

City of Cincinnati
An Ordinance No. _____

CHM

EESW

- 2022

AUTHORIZING the City Manager to execute a *Grant of Easement* in favor of Market House, LLC, pursuant to which the City of Cincinnati will grant an access easement across a portion of City-owned real property in Over-the-Rhine.

WHEREAS, pursuant to a *Quitclaim Deed* authorized by Ordinance No. 212-2018, passed by Cincinnati City Council on June 27, 2018, the City of Cincinnati (“City”) conveyed to Market House, LLC, an Ohio limited liability company (“Grantee”), all its right, title, and interest in and to an air parcel consisting of the upper floors of a building located at 1811 Pleasant Street, also known as 118 W. Elder Street (the “Benefitted Property”) at Findlay Market in the Over-the-Rhine neighborhood; and

WHEREAS, the City owns an adjoining parcel of real property identified as Hamilton County, Ohio Auditor’s Parcel ID No. 094-0008-0376-00, as more particularly described and depicted in the *Grant of Easement* attached to this ordinance as Attachment A and incorporated herein by reference (“Property”), which Property consists of vacated former public right-of-way that is under the management of the City’s Department of Public Services (“DPS”); and

WHEREAS, Grantee has undertaken a project to renovate the Benefitted Property into a residential dwelling (the “Project”), and Grantee requires an access easement across the Property to the Sellew Alley and West Elder Street public rights-of-way, as more particularly detailed in Attachment A (“Easement”); and

WHEREAS, Section 16 of Article VIII of the Ohio Constitution provides that it is in the public interest and a proper public purpose for the City to enhance the availability of adequate housing and to improve the economic and general well-being of the people of the City by providing or assisting in providing housing; and

WHEREAS, pursuant to Ordinance No. 212-2018, the Council determined that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements; and

WHEREAS, the City Manager, in consultation with DPS, has determined that granting the Easement to Grantee is not adverse to the City’s retained interest in the Property; 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 \$900.00; however, the City has agreed to grant the Easement to Grantee for \$1.00 because the City will receive benefits from the Project that equal or exceed the fair market value of the Easement through the creation of temporary construction jobs and the increased availability of adequate housing in the City; 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 August 5, 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 Market House, LLC, an Ohio limited liability company ("Grantee") and the owner of an air parcel consisting of the upper floors of a building located at 1811 Pleasant Street, also known as 118 W. Elder Street (the "Benefitted Property") at Findlay Market in Over-the-Rhine, in substantially the form attached to this ordinance as Attachment A and incorporated herein by reference, pursuant to which the City of Cincinnati ("City") will grant to Grantee an access easement ("Easement") across a portion of certain real property identified as Hamilton County, Ohio Auditor's Parcel ID No. 094-0008-0376-00, as more particularly described and depicted in Attachment A ("Property").

Section 2. That granting the Easement to Grantee is not adverse to the City's retained interest in the Property.

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 \$900.00; however, the City has agreed to grant the Easement to Grantee for \$1.00 because the City will receive benefits

from Grantee's renovation of the Benefitted Property into a residential dwelling that equal or exceed the fair market value of the Easement through the creation of temporary construction jobs and the increased availability of adequate housing in the City.

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 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 7. 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

(access across a portion of APN 94-8-376)

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 **MARKET HOUSE, LLC**, an Ohio limited liability company, with a tax mailing address of 4100 Brookdale Lane, Dayton, OH 45440 ("**Grantee**").

Recitals:

A. By virtue of a *Quitclaim Deed* recorded on March 24, 2022, in OR 14631, Page 1504, Hamilton County, Ohio Records, Grantee holds title to certain real property consisting of a residential air lot comprising the upper levels of a building located at 1811 Pleasant Street, also known as 118 W. Elder 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**"). Grantee purchased the Benefitted Property pursuant to a *Property Sale and Development Agreement* by and between the City and Andrew and Rachel Reider, as assigned by the aforesaid to Grantee (the "**Agreement**").

B. Pursuant to Cincinnati Municipal Ordinance No. 319-2010, passed by Cincinnati City Council on August 4, 2010, as recorded in Official Record 11522, Page 2871, Hamilton County, Ohio Records, the City vacated a portion of Pleasant Street located in the Over-the-Rhine neighborhood of Cincinnati between Sellow Alley and West Elder Street (the "**Property**"). The Property is more particularly identified as Hamilton County, Ohio Auditor's Parcel No. 094-0008-0376, and more particularly depicted on Exhibit B hereto. The Property is under the management of the City's Department of Public Services ("**DPS**").

C. As set forth by the Agreement, Grantee has undertaken a project at the Benefitted Property to renovate the upper floors of the building into a residential dwelling. The primary ingress and egress to the upper floors of the building is from the Property, and due to the vacation of the Property as public right-of-way, Grantee requires ingress and egress access rights across the Property to the public right-of-way.

D. The City Manager, in consultation with DPS, has determined that the easement will not have an adverse effect on the City's retained interest in the Property.

E. The City's Real Estate Services Division has determined that the fair market value of the easement, as determined by professional appraisal, is \$900; however, the City has agreed to grant the easement to Grantee for \$1.00, because the City will receive benefits from Grantee's renovation of the Benefitted Property that equal or exceed the fair market value of the easement and enhance the availability of adequate housing in the City.

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 August 5, 2022.

G. Cincinnati City Council approved the easement by Ordinance No. []-2022, passed on [], 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 access easement for access, ingress, and egress across the Property to and from the Sellow Alley and West Elder Street public rights-of-way, as more particularly depicted on Exhibit B and described on Exhibit C (Legal Description- Easement) hereto (the “**Access Easement**” or “**Access Easement Area**”, as applicable).

2. Permitted Use. Grantee, its agents, tenants, licensees, and invitees shall have the non-exclusive right to use the Access Easement Area for the sole and limited purpose of ingress and egress on foot, wheelchair, or similar ambulatory device across Property to the adjoining public rights-of-way. Grantee shall not use or permit the use of the Access Easement Area 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 full use and enjoyment of the Property, as determined by the City.

3. Termination. Notwithstanding anything herein to the contrary, the Access Easement shall automatically terminate upon any permanent alteration of access to the Benefitted Property or elimination or demolition of the improvements located on the Benefitted Property such that the Access Easement would be rendered unnecessary, unless construction to replace the building improvements is commenced within 12 months thereafter.

3. Relocation of Access Easement. The City, at its sole discretion, and upon no less than 10 days prior written notice to Grantee, may relocate the Access Easement Area from time to time to a pathway of its choosing, provided that the City's Department of Buildings and Inspections determines that the relocated pathway conforms to applicable building code requirements. The City's notice of relocation of the Access Easement Area shall be accompanied by a survey drawing depicting the relocated Access Easement Area, and such notice shall automatically serve as an amendment to this instrument. The City shall have the right to execute and record an amendment to this instrument in the Hamilton County Recorder's Office to memorialize the relocated Access Easement Area.

4. Insurance; Indemnification. At all times, and in addition to whatever other insurance and bond requirements the City may from time to time require, Grantee shall maintain or cause to be maintained a policy of 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 \$300,000 per occurrence, combined single limit/\$300,000 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. 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 or loss of personal 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 the use of the Access Easement by Grantee, its agents, tenants, licensees, and invitees.

5. 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.

6. 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.

7. 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.

8. Coordinated Report Conditions (CR #17-2022). The following additional conditions shall apply: None

9. 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.

10. 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 - 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: _____

Date: _____, 2022

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:

MARKET HOUSE, 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 **MARKET HOUSE, 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

Property Address: 1811 Pleasant Street, f/k/a 118 W. Elder Street, Cincinnati, Ohio 45202
Auditor's Parcel No.: 094-0008-0441-00 ST

SITUATE IN SECTION 13, TOWN 3, FRACTIONAL RANGE 2, MILLCREEK TOWNSHIP, CITY OF CINCINNATI, HAMILTON COUNTY, OHIO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF AIR LOT 2 OF 118 WEST ELDER STREET SUBDIVISION AS RECORDED IN PLAT BOOK 480, PAGE 2 OF THE HAMILTON COUNTY, OHIO RECORDER'S OFFICE.

BEING SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD.

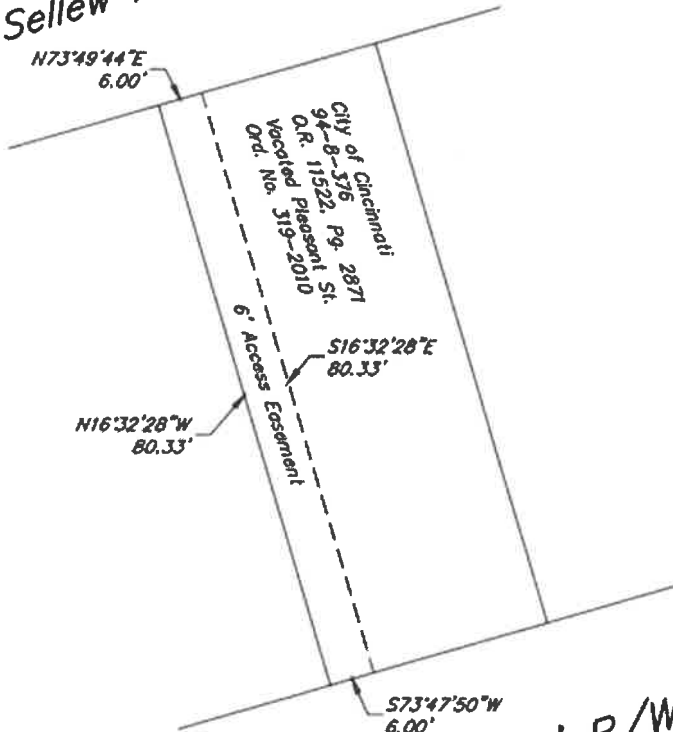
EXHIBIT B

to Grant of Easement

Survey Plat
Access Easement
Parcel 94-8-376
Easement Area = 482 s.f.



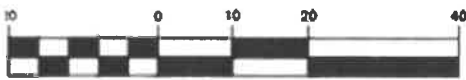
Sellew Alley (12' R/W)



Elder St. (30' R/W)

Situate in Section 13, F.R. 2, Town 3., Millcreek Township
City of Cincinnati, Hamilton County, Ohio.

GRAPHIC SCALE



(IN FEET)
1 inch = 20 ft.

Date: June, 2022

	Department of Transportation and Engineering
	City of Cincinnati City Hall 801 Plum Street Cincinnati, Ohio 45202

EXHIBIT C

to Grant of Easement

Legal Description –Easement

Situate in Section 13, Town 3, Fractional Range 2, Millcreek Township, City of Cincinnati, Hamilton County, Ohio and being part of a tract conveyed to the City of Cincinnati in O.R. 11522, Pg. 2871 and being part of vacated Pleasant Street, Ord. No. 319-2010 and being more particularly described as follows:

Beginning at the intersection of the north line of Elder Street, 30' R/W and the west line of said vacated Pleasant Street; thence with the west line of said vacated Pleasant Street, North 16°32'28" West, 80.33 feet to a point in the south line of Sellew Alley, 12' R/W; thence with the south line of said Sellew Alley, North 73°49'44" East, 6.00 feet to a point; thence South 16°32'28" East, 80.33 feet to a point in the north line of said Elder Street; thence South 73°47'50" West, 6.00 feet to the Place of Beginning. Containing 482 square feet of land more or less (0.011 acres). Bearings based on Plat Book 335, Page 12. Subject to all legal highways, easements and restrictions of record.