

City of Cincinnati

CHM

BWB

An Ordinance No. _____

- 2021

AUTHORIZING the City Manager to execute a *Grant of Easement* in favor of CLC Main Street LLC, pursuant to which the City of Cincinnati will grant encroachment easements upon portions of Third and Main Streets in the Central Business District.

WHEREAS, CLC Main Street LLC, an Ohio limited liability company ("Grantee"), owns certain real property located at 300 Main Street in the Central Business District; and

WHEREAS, the City of Cincinnati owns the adjoining Third Street and Main Street public rights-of-way (the "Property"), which Property is under the management of the City's Department of Transportation and Engineering ("DOT"); and

WHEREAS, Grantee has requested easements from the City for encroachments upon portions of the Property, namely, steps and basement space, as more particularly depicted and 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 DOT, has determined (i) that granting the easements to Grantee is not adverse to the City's retained interest in the Property and; (ii) that granting the easements will not have an adverse effect on the usability or accessibility of any existing transportation facilities located within the public rights-of-way; 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 an appraisal that the fair market value of the easements is approximately \$3,825, 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 October 15, 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 Easement* in favor of CLC Main Street LLC, an Ohio limited liability company ("Grantee"), owner of the property located at 300 Main 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 easements for encroachments upon the Third Street and Main Street public rights-of-way (the "Property").

Section 2. That granting the easements 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 rights-of-way.

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, an adjoining property owner, 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 \$3,825, which Grantee has agreed to pay.

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: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

ATTACHMENT A

[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF EASEMENT

(encroachments upon portions of Third and Main Streets)

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 **CLC MAIN STREET LLC**, an Ohio limited liability company, with a tax mailing address of 655 Plum Street, Cincinnati, OH 45202 ("**Grantee**").

Recitals:

A. By virtue of a *Quitclaim Deed* recorded on June 23, 2021, in OR 14444, Page 2847, Hamilton County, Ohio Records, Grantee holds title to certain real property located at 300 Main Street, Cincinnati, OH 45202, 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 Third and Main Streets public rights-of-way, which are under the management of the City's Department of Transportation and Engineering ("**DOT**").

C. Grantee has requested the City to grant easements for encroachments on, under, and across the Third and Main Streets public rights-of-way, i.e., steps and subterranean basement space (the "**Encroachments**").

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

E. The City's Real Estate Services Division has determined that the fair market value of the easements, as determined by professional appraisal, are \$3,825, 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 easement at its meeting on October 15, 2021.

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

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, the following easements: (i) a non-exclusive encroachment easement to use, maintain, repair, reconstruct, replace, and remove steps in, on, and across the Third Street public right-of-way, as more particularly depicted on Exhibit B and described on Exhibit C (Legal Description-Step and Basement Easement #2) hereto (the "**Step Easement**" or "**Step Easement Area**", as applicable); (ii) a non-exclusive encroachment easement to use, maintain, repair, reconstruct, replace, and fill subterranean basement space in, on, and under the Main Street public right-of-way, as more particularly depicted on Exhibit B and described on Exhibit D (Legal Description- Basement Easement #1) hereto ("**Basement Easement #1**"; and (iii) a non-exclusive encroachment easement to use, maintain, repair, reconstruct, replace, and fill subterranean basement space in, on, and under the Third Street public right-of-way, as more particularly depicted on Exhibit B and described on Exhibit C hereto ("**Basement Easement #2**", and collectively with the Step Easement and Basement Easement #1, the "**Easements**" or the "**Easement Areas**", as applicable). Grantee shall not make any modifications to the Encroachments within the Easement Areas without the City's prior written consent.

2. Termination. Notwithstanding anything herein to the contrary, the Easements shall automatically terminate upon (i) the complete or respective partial demolition of the Encroachments within the Easement Areas, such that the Easements would be rendered unnecessary; (ii) upon written notice from the City, if the City determines that it needs the Easement Areas, 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 Encroachments 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.

3. Maintenance and Repairs. At no cost to the City, Grantee shall maintain the Encroachments 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 maintenance, repair, and use of the Encroachments, 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 maintenance, repair, reconstruction, removal, or sealing of the Encroachments 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 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 Encroachments, 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, maintenance, repair, and all other matters associated with the Encroachments.

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 #21-2020). The following additional conditions shall apply:

(A) DOTE:

(i) [Intentionally Omitted].

(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. 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) Cincinnati Bell: There are existing underground telephone facilities at or around 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 this instrument 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 - Step and Basement Easement #2*
Exhibit D – *Legal Description - Basement Easement #1*

[*Signature Page Follows*]

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:

CLC MAIN STREET 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 **CLC MAIN STREET 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, Town 4, Fractional Range 1 Between the Miami ~~City of Cincinnati~~ ^{The City of Cincinnati}, Hamilton County, Ohio being part of Lot 85 of the original plan of Cincinnati and being all of CLC 300 Main Street LLC as recorded in Official Record 14047, Page 659 of the Hamilton County Recorder's Office containing 0.1537 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 East Third Street (RW Varies), said corner being referenced by a set cross notch being South 80° 22' 35" West, 3.00 feet and being referenced by a set cross notch being South 10° 04' 25" East, 3.00 feet and being the True Point of Beginning;

thence, from the True Point of Beginning and departing the north right of way of said East Third Street and with the east right of way of said Main Street, North 10° 04' 25" West, 67.90 feet to the southwest corner of Fort Wash Hills, LLC as recorded in Official Record 13969, Page 2181, said corner being referenced by a found cross notch being South 79° 55' 35" West, 3.00 feet;

thence, departing the east right of way of said Main Street and with said Fort Wash Hills, LLC, North 79° 55' 35" East, 100.08 to the southeast corner of said Fort Wash Hills, LLC and to a west line of NAP Williams Office Building LLC as recorded in Official Record 9392, Page 4745, said corner being referenced by a found cross notch being South 10° 04' 25" East, 3.00 feet;

thence, departing said Fort Wash Hills, LLC and with said NAP Williams Office Building LLC, South 10° 04' 25" East, 33.55 feet to the northeast terminus of a Private Alley (4'), said corner referenced by a found MAG Nail being South 10° 04' 25" East, 38.14 feet;

thence, departing said NAP Williams Office Building LLC and with the north terminus of said Private Alley, South 80° 23' 42" West, 4.00 feet to a set cross notch on the centerline of said Private Alley;

thence, with the centerline of said Private Alley, South 10° 04' 25" East, 35.17 feet to a set cross notch at the north right of way of said Third Street;

thence, departing the centerline of said Private Alley and with the north right of way of said Third Street, South 80° 22' 35" West, 96.09 feet to the True Point of Beginning containing 0.1537 acres of land, more or less.

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

The above description was prepared from a consolidation plat made on March 5, 2021 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.

Survey Plat

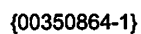


EXHIBIT C

to Grant of Easement

*Legal Description - Step and Basement Easement
#2*

Situated in Section 18, Town 4, Fractional Range 1 Between the Miamis, The City of Cincinnati, Hamilton County, Ohio being a Step and Basement Easement over part of the right of way of Third Street 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 east right of way of said Main Street and with the north right of way of said Third Street, North 80° 22' 35" East, 49.09 feet to the True Point of Beginning;

thence, from the True Point of Beginning thus found, and continuing with the north right of way of said Third Street, North 80° 22' 35" East, 41.60 feet;

thence, through the lands of said Third Street right of way the following five courses: South 09° 37' 25" East, 9.00 feet;

thence, South 80° 22' 35" West, 31.10 feet;

thence, North 09° 37' 25" West, 2.00 feet;

thence, South 80° 22' 35" West, 10.50 feet;

thence, North 09° 37' 25" West, 7.00 feet to the True Point of Beginning containing 343.40 square feet of land, more or less.

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

The above description was prepared from an easement exhibit made on February 26, 2020 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.

EXHIBIT D

to Grant of Easement

Legal Description - Basement Easement #1

Situated in Section 18, Town 4, Fractional Range 1 Between the Miamis, The City of Cincinnati, Hamilton County, Ohio being a Basement Easement over part of the right of way of Main Street 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, 36.30 to the True Point of Beginning;

thence, from the True Point of Beginning thus found, and through the lands of said Main Street right of way the following three courses: South 79° 55' 35" West, 5.00 feet;

thence, North 10° 04' 25" West, 15.00 feet;

thence, North 79° 55' 35" East, 5.00 feet to the east right of way of said Main Street;

thence, with the east right of way of said Main Street, South 10° 04' 25" East, 15.00 feet to the True Point of Beginning containing 75 square feet of land, more or less.

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

The above description was prepared from an easement exhibit made on February 26, 2020 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.