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[SPACE ABOVE FOR RECORDER'S USE]

## GRANT OF EASEMENT

(private improvements upon a portion of Vine 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 **FOUNTAIN PLACE, LLC**, an Ohio limited liability company, with a tax mailing address of 1203 Walnut Street, Fourth Floor, Cincinnati, OH 45202 ("**Grantee**").

### Recitals:

A. By virtue of a *Quitclaim Deed* recorded on December 24, 2019, in OR 14070, Page 848, Hamilton County, Ohio Records, Grantee holds title to certain real property located at 505 Vine Street, Cincinnati, OH 45202, as more particularly described on Exhibit A (*Legal Description – Benefitted Property*) hereto (the "**Benefitted Property**").

B. The City owns the adjoining Vine 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 private improvements on, under, over, and across the Vine Street public right-of-way to facilitate an outdoor patio and dining area and associated amenities, i.e., a marquee, a fountain, an awning with posts and footers, pavers, tables, chairs, free-standing walls with foundations, fire pits, planters, drains, private utility lines and associated fixtures and equipment, statuary, and out-swinging doors (the "**Improvements**").

D. The City Manager, in consultation with DOTE, has determined that (i) granting an easement for the Improvements will not have an adverse effect on the City's retained interest in the Vine and Street public right-of-way, and (ii) granting the easement for the Improvements will not have an adverse effect on the usability or accessibility of any existing Vine 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 \$24,000, however, the City has agreed to grant the easement to Grantee for \$1.00, because the City will receive benefits from Grantee's use, operation, and maintenance of the Improvements that equal or exceed the fair market value of the easement because it will stimulate economic activity and growth in the Central Business District in and around Fountain Square.

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 May 6, 2022.

G. Cincinnati City Council approved the easement by Ordinance No. [\_\_\_\_]-2022, passed on June [\_\_\_\_], 2022.

NOW THEREFORE, the parties do hereby agree as follows:

**1. Grant of Easement; Public Utilities.**

(A) 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 easement appurtenant to construct, install, occupy, use, operate, maintain, repair, reconstruct, remove, and replace the Improvements on, under, over, and across the Vine Street public right-of-way, as more particularly depicted on Exhibit B (Survey Plat) and described on Exhibit C (Legal Description- Easement Area) hereto (the “**Easement**” or “**Easement Area**”, as applicable). Grantee acknowledges and agrees that the City retains the unrestricted right for its employees and agents to enter upon the Easement Area from time to time for any proper purpose. Grantee acknowledges and agrees that it has conducted its own due diligence to familiarize itself with the condition and characteristics of the Easement Area. The City has not made any representations or warranties concerning the title, condition, or characteristics of the Easement Area or the suitability or fitness of the Easement Area for the Permitted Use, as defined below. Grantee acknowledges and agrees that it is not relying upon any such representations or warranties from the City. Without limitation of the foregoing, under no circumstances shall the City be responsible or liable for any pre-existing environmental conditions affecting the Easement Area.

(B) Public Utilities. The rights herein granted to Grantee are subject and subordinate to the rights of public utility providers to enter upon the Easement Area from time to time to construct, install, operate, maintain, repair, reconstruct, reinstall, remove, replace, and abandon utility lines, and related facilities within and around the vicinity of the Easement Area. Grantee shall ensure that such utility lines and facilities are not disturbed and that the utility providers’ access to such facilities is not denied or unreasonably impaired. Grantee shall be responsible for paying all costs of relocating such utilities if relocation is required in connection with Grantee’s construction, installation, use, occupancy, operation, or maintenance of the Improvements within the Easement Area. Grantee shall be responsible for reimbursing the utility providers for the cost of repairing any and all damage to such facilities caused by Grantee, its employees, agents, contractors, subcontractors, licensees, and invitees.

**2. Permitted Use.** Grantee shall solely use the Easement Area to establish, operate, and maintain an outdoor dining area and patio ancillary to an eating or drinking establishment located within the Benefitted Property and for no other purpose. All activities undertaken by Grantee, its employees, agents, contractors, subcontractors, and tenants under this instrument shall be in compliance with all applicable federal, state and local codes, laws, and other governmental standards, policies, guidelines, and requirements. Subject to the rights of the City and public utilities described herein, Grantee shall have sole control over the Easement Area.

**3. Termination; Restoration; Failure to Restore.**

(A) Termination. Notwithstanding anything herein to the contrary, the Easement shall automatically terminate upon (i) the complete or respective partial demolition, without rebuilding within 1 year of such demolition, of the Improvements 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, and such municipal purpose cannot be fulfilled another reasonable way; (iii) or upon written notice from the City if the City determines that the Improvements are creating a public safety issue, such as non-compliance with ADA accessibility regulations, contributing to adverse impacts on the usability or

accessibility of any public right-of-way facilities, if Grantee does not abate or begin to take efforts to mitigate the public safety issue in a timely manner consistent with the degree of harm posed by the public safety issue.

(B) Restoration. Upon the termination of this Easement, Grantee shall take immediate steps to remove the Improvements from the Easement Area and shall repair and restore any and all public improvements within the Easement Area to their original condition as they existed immediately prior to the issuance of this instrument, unless otherwise authorized by the city manager or his or her designee. All repairs, modifications, and restorations shall be subject to the supervision and approval of the city manager or his or her designee.

(C) Failure to Restore. If Grantee fails to remove the Improvements from the Easement Area, or to repair and restore any and all public improvements within the Easement Area within a reasonable time, the Improvements and any and all of Grantee's personal property within the Easement Area not so removed shall be deemed abandoned, and the City may remove any and all Improvements and personal property and restore any and all public improvements within the Easement Area to their original condition, and to charge the expense thereof to Grantee; provided, however, in the case of underground pipes, equipment, or construction that may be effectively sealed without interfering with the use and maintenance of public streets, the city manager may authorize the sealing of the pipes, equipment, or construction in lieu of their removal and, upon their sealing, all pipes, equipment.

**4. Alterations; Utilities; Maintenance and Repairs; Signs; No Liens.**

(A) Alterations. Once installed, Grantee shall not make any material alterations, material additions, or enlargements to the Improvements within the Easement Area without the prior written consent of the City. Grantee shall have the right to make all minor and cosmetic-type alterations to the Improvements without obtaining the City's prior consent.

(B) Utilities. Grantee shall pay for the cost of electricity, water, and any and all other utilities utilized at the Easement Area in connection with the Improvements. The City shall have no obligation to furnish utilities to the Easement Area.

(C) Maintenance and Repairs. At no cost to the City, Grantee shall maintain the Improvements in a continuous state of good and safe condition and repair. Upon completion, the Improvements shall remain under the ownership and control of Grantee, and Grantee shall be solely responsible for maintaining, repairing, replacing, reconstructing, reinstalling, restoring, removing, or abandoning the Improvements at no cost to the City. Grantee shall assume all responsibility for the maintenance and repair of the Easement Area, including stormwater trenches and drains. The City shall not have any maintenance or repair obligations or any obligation to provide services for the benefit of the Easement Area under this instrument.

(D) No Liens. Grantee shall not permit any mechanics liens to attach to the Easement Area in connection with the construction, installation, use, operation, maintenance, repair, reconstruction, removal, or replacement of the Improvements.

**5. Real Estate Taxes.** Grantee shall pay all real estate taxes and assessments levied against the Easement Area that become due and payable related to or arising from the rights herein granted to Grantee, if any. Upon each such payment, Grantee shall furnish the City with appropriate evidence of payment. If Grantee institutes proceedings to contest the validity or amount of such taxes, the City, at no cost to the City, shall cooperate with Grantee to the extent that the participation of the owner of the public right-of-way is required, but Grantee may not defer payment of such taxes during such contest. Grantee shall be entitled to any and all amounts recovered which relate to tax payments previously made by Grantee. Notwithstanding the foregoing, the City reserves the right to evaluate, on a case-by-case basis,

the merit of Grantee's contest and reserves the right not to cooperate in such contest if, in the reasonable determination of the City, such contest would not be in the best interest of the public.

**6. Insurance; Indemnification.**

(A) Insurance. 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 the following insurance:

(i) special peril (formerly known as "all-risk") full replacement cost insurance on the Improvements;

(ii) property insurance on any and all personal property of Grantee from time to time located within the Easement Area in the amount of the full replacement cost thereof;

(iii) 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 \$2,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, or such greater amount as the City may from time to time require; and

(iv) workers compensation insurance as required by law.

(B) Policy Requirements. Grantee's insurance policies shall (i) be written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better, (ii) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City, and (iii) be primary and non-contributory with respect to insurance maintained by the City (if any). Grantee shall provide the City with a certificate of insurance evidencing the insurance required to be maintained upon request.

(C) Waiver of Subrogation. Grantee hereby waives all claims and rights of recovery, and on behalf of Grantee's insurers, rights of subrogation against the City, its employees, agents, contractors, and subcontractors with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this instrument to be maintained by Grantee, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Grantee shall at all times protect itself against such loss or damage by maintaining adequate insurance. Grantee shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(D) Indemnity. The City assumes no responsibility for any acts, errors or omissions of Grantee or any employee, agent, representative or any other person acting or purporting to act for or on behalf of Grantee. Grantee shall defend, indemnify and hold the City, its employees, agents, contractors and subcontractors ("**Indemnified Parties**") harmless from and against all costs (including without limitation legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against the Indemnified Parties or any one or more of them as a result of or arising from the acts of Grantee, its agents, employees, licensees, invitees, contractors, subcontractors or anyone else acting at the request of Grantee in connection with Grantee's activities at or with respect to the Easement Area or in connection with any breach by Grantee under this instrument.

**7. Default; Remedies.**

(A) Default. An event of default shall be deemed to have occurred if Grantee fails to perform or observe any of the covenants, terms or conditions contained in this instrument, and such failure continues

for longer than thirty (30) days after Grantee receives written notice thereof from the City; provided, however, that if such failure is not reasonably susceptible of being cured within such thirty (30) day period, an event of default shall not be deemed to have occurred if Grantee commences to cure such failure within such thirty (30) day period and thereafter diligently pursues such cure to completion and, in fact, cures such failure within ninety (90) days after Grantee receives written notice of the default from the City. The foregoing notwithstanding, if the failure creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Grantee fails to take corrective action immediately upon discovering such dangerous condition or emergency.

(B) Remedies. Upon the occurrence of an event of default that continues beyond the applicable notice and cure period (if any) provided for under the paragraph above, the City shall be entitled to (i) terminate this Easement by giving Grantee written notice thereof, (ii) take such actions in the way of “self-help” as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Grantee, and (iii) exercise any and all other rights and remedies under this instrument or available at law or in equity, including without limitation pursuing an action for specific performance; all such rights and remedies being cumulative. Grantee shall be liable for all costs and damages, including without limitation legal fees, suffered or incurred by the City as a result of a default of Grantee under this instrument or the City’s enforcement or termination of this instrument. Grantee shall pay all such costs and damages within thirty (30) days after receiving documentation from the City of the amount due. 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. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this instrument shall not constitute a waiver of the breach of such covenant or of such remedy.

**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 #8-2022).** The following additional conditions shall apply:

(A) DOTE:

(i) 10 feet of clear pedestrian path shall be maintained at all times between the Improvements and the inside face of the tree well grate (not the curb). No component of the enclosure or other amenities in the Easement Area shall encroach further into the 10-foot clear pedestrian path.

(ii) Construction drawings for all building-mounted or free-standing structures in or extending in the public right-of-way, such as awnings, canopies, walls with foundations, signs, lights etc., must be prepared and sealed by a professional engineer registered in the State of Ohio. These drawings shall include mounting and framing details, with design loads—in accordance with Building Code standards, stated on the drawings. Submit for review and approval to Buildings & Inspections Permit for all structures in the right -of-way.

(iii) All canopies, awnings, signs or building mounted structures extending into the public right-of-way must be vertically at least eight feet above the sidewalk; 10 feet if any items are energized.

(iv) All proposed private utilities such as water, electric, gas etc. shall be submitted for permit to the Department of Buildings & Inspections for review and approval.

(v) Grantee must become a member and maintain membership of the Ohio Utility Protection Service (“**OUPS**”), by calling 1-800-362-2764, if not already a member. Membership is required before a permit for utilities will be issued. Failure to maintain membership will result in Grantee being responsible for repairs due to damage caused by excavations performed by utility companies, the City, or a permitted contractor.

(vi) Grantee must provide a name and phone number of a 24-hour contact for emergency repair and/or maintenance work. If the City cannot reach the 24-hour contact and must perform work of an emergency nature on the privately owned utility, the City reserves the right to bill the Petitioner for all associated costs with this repair.

(vii) [intentionally omitted]

(viii) [intentionally omitted]

(ix) [intentionally omitted]

(x) No cafe seating object shall be placed within one foot on all sides of public electric infrastructure. All cafe seating objects within three feet shall be easily movable to allow for service personnel.

(xi) No planters or heavy objects shall be placed over utility pull boxes or utility manholes preventing easy access. Liability for damaged public infrastructure repair and replacement is on the applicant as directed by DOTE.

(xii) No permanent removal, or construction of any permanent structure or utility may take place in the right-of-way without written permission from the City or utility company.

(xiii) [intentionally omitted]

(xiv) [intentionally omitted]

(xv) [intentionally omitted]

(xvi) DOTE's review does not include the proposed fire pits or specific table/chair layout as they will be part of Buildings & Inspections permit review.

(xvii) [intentionally omitted]

(xviii) 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. The sidewalk must remain open and safe during installation. Apply for permits in Room 425 at City Hall, 801 Plum St.

(xix) All non-standard improvements must be removed upon termination and the public right-of-way restored to its preceding condition.

(xx) Any damage to City infrastructure at installation or removal shall be the sole responsibility of Grantee to repair/replace as directed by DOTE. Any existing sidewalk in the right-of-way damaged during construction must be replaced from joint to joint. Removal shall include all free-standing structures, private utilities and below grade foundations in totality at the termination of the easement.

(B) GCWW: There is an existing 12-inch public water main and main line valve in the northern portion of the Easement Area at the intersection of Vine Street and Convention Way. GCWW believes that there is not sufficient clearance to maintain the public water system without damaging the Easement Area. Grantee acknowledges and agrees that it shall be solely responsible for the replacement or repair of the Improvements within the Easement Area if such Improvements are damaged by the failure, repair, operation, or replacement of the existing public water system located within or adjacent to the Easement Area. This includes, but is not limited to decorative pavement, canopy and/or marquee, structures and statues. The City shall not be responsible for any damage caused by accessing the public water system for the purpose of repairing, operating, or replacing water mains. Grantee is encouraged to install removable structures that can be moved by the Grantee prior to any water system scheduled activity. Grantee must repair any damage caused to the public water system by the Grantee. Furthermore, Grantee shall, at Grantee's expense, promptly repair any and all damage to the public water system caused by Grantee, its agents, employees, contractors, subcontractors, licensees or invitees. Any relocation of the public water system necessitated by Grantee's activities under this instrument shall be handled entirely at Grantee's expense. Before construction, the petitioner's contractor must contact OUPS to have the water main field located and marked.

(C) Duke Energy: There are potentially gas services that would run under the proposed outdoor seating area. For safety and maintenance this outdoor patio should be removable.

(D) 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 as of this request will be handled entirely at Grantee's expense.

(E) Parks: The Easement Area is located within 15 feet of City street trees, a Public Tree Work Permit shall be required for construction.

## **10. General Provisions.**

(A) Governing Law. This instrument shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio.

(B) 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.

(C) Captions. The captions of the various sections and paragraphs of this instrument are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this instrument.

(D) Severability. If any part of this instrument is held to be void, illegal or unenforceable by a court of law, such part shall be deemed severed from this instrument, and the balance of this instrument shall remain in full force and effect.

(E) 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 Area*

Executed by the City on the date of acknowledgement listed below and effective as of such date (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:

**FOUNTAIN PLACE, 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 **FOUNTAIN PLACE, 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*

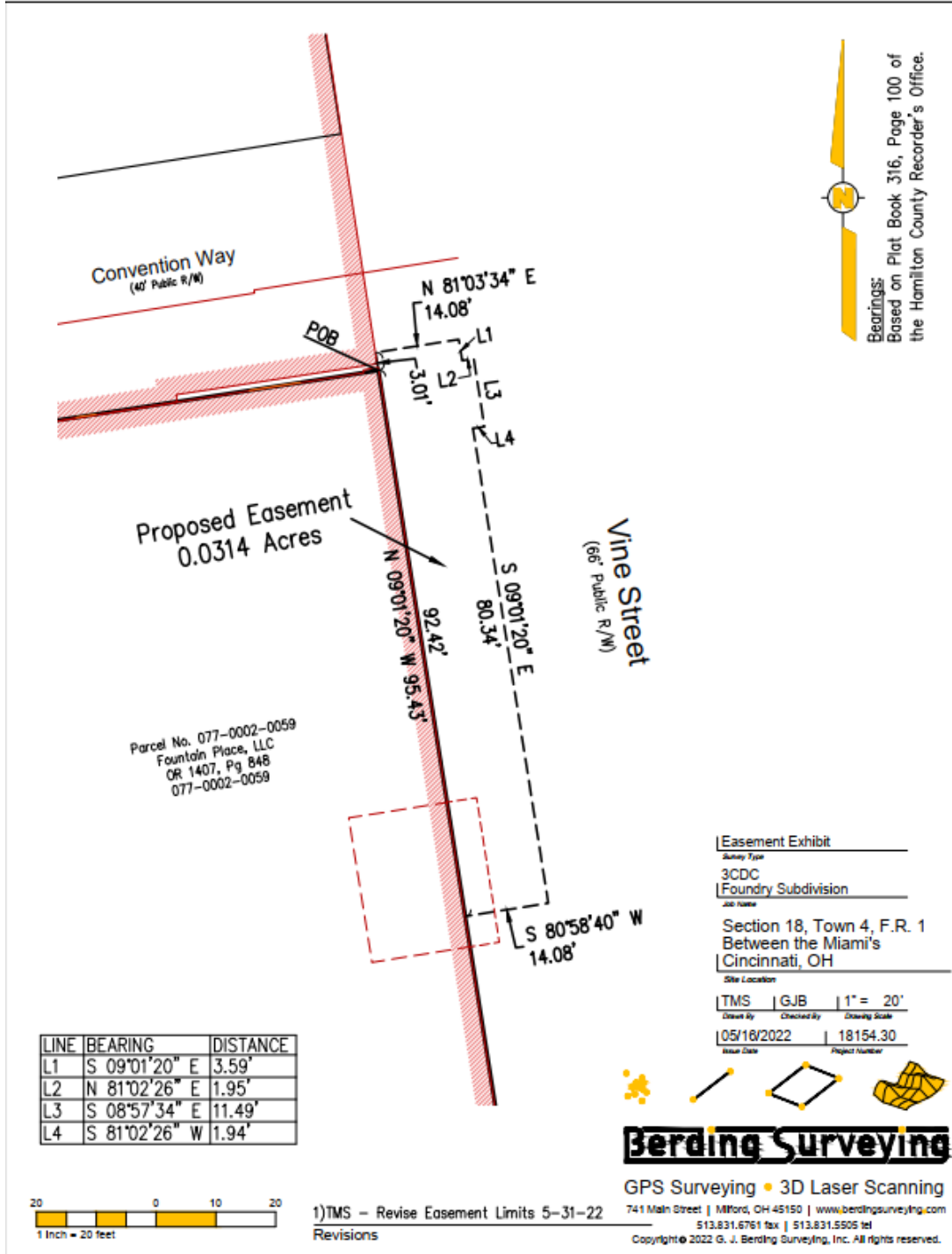
Situated in Section 18, Fractional Range 1, Town 4, in the City of Cincinnati, Cincinnati Township, Hamilton County, Ohio and being all of Lot 2 of the Foundry Subdivision as set forth in the Record Plat filed in Plat Book 488, Pages 27-39, of the Hamilton County, Recorder's Records.

PPN: 077-0002-0349-00

**EXHIBIT B**

to Grant of Easement

Survey Plat



**EXHIBIT C**

to Grant of Easement

*Legal Description – Easement Area*

**Description for: 3CDC 0.0314 Acres - Easement**

**Location: City of Cincinnati, Vine Street**

Situated in Section 18, Town 4, Fractional Range 1, Between the Miami's, City of Cincinnati, Ohio and being more particularly described as follow:

**BEGINNING** at the intersection of the south right of way line of Convention Way and the west right of way line of Vine Street,

Thence along the northerly extension of said west line of Vine Street, North 09°01'20" West, 3.01 feet;

Thence North 81°03'34" East, 14.08 feet;

Thence South 09°01'20" East, 3.59 feet;

Thence North 81°02'26" East, 1.95 feet;

Thence South 08°57'34" East, 11.49 feet;

Thence South 81°02'26" West, 1.94 feet;

Thence South 09°01'20" East, 80.34 feet;

Thence South 80°58'40" West, 14.08 feet to a point in the aforementioned west right of way line of Vine Street;

Thence along said west line, North 09°01'20" West, 92.42 feet to **POINT OF BEGINNING**.

**CONTAINING 0.0314 ACRES.** Subject to legal highways and easements of record.

The above-described parcel being part of Vine Street right of way.

The bearings are based on Plat Book 316, Page 100 of the Hamilton County Recorder's Office.

Prepared by G.J. BERDING SURVEYING, INC. on May 16, 2022, Revised May 31, 2022.  
Based on an Exhibit prepared by G.J. BERDING SURVEYING, INC. on May 16, 2022. Revised May 31, 2022