company (“Grantee”), owns the building located at 2445-2449 Gilbert Avenue in the Walnut Hills neighborhood of Cincinnati; and

WHEREAS, the City of Cincinnati owns the adjoining Gilbert Avenue public right-of-way, which is 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 existing balconies, existing bracketed hoods, and an existing cornice to encroach upon portions of the Gilbert Avenue public right-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 Cincinnati Municipal Code Sec. 331-5, the City 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 \$300, which Grantee has agreed to pay; 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 February 19, 2021; 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 2445 Gilbert, LLC, an Ohio limited liability company (“Grantee”), owner of the building located at 2445-2449 Gilbert Avenue in the Walnut Hills neighborhood of Cincinnati, 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 encroachment easements to permit existing balconies, existing bracketed hoods, and an existing cornice to encroach upon portions of the Gilbert Avenue public right-of-way.

Section 2. That granting the easements to Grantee (i) is not adverse to the City’s retained interest in the Gilbert Avenue public right-of-way and (ii) will not have an adverse effect on the usability or accessibility of any existing Gilbert Avenue 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 \$300, which Grantee has agreed to pay.

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

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[SPACE ABOVE FOR RECORDER'S USE]

## GRANT OF ENCROACHMENT EASEMENTS

(aerial encroachments over a portion of Gilbert Avenue)

This Grant of Encroachment Easements 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 **2445 GILBERT, LLC**, an Ohio limited liability company, the address of which is 4400 Liberty Hill, Cincinnati, Ohio 45202 ("**Grantee**").

### Recitals:

A. By virtue of a *Quitclaim Deed* dated February 5, 2018, Grantee holds title to certain real property located at 2445-2449 Gilbert Avenue, as more particularly described on Exhibit A (*Legal Description – Benefitted Property*) and depicted on Exhibit B (*Survey Plat*) hereto (the "**Benefitted Property**").

B. The City owns the adjoining Gilbert Avenue 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 to grant aerial encroachment easements for existing projections encroaching upon the Gilbert Avenue public right-of-way, i.e., existing balconies, existing bracketed hoods, and an existing cornice (collectively, the "**Improvements**").

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

E. The City's Real Estate Services Division has determined that the fair market value of the encroachment easements, as determined by appraisal, is \$300, 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 encroachment easements at its meeting on February 19, 2021.

G. Cincinnati City Council approved the encroachment 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, non-exclusive aerial encroachment easements to maintain, repair, reconstruct, replace, and remove the Improvements over the Gilbert Avenue public right-of-way, as more particularly depicted on Exhibit B, and more particularly described on Exhibit C (Legal Description-Aerial Easements) hereto (the "**Aerial Easements**" or "**Aerial Easement Area**", 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 Aerial Easements shall automatically terminate upon (i) the complete demolition of the Improvements within the Aerial Easement Area, such that the Aerial Easements would be rendered unnecessary; (ii) upon written notice from the City, if the City determines that it needs the Aerial 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 Improvements are 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.

2. Construction, Maintenance, and Repairs.

(A) The Improvements shall be constructed and maintained in accordance with the plans and specifications approved by DOTE, and in accordance with applicable code standards. Once installed, Grantee shall not make any enlargements or other modifications to the Improvements without DOTE's prior written consent.

(B) Following installation, at no cost to the City, Grantee shall 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 Aerial Easement Area ("**Third-Party Utility Lines**"). In connection with Grantee's construction, maintenance, repair, and use of the Improvements, 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, their agents, employees, contractors, subcontractors, tenants, licensees, or invitees. Any relocation of Third-Party Utility Lines necessitated by the maintenance, repair, reconstruction, or removal of the Improvements 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

3. 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 Aerial 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 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 be binding upon and inure to the benefit of the City and Grantee and Grantee's successors-in-interest with respect to the Benefitted Property.

5. Coordinated Report Conditions (CR #50-2020). The following additional conditions shall apply:

(A) Cincinnati Bell Telephone: All existing underground telephone facilities must remain in place, in service, and able to be accessed. Any damage to such facilities or any work done to relocate such facilities as a result of the construction of the Improvements shall be done at Grantee's sole cost and expense.

(B) Department of Transportation and Engineering:

(i) 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.

6. 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-Aerial Easement Area*

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 \_\_\_\_\_, 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

[ Grantee Signature Page Follows ]



ACCEPTED AND AGREED TO BY:

**2445 GILBERT, LLC,**  
an Ohio limited liability company

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2021

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF HAMILTON         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021 by \_\_\_\_\_, the \_\_\_\_\_ of **2445 Gilbert, 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 Encroachment Easements

***LEGAL DESCRIPTION - BENEFITTED PROPERTY***

Situated in the City of Cincinnati, Hamilton County, Ohio being part of Lots 4 and 5 of Fred A. Kemper's Subdivision as recorded in Plat Book 2, page 59 of the Hamilton County, Ohio Records, and described as follows:

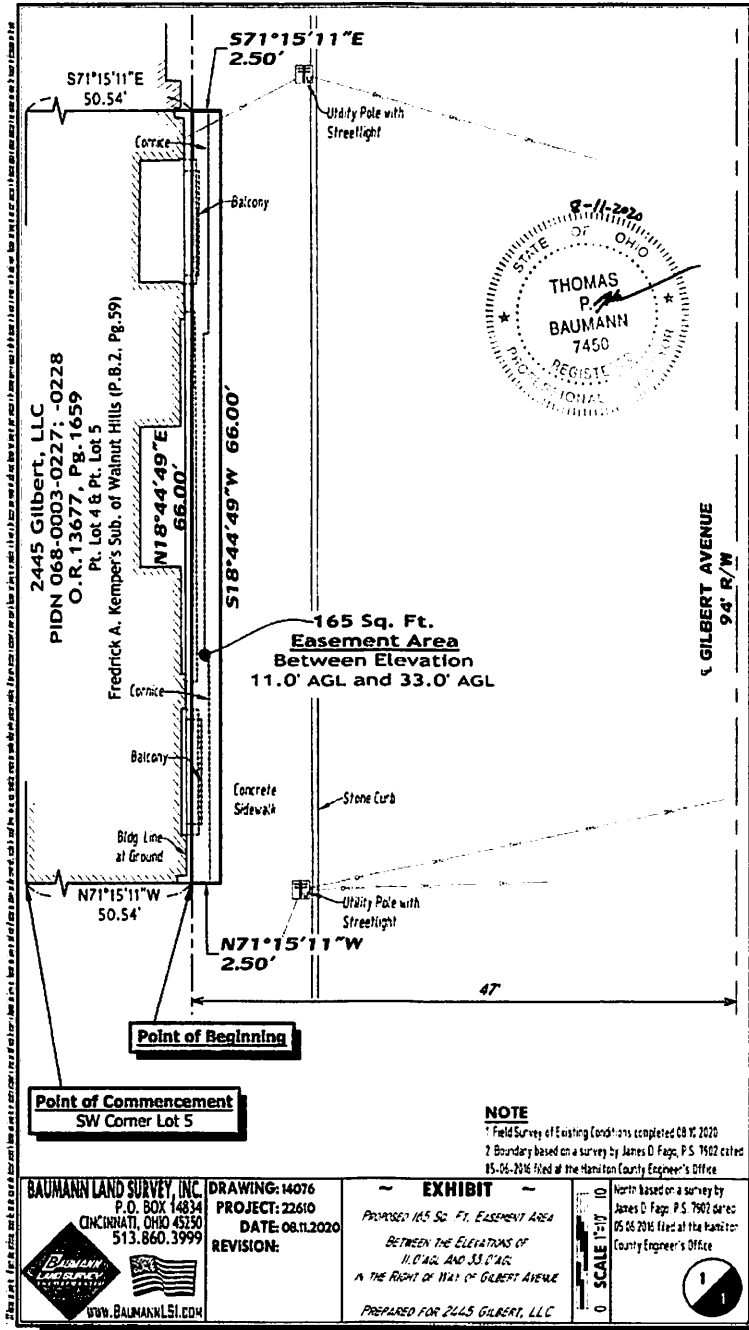
Beginning at the intersection of the west line of Gilbert Avenue as now improved and the north line of said Lot 4, said Place of Beginning is southwardly a distance of 97.47 feet from the intersection of the said west line of Gilbert Avenue and the south line of McMillan Street as now improved; thence southwardly along the said west line of Gilbert Avenue a distance of 66 feet to the south line of said Lot 5; thence westwardly along the south line of said Lot 5 a distance of 50.54 feet to the east line of Sedalia Alley; thence northwardly along the east line of Sedalia Alley a distance of 66 feet to the north line of said Lot 4; thence eastwardly along the north line of said Lot 4 a distance of 50.54 feet to the Place of Beginning.

Property Address: *So* 2445 and 2449 Gilbert Avenue, Cincinnati, Ohio  
Auditor's parcels: 068-0003-0227-00 and 068-0003-0228-0 *So*  
Prior Instrument reference: Official Record Book 13677, Page 1637

**EXHIBIT B**

to Grant of Encroachment Easements

Survey Plat



**EXHIBIT C**

**to Grant of Encroachment Easements**

***Legal Description – Aerial Easement Area***

Situate in Section 7, Town 3, Fractional Range 2, Millcreek Township, City of Cincinnati, Hamilton County, Ohio, and being part of Lot 4 and part of Lot 5 of Fredrick A. Kemper's Subdivision of Walnut Hills as recorded in P.B. 2, Pg. 59, and being in the right of way of Gilbert Avenue and being more particularly described as follows:

Commencing at the southwest corner of said Lot 5, thence, along the south line of said Lot 5, South 71° 15' 11" East a distance of 50.54' to a point in the south line of said Lot 5 in the westerly right of way line of Gilbert Avenue and the Point of Beginning;

Thence, leaving the south line of said Lot 5 and along the westerly right of way line of Gilbert Avenue, North 18° 44' 49" East a distance of 66.00 feet to a point in the north line of said Lot 4 in the westerly right of way line of Gilbert Avenue;

Thence, leaving the westerly right of way line of Gilbert Avenue and along the north line of said Lot 4, South 71° 15' 11" East a distance of 2.50 feet to a point in the north line of said Lot 4;

Thence, leaving the north line of said Lot 4, South 18° 44' 49" West a distance of 66.00 feet to a point in the south line of said Lot 5;

Thence, along the south line of said Lot 5, North 71° 15' 11" West a distance of 2.50 feet to the Point of Beginning;

Containing 165 square feet and being a portion of the right of way of Elm Street between the elevations of 11.0' AGL and 33.0' AGL.

Subject to all existing easements and right-of-ways.

Bearing are based on a survey performed by James D. Fago dated 05.06.2016 and filed with the Hamilton County Engineer's Office

Prepared by: Baumann Land Survey, Inc.  
Thomas P. Baumann, PS  
Ohio Surveyor #: S-7450

