

City of Cincinnati

CHM

AWB

An Ordinance No. _____

- 2021

AUTHORIZING the City Manager to execute a *Grant of Encroachment Easement* in favor of 5-11 Court Street, LLC, pursuant to which the City of Cincinnati will grant an encroachment easement to permit a fire escape to encroach upon the Prior Street public right-of-way in the Central Business District.

WHEREAS, 5-11 Court Street, LLC, an Ohio limited liability company (“Grantee”), owns the building located at 5-11 East Court Street in the Central Business District; and

WHEREAS, the City of Cincinnati owns the adjoining Prior Street public right-of-way, which is 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 a fire escape to encroach upon portions of the Prior Street public right-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 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; 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 \$770, 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 5-11 Court Street, LLC, an Ohio limited liability company

("Grantee"), owner of the building located at 5-11 East Court 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 a fire escape to encroach upon portions of the Prior Street public right-of-way.

Section 2. That granting the easement to Grantee (i) is not adverse to the City's retained interest in the Prior Street public right-of-way and (ii) will not have an adverse effect on the usability or accessibility of any existing Prior Street public right-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 \$770, 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

(aerial encroachment over a portion of Prior Street)

This Grant of Encroachment 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 **5-11 Court Street, LLC**, an Ohio limited liability company, the address of which is 1203 Walnut Street, 4th Floor, Cincinnati, Ohio 45202 ("**Grantee**").

Recitals:

A. By virtue of a *General Warranty Deed* dated July 30, 2020, Grantee holds title to certain real property located at 5-11 East Court Street, 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 Prior 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 aerial encroachment easement for a projection encroaching upon the Prior Street public right-of-way, i.e., a fire escape (the "**Improvement**").

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

E. The City's Real Estate Services Division has determined that the fair market value of the encroachment easement, as determined by appraisal, is \$770, 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 easement at its meeting on March 19, 2021.

G. Cincinnati City Council approved the encroachment 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, non-exclusive aerial encroachment easement to maintain, repair, reconstruct, replace, and remove the Improvement over the Prior Street public right-of-way, as more particularly depicted on Exhibit B, and more particularly described on Exhibit C (Legal Description-Aerial Easement) hereto (the "**Aerial Easement**" or "**Aerial Easement Area**", as applicable). Grantee shall not make any modifications to the Improvement without the City's prior written consent. Notwithstanding anything herein to the contrary, the Aerial Easement shall automatically terminate upon (i) the complete demolition of the Improvement within the Aerial Easement Area, such that the Aerial Easement 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 Improvement is 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 Improvement 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 Improvement without DOTE's prior written consent.

(B) Following installation, at no cost to the City, Grantee shall 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 Aerial Easement Area ("**Third-Party Utility Lines**"). In connection with Grantee's construction, maintenance, repair, and use of the Improvement, 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 Improvement 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 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 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 #61-2020). The following additional conditions shall apply:

(A) Department of Public Services: Grantee should install a bollard to stop vehicles from potentially driving under the Improvement. The bollard should be placed out from the building under the leading edge of the Improvement. Grantee must obtain DOTE approval to install a bollard.

(B) Department of Transportation and Engineering:

(i) DOTE does not object to a less-than-standard clearance height for the fire escape provided that Grantee enhances visibility of the encroachment by:

1. Painting and maintaining an outline with diagonal stripping infill on the roadway surface of the easement area that overhangs into the roadway.
2. Provide and mount a sign on the fire escape encroachment noting the clear distance height visible to drivers.

(ii) Construction drawings for the Improvement must be prepared and sealed by a professional engineer or architect registered in the State of Ohio. The design loads must be in accordance with the appropriate Building Code standards and be stated on the drawings. Drawings must include mounting and framing details.

(iii) The Improvement must be:

- a. vertically at least eight feet above the sidewalk;
- b. horizontally no closer than two feet from the street curb line;
- c. fully supported from the building with no supports extending below the bottom of the Improvement;
- d. compliant with clearance requirements for overhead utility lines;
- e. horizontally no closer than five feet from a utility pole.

(iv) All metal for the Improvement must be non-rusting so as not to stain the sidewalk surface and building surface.

(v) The public right-of-way must remain open during installation. If installation is to take longer than two hours, a street use permit, obtained from DOTE, is required. Apply for permits in Room 425 at City Hall, 801 Plum Street.

(vi) Prior to installation of the Improvement, Grantee must obtain all applicable permits and permissions from the Department of Buildings and Inspection, without limitation to a Certificate of Appropriateness from the Urban Conservator or Historic Conservation Board, as applicable.

(C) Cincinnati Bell: There are 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 this easement 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 – *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:

5-11 Court 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 **5-11 Court 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 Encroachment Easement

LEGAL DESCRIPTION - BENEFITTED PROPERTY

Situated in Section 18, Town 4, Fractional Range 1 Between the Miamis, Mill Creek Township, The City of Cincinnati, Hamilton County, Ohio and being part of lot 4 and all of lots 5 and 6 of Carter, Grandin and Gwynne Subdivision as recorded in Deed Book 29, Page 548 being part of 5-11 Court Street, LLC, as recorded in Official Record 14088, Page 2027 as consolidated in Plat Book 476, Page 97 of the Hamilton County, Ohio Recorder's Office, containing 0.0939 acres being further described as follows:

Begin at a point found by measuring from a set cross notch at the intersection of the south right of way of East Court Street (126') and the east right of way of Vine Street (66'), said corner being the northwest corner of Lot 1 of said Carter, Grandin and Gwynne Subdivision and the northwest corner of OTR Holdings, Inc, as recorded in Official Record 13922, Page 2001; thence, departing the east right of way of said Vine Street and with the south right of way of said East Court Street, North 80° 02' 23" East, 53.83 feet to a point referenced by a set cross notch being North 09° 43' 22" West, 3.00 feet, said corner being the True Point of Beginning;

thence, from the True Point of Beginning and continuing with the south right of way of said East Court Street, North 80° 02' 23" East, 57.95 feet to a found MAG Nail at the northwest corner of Elliott David Partners as recorded in Official Record 10743, Page 322;

thence, departing the south right of way of said East Court Street and with said Elliott David Partners, South 09° 43' 22" East, 70.51 feet to the southwest corner of said Elliott David Partners, said corner being on the north right of way of Prior Alley (20') and being referenced by a set MAG Nail being South 09° 43' 22" East, 3.00 feet;

thence, departing said Elliott David Partners and with the north right of way of said Prior Alley, South 79° 51' 17" West, 57.95 feet to a corner being referenced by a set MAG Nail being South 09° 43' 22" East, 3.00 feet;

thence, departing the north right of way of said Prior Alley with a new division line, North 09° 43' 22" West, 70.69 to the True Point of Beginning containing 0.0939 acres.

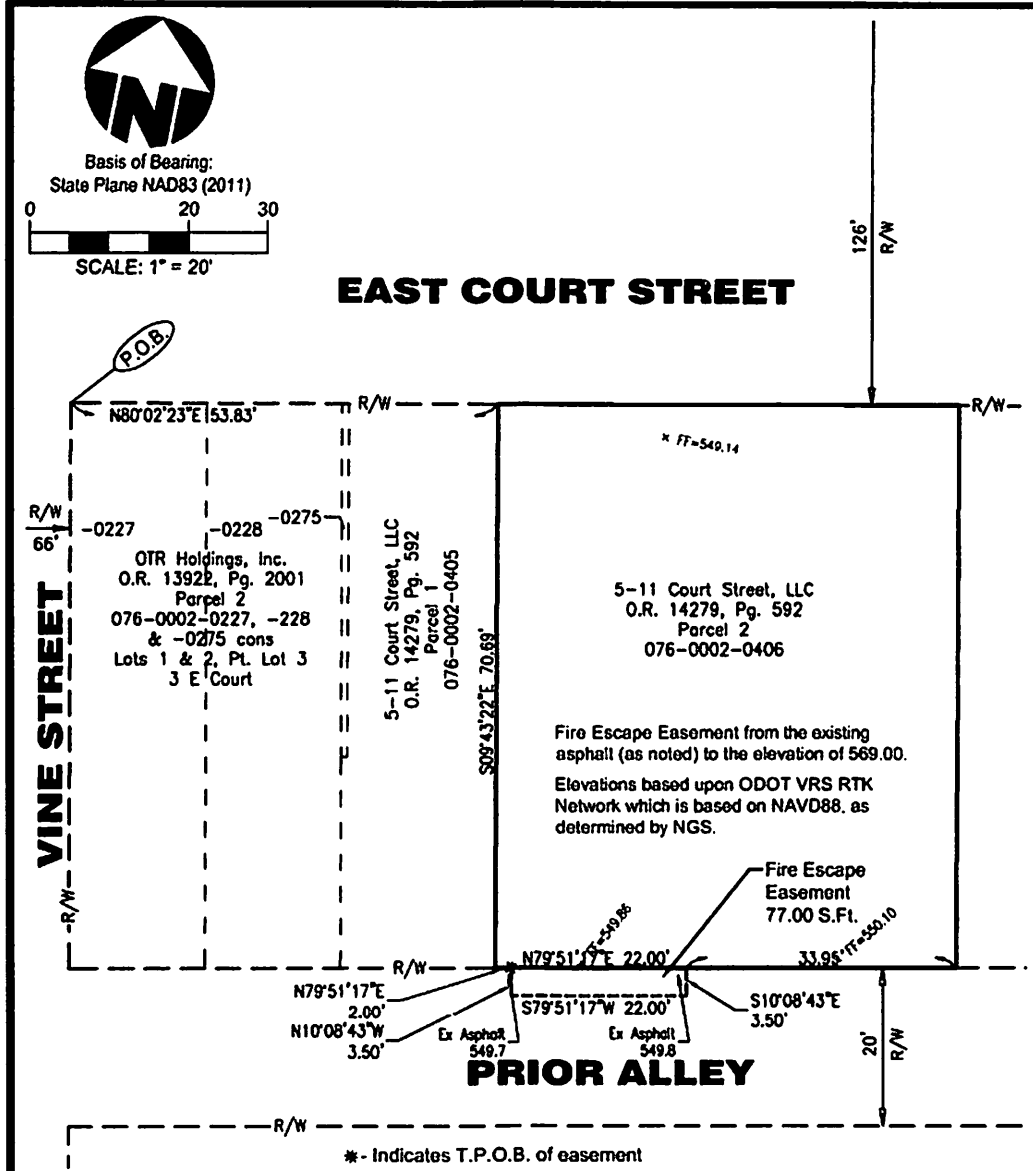
Basis of Bearings: NAD83(2011) Ohio State Plane Coordinates, South Zone (3402).

The above description was prepared from a plat of survey made on July 22, 2020 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.

EXHIBIT B

to Grant of Encroachment Easement

Survey Plat



Note: This exhibit was prepared from existing deeds and surveys of record. It does not represent a boundary survey.

Drawing: 19-0232 ES	COURT STREET SOUTH CONDOS SECTION 18, TOWN 4, F. RANGE 1 BTM THE CITY OF CINCINNATI HAMILTON COUNTY, OHIO FIRE ESCAPE EASEMENT EXHIBIT	 www.bayerbecker.com 1404 Race Street, Suite 204 Cincinnati, OH 45202 - 513.834.6151
Sheet: 1 of 1		
Drawn by: j.o.l.		
Checked By: TWC		
Issue Date: 10-30-20		

EXHIBIT C

to Grant of Encroachment Easement

Legal Description – Aerial Easement Area

Situated in Section 18, Town 4, Fractional Range 1 Between the Miamis, Mill Creek Township, The City of Cincinnati, Hamilton County, Ohio and being a Fire Escape Easement from the existing asphalt elevation to the elevation of 569.00 over part of the right of way of Prior Alley and being further described as follows:

Begin at a point found by measuring from the intersection of the south right of way of East Court Street (126') and the east right of way of Vine Street (66'); thence, departing the east right of way of said Vine Street and with the south right of way of said East Court Street, North 80° 02' 23" East, 53.83 feet; thence, departing the south right of way of said East Court Street, South 09° 43' 22" East, 70.69 feet to the north right of way of said Prior Alley; thence, with the north right of way of said Prior Alley, North 79° 51' 17" East, 2.00 feet to the True Point of Beginning;

thence, from the True Point of Beginning and continuing with the north right of way of said Prior Alley, North 79° 51' 17" East, 22.00 feet;

thence, through the lands of said Prior Alley the following three courses: South 10° 08' 43" East, 3.50 feet;

thence, South 79° 51' 17" West, 22.00 feet;

thence, North 10° 08' 43" West, 3.50 feet to the True Point of Beginning containing 77.00 square feet.

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

Vertical Elevations based upon ODOT VRS RTK Network which is based on NAVD88, as determined by NGS.

The above description was prepared from an exhibit made on October 30, 2020 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.