

City of Cincinnati

CHM

AWB

An Ordinance No. _____

- 2021

AUTHORIZING the City Manager to execute a *Grant of Encroachment Easement* in favor of Vision Cincinnati, LLC, pursuant to which the City of Cincinnati will grant an encroachment easement to permit existing basement space to encroach upon the Seventh and Race Streets public rights-of-way in the Central Business District.

WHEREAS, Vision Cincinnati, LLC, an Ohio limited liability company (“Grantee”), owns the building located at 636 Race Street in the Central Business District; and

WHEREAS, the City of Cincinnati owns the adjoining Seventh and Race Streets public rights-of-way, which are under the management of the City’s Department of Transportation and Engineering (“DOTe”); and

WHEREAS, Grantee has requested an encroachment easement from the City, as more particularly depicted and described in the *Grant of Encroachment Easement* attached to this ordinance as Attachment A and incorporated herein by reference, to permit existing basement space to encroach upon portions of the Seventh and Race Streets public rights-of-way; and

WHEREAS, the City Manager, in consultation with DOTe, has determined (i) that granting the easement to Grantee is not adverse to the City’s retained interest in the public rights-of-way and (ii) that granting the easement 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 easement is approximately \$14,795, 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 easement at its meeting on March 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 Easement* in favor of Vision Cincinnati, LLC, an Ohio limited liability company

(“Grantee”), owner of the building located at 636 Race 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 an encroachment easement to permit existing basement space to encroach upon portions of the Seventh and Race Streets public rights-of-way.

Section 2. That granting the easement to Grantee (i) is not adverse to the City’s retained interest in the Seventh and Race Streets public rights-of-way and (ii) will not have an adverse effect on the usability or accessibility of any existing Seventh and Race Streets public rights-of-way facilities.

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 would have any use for the easement.

Section 4. That the fair market value of the easement, as determined by appraisal by the City’s Real Estate Services Division, is approximately \$14,795, 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 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 Encroachment Easement*, including, without limitation, by 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 ENCROACHMENT EASEMENT

(building basement encroachment upon Seventh and Race Streets at 636 Race Street)

This Grant of Encroachment Easement 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 **VISION CINCINNATI, LLC**, an Ohio limited liability company, the tax-mailing address of which is One Lakeside Commons, 990 Hammond Drive, Atlanta, GA 30328 ("**Grantee**").

Recitals:

A. By virtue of instruments recorded in Official Record 13319, Page 1604, Official Record 13994, Page 3090, and Official Record 13996, Page 2373, Hamilton County, Ohio Recorder's Office, Grantee holds title to certain real property located at 636 Race Street, Cincinnati, Ohio, generally located at the southeast corner of the intersection of West Seventh and Race Streets in the Central Business District of Cincinnati, as more particularly described on Exhibit A – (*Legal Description – Benefitted Property*) hereto (the "**Benefitted Property**").

B. The City owns the adjoining West Seventh Street and Race Street public rights-of-way, which are under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

C. Grantee has requested an encroachment easement from the City for a building encroachment for basement/subbasement space (the "**Improvement**").

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

E. The City's Real Estate Services Division has determined that the fair market value of the easement, as determined by appraisal, is \$14,795, 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 March 19, 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 Encroachment 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 non-exclusive easement for the maintenance of the Improvement: an encroachment easement for building subspace that encroaches into the West Seventh Street and Race Street rights-of-way, as depicted on Exhibit B (Easement Plat) and described on Exhibit C (Legal Description – Basement Easement) hereto (the “**Encroachment Easement**”, or the “**Encroachment Easement Area**”, as applicable). Grantee’s easement rights are subordinate and subject to the City’s duties and responsibilities related to the care, supervision, and control of the public right-of-way. Grantee acknowledges and agrees to provide the City access to inspect the Improvement within the Encroachment Easement Area upon request. Grantee shall not make any modifications to the Improvement without the City’s prior written consent. Notwithstanding anything herein to the contrary, the Encroachment Easement shall automatically terminate upon (i) the complete demolition of the building; (ii) any permanent alteration of the building that entails the elimination of the Improvement within the Encroachment Easement Area such that the Encroachment Easement would be rendered unnecessary; or (iii) upon written notice from the City if the City determines that it needs the Encroachment 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; (iv) or upon written notice from the City if the City determines that the Improvement 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. Maintenance and Repairs. Grantee, at no cost to the City, shall at all times maintain the Improvement 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 Encroachment Easement (“**Third Party Utility Lines**”). In connection with Grantee’s activities within the Encroachment Easement Area, Grantee shall not interfere with the access of any relevant utility company to maintain and repair the Third Party Utility 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 Encroachment Easement Area, 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/\$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 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 Improvement, 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 Improvement.

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 #79-2020). The following additional conditions shall apply:

(a) 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 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 – *Easement Plat*
Exhibit C – *Legal Description – Basement Easement*

Executed on the date of acknowledgement indicated below (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

Acknowledged and Accepted:

VISION CINCINNATI, LLC,
an Ohio limited liability company

By: _____

Printed name: _____

Title: _____

Date: _____, 2021

This instrument prepared by:
City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, OH 45202

EXHIBIT A

to Grant of Encroachment Easement

LEGAL DESCRIPTION - BENEFITTED PROPERTY

Property Address: 636 Race Street, Cincinnati, Ohio 45202

Auditor's Parcel No.: 077-0002-0347-00

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF HAMILTON, STATE OF OHIO, AND IS DESCRIBED AS FOLLOWS:

TRACT 1:

SITUATED IN THE CITY OF CINCINNATI, COUNTY OF HAMILTON AND STATE OF OHIO, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SEVENTH AND RACE STREETS; THENCE RUNNING EASTWARDLY ON THE SOUTH SIDE OF SEVENTH STREET, 67 FEET TO THE WEST LINE OF IN-LOT SOLD BY JAMES FERGUSON TO JAMES JOHNSON BY DEED RECORDED IN BOOK 61, PAGE 439, HAMILTON COUNTY, OHIO RECORDS; THENCE SOUTH ALONG SAID LINE, 90 FEET, MORE OR LESS, TO AN ALLEY; THENCE WEST WITH SAID ALLEY 67 FEET TO RACE STREET AND THENCE NORTH ON RACE STREET, 90 FEET TO THE PLACE OF BEGINNING, BEING LOTS 232, 231 AND 17 FEET OFF OF THE WEST SIDE OF LOT 230 OF JAMES FERGUSON SUBDIVISION.

TOGETHER WITH THE APPURTENANT EASEMENT AS SHOWN IN GENERAL WARRANTY DEED OF EASEMENT GRANTED BY FEDERATED DEPARTMENT STORES, INC., THE JOHN SHILLITO COMPANY DIVISION, TO GEORGE P. DESILVER DISCLOSED BY INSTRUMENT RECORDED APRIL 24, 1972 VOLUME 3845, PAGE 96.

TRACT 2:

SITUATED IN CITY OF CINCINNATI, HAMILTON COUNTY, OHIO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A SET IRON PIN AT THE NORTHWEST CORNER OF LOT 3 OF SEVEN WEST SEVENTH SUBDIVISION AS RECORDED IN PLAT BOOK 463, PAGE'S 65-80 OF THE HAMILTON COUNTY RECORDER'S OFFICE AND A POINT IN THE EAST LINE OF A TRACT CONVEYED TO VISION CINCINNATI, LLC AS RECORDED IN OFFICIAL RECORD 13319, PAGE 1604 OF THE HAMILTON COUNTY RECORDER'S OFFICE AND IN THE SOUTH LINE OF W. SEVENTH STREET.

THENCE WITH THE EAST LINE OF SAID VISION CINCINNATI, LLC, NORTH 09°19'20" WEST, 0.00 FEET TO A POINT IN THE ORIGINAL SOUTH LINE OF W. SEVENTH STREET. SAID POINT BEING REFERENCED BY A SET CROSS NOTCH AT NORTH 09°19'20" WEST, 3.0 FEET

THENCE ALONG SAID SOUTH LINE, NORTH 81°04'10" EAST, 23.61 FEET TO A SET CROSS NOTCH;

THENCE ALONG A NEW DIVISION LINE, SOUTH 08°58'50" EAST, 10.00 FEET TO A SET CROSS NOTCH AT THE NORTHEAST CORNER OF AFORESAID LOT 3 OF SEVEN WEST SEVENTH SUBDIVISION;

THENCE WITH THE NORTH LINE OF SAID LOT 3 OF SEVEN WEST SEVENTH SUBDIVISION, SOUTH 81°04'10" WEST, 23.55 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.0054 ACRES AND BEING SUBJECT TO ALL LEGAL EASEMENTS AND HIGHWAY OF RECORD.

THE ABOVE DESCRIBED PARCEL BEING PART OF THOSE LANDS CONVEYED TO THE CITY OF CINCINNATI IN DEED BOOK 3646, PAGE 885 OF THE HAMILTON COUNTY RECORDER'S OFFICE AND FURTHER IDENTIFIED AS PART OF HAMILTON COUNTY PARCEL NUMBER 077-0002-0303-90.

BEARINGS ARE BEARINGS ARE BASED ON SEVEN WEST SEVENTH SUBDIVISION, PLAT BOOK 463, PAGE'S 65-80.

ALL IRON PINS SET ARE 5/8" X 30'REBAR WITH CAP STAMPED "G.J. BERDING SURVEYING, INC". PREPARED BY G.J. BERDING SURVEYING, INC. ON MARCH 5, 2018. BASED ON A STREET SALE PLAT PREPARED BY G.J. BERDING SURVEYING, INC. ON MARCH 5, 2018.

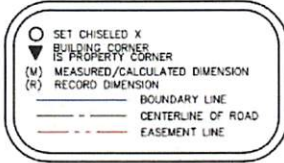
TRACT NO. 3:

SITUATED IN SECTION 18, TOWN 4, FRACTIONAL RANGE 1, BTM, AND IN THE CITY OF CINCINNATI, HAMILTON COUNTY, OHIO, AND BEING ALL OF LOT 3 OF SEVEN WEST SEVENTH SUBDIVISION, AS SET FORTH ON THE RECORD PLAT RECORDED IN PLAT BOOK 463, PAGE 65, OF THE HAMILTON COUNTY, OHIO RECORDER'S OFFICE.

EXHIBIT B

to Grant of Encroachment Easement

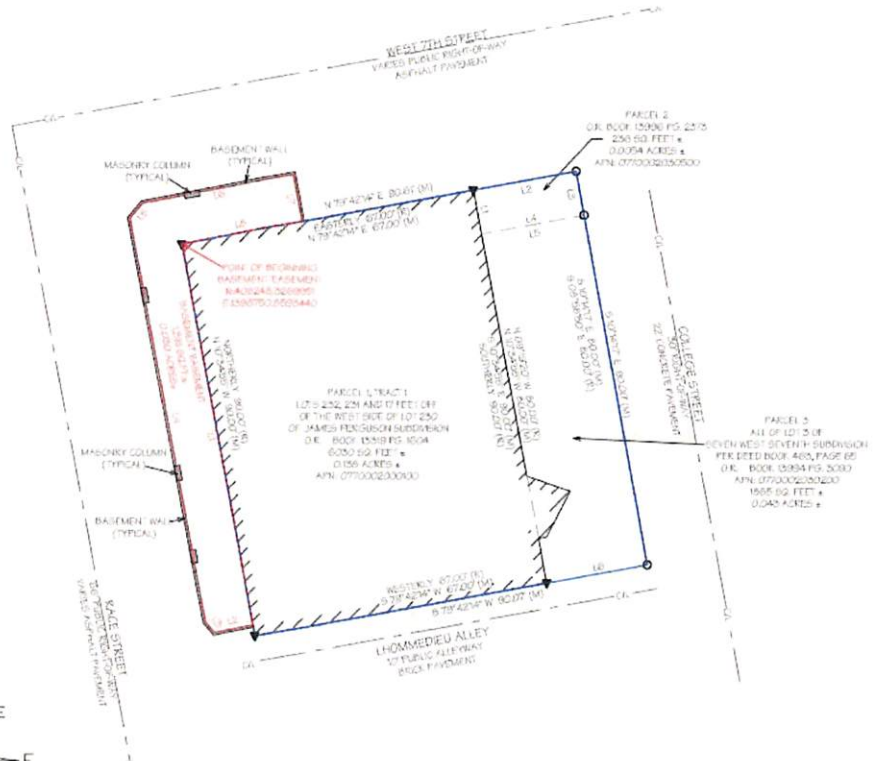
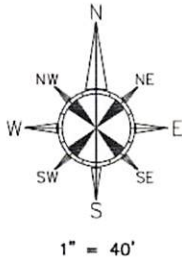
Easement Plat



LEGEND

EASEMENT LINE TABLE

LINE	BEARING	DISTANCE
L1(M)	S 13° 54' 55" E	10.00'
L2(M)	S 79° 42' 14" E	23.61'
L3(M)	N 10° 14' 17" E	10.00'
L4(M)	N 09° 19' 20" W	10.00'
L5(M)	N 81° 04' 10" E	23.61'
L6(M)	N 13° 54' 55" W	10.00'



FEE LINE TABLE

LINE	BEARING	DISTANCE
L1 (M)	N 03° 34' 55" W	10.00'
L1 (R)	N 09° 19' 20" W	10.00'
L2 (M)	N 79° 42' 14" E	23.61'
L2 (R)	N 81° 04' 10" E	23.61'
L3 (M)	S 10° 14' 17" E	10.00'

EXHIBIT C

to Grant of Encroachment Easement

Legal Description – Basement Easement

THE EASEMENT REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF HAMILTON, STATE OF OHIO, AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT A BUILDING CORNER BEING THE INTERSECTION OF SEVENTH STREET AND RACE STREET; THENCE RUN S 10°34'55" E ALONG THE EASTERLY RIGHT OF WAY LINE OF RACE STREET A DISTANCE OF 87.55'; THENCE, LEAVING SAID RIGHT OF WAY LINE, RUN S 79°28'24" W A DISTANCE OF 8.87'; THENCE RUN N 40°11'18" W A DISTANCE OF 3.16'; THENCE RUN N 10°36'12" W A DISTANCE OF 92.58'; THENCE RUN N 40°14'04" E A DISTANCE OF 4.48'; THENCE RUN N 79°28'24" E A DISTANCE OF 34.71'; THENCE RUN S 10°31'36" E A DISTANCE OF 10.73' TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF WEST 7TH STREET; THENCE RUN S 79°42'14" W ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 27.70' TO THE POINT OF BEGINNING.

CONTAINING IN ALL 0.030 ACRES, MORE OR LESS.