

City of Cincinnati

CHM

EESW

An Ordinance No. _____

- 2022

AUTHORIZING the City Manager to execute a *Grant of Easement* in favor of LPH Thrives, LLC, pursuant to which the City of Cincinnati will grant an encroachment easement upon a portion of West Eighth Street in Lower Price Hill.

WHEREAS, LPH Thrives, LLC, an Ohio limited liability company (“Grantee”), owns certain real property located at 2113 West Eighth Street in Lower Price Hill; and

WHEREAS, the City of Cincinnati owns the adjoining West Eighth Street public right-of-way (“Property”), which Property is under the management of the City’s Department of Transportation and Engineering (“DOT E”); and

WHEREAS, Grantee has requested an easement from the City for an encroachment upon a portion of the Property, namely, an out-swinging door, as more particularly depicted and described in the *Grant of Easement* attached to this ordinance as Attachment A and incorporated herein by reference (“Easement”); and

WHEREAS, the City Manager, in consultation with DOT E, has determined (i) that granting the Easement to Grantee is not adverse to the City’s retained interest in the Property and; (ii) that granting the Easement will not have an adverse effect on the usability or accessibility of any existing transportation facilities located within the public right-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 a professional appraisal that the fair market value of the Easement is approximately \$50, 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 August 19, 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 LPH Thrives, LLC, an Ohio limited liability company (“Grantee”), owner of the

property located at 2113 West Eighth Street in Lower Price Hill, 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 easement to construct and maintain an encroachment (“Easement”) upon the West Eighth Street public right-of-way (the “Property”), as more particularly described on Attachment A.

Section 2. That granting the Easement 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 right-of-way.

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 collective fair market value of the Easement, as determined by a professional appraisal by the City’s Real Estate Services Division, is approximately \$50, 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: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF EASEMENT

(encroachment upon a portion of W. 8th Street)

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 **LPH THRIVES, LLC**, an Ohio limited liability company, with a tax mailing address of 114 W. 14th Street, Cincinnati, OH 45202 ("**Grantee**").

Recitals:

A. By virtue of a *Quitclaim Deed* recorded on August 2, 2021, in OR 14471, Page 4088, Hamilton County, Ohio Records, Grantee holds title to certain real property located at 2113 W. 8th Street, Cincinnati, OH 45204, 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 West 8th Street 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 an easement for an out swinging door encroachment upon the West 8th Street public right-of-way (the "**Encroachment**").

D. The City Manager, in consultation with DOT, has determined that (i) the easement will not have an adverse effect on the City's retained interest in the West 8th Street public right-of-way, and (ii) granting the easement will not have an adverse effect on the usability or accessibility of any existing West 8th Street 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 professional appraisal, is \$50, 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 August 19, 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 encroachment easement to use, maintain, repair, reconstruct, replace, and remove the Encroachment in, over, and across the West 8th Street public right-of-way, as more particularly depicted on Exhibit B and described on Exhibit C (Legal Description- Easement) hereto (the “**Easement**” or “**Easement Area**”, as applicable). Grantee shall not make any modifications to the Encroachment within the Easement Area without the City’s prior written consent.

2. Termination. Notwithstanding anything herein to the contrary, the Easement shall automatically terminate upon (i) the complete or partial demolition of the Encroachment within the Easement Area, such that the Easement would be rendered unnecessary; (ii) upon written notice from the City, if the City determines that it needs the 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; or (iii) upon written notice from the City if the City determines that the Encroachment 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 Encroachment 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 Area (“**Third-Party Utility Lines**”). In connection with Grantee’s maintenance, repair, and use of the Encroachment, 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 Encroachment 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 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 Encroachment, 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 Encroachment.

5. Default. If Grantee, its successors-in-interest, or assigns fail to perform any required work under this instrument and fail 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, with a copy to CREA LPH Thrives, LLC, 30 South Meridian Street, Suite 400, Indianapolis, Indiana 46204, 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 #5-2022). The following additional conditions shall apply:

a. NOTE: Grantee shall maintain a minimum of an eight-foot unobstructed pedestrian path between the Easement Area and the curb.

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 - 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: _____

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:

LPH THRIVES, 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 **LPH THRIVES, 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

Parcel ID No.: 149-0011-0136-90 57
2113 W. 8th

All that certain lot of land in Cincinnati, Hamilton County, Ohio, in Section 30, Township 4, Fractional Range 1, of the Miami Purchase, bounded and described as follows:

Commencing at a point in the South line of Eighth Street seventy-five (75) feet East of Depot Street and extending

Thence eastwardly twenty-five (25) feet to a point in the South line of said Eighth Street;

Thence, southwardly parallel to Depot Street one hundred twenty (120) feet more or less to Pardee Alley; Thence, westwardly with Pardee Alley twenty-five (25) feet to a point seventy-five (75) feet distant from Depot Street; Thence, northwardly one hundred twenty (120) feet more or less to the South line of Eighth Street and the place of

EXHIBIT B

to Grant of Easement

Survey Plat

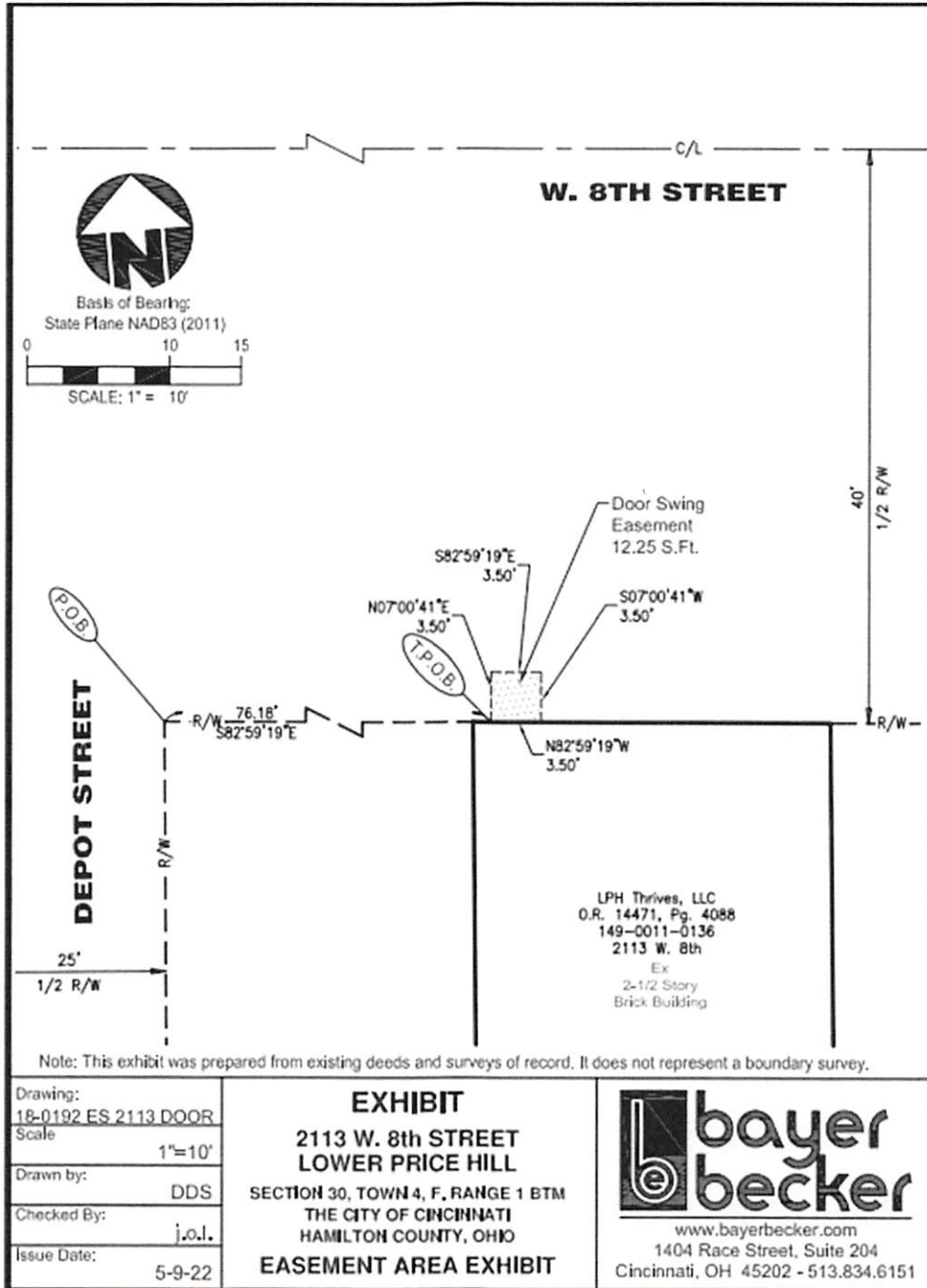


EXHIBIT C

to Grant of Easement

Legal Description – Easement

Description: Exhibit
Door Swing Easement

Date: May 9, 2022

Location: 2113 W. 8th Street
City of Cincinnati
Hamilton County, Ohio



Situated in Section 30, Town 4, Fractional Range 1 Between the Miamis, The City of Cincinnati, Hamilton County, Ohio being a Door Swing Easement and being further described as follows:

Begin at a point found by measuring from the intersection of the south right of way of W. 8th Street (80') and the east right of way of Depot Street (50'); thence, departing the east right of way of said Depot Street and with the south right of way of said W. 8th Street, South 82° 59' 19" East, 76.18 feet to the true point of beginning;

thence, from the True Point of Beginning thus found and through the right of way of said right of said W. 8th Street for the following three courses:

- 1) North 07° 00' 41" East, 3.50 feet;
- 2) South 82° 59' 19" East, 3.50 feet;
- 3) South 07° 00' 41" West, 3.50 feet to the right of way of said right of said W. 8th Street

thence, with right of way of said right of said W. 8th Street, North 82° 59' 20" West, 3.50 feet to the True Point of Beginning containing 12.25 square feet.

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

The above description was prepared from an easement exhibit made on May 9, 2022 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.