

City of Cincinnati

CHM

AWB

An Ordinance No. _____

- 2021

AUTHORIZING the City Manager to execute a *Grant of Easement* in favor of Textile Partners, LLC, pursuant to which the City of Cincinnati will grant an aerial encroachment easement above portions of Elm, West Fourth, and McFarland Streets in the Central Business District.

WHEREAS, Textile Partners, LLC, an Ohio limited liability company (“Grantee”), owns certain real property located at 205-209 West Fourth Street in the Central Business District; and

WHEREAS, the City of Cincinnati owns the adjoining Elm, West Fourth, and McFarland Streets public rights-of-way (the “Property”), which Property is under the management of the City’s Department of Transportation and Engineering (“DOTe”); and

WHEREAS, Grantee has requested an aerial encroachment easement from the City for a projection encroaching upon portions of the Property, namely a cornice, as more particularly depicted and described in the *Grant of Easement* attached to this ordinance as Attachment A and incorporated herein by reference; 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 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 rights-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 an appraisal that the fair market value of the easement is approximately \$9,500, 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 October 15, 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 Easement* in favor of Textile Partners, LLC, an Ohio limited liability company (“Grantee”), owner of the property located at 205-209 West Fourth 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 aerial encroachment easement for a cornice located above the Elm, West Fourth, and McFarland Streets public rights-of-way (the "Property").

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 rights-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 fair market value of the easement, as determined by appraisal by the City's Real Estate Services Division, is approximately \$9,500, 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 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: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

ATTACHMENT A

[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF EASEMENT

(aerial encroachment over portions of Elm, West Fourth, and McFarland Streets)

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 **TEXTILE PARTNERS, LLC**, an Ohio limited liability company, the address of which is 3299 K Street, NW Suite 700, Washington, DC 20007 ("**Grantee**").

Recitals:

A. By virtue of a *Receiver's Deed* dated January 4, 2019, Grantee holds title to certain real property located at 205-209 West Fourth 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**").

B. The City owns the adjoining Elm, West Fourth, and McFarland Streets public rights-of-way, which are under the management of the City's Department of Transportation and Engineering ("**DOT**").

C. Grantee has requested the City to grant an easement for a projection encroaching upon the Elm, West Fourth, and McFarland Streets public rights-of-way, i.e., a cornice (the "**Improvement**").

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 Elm, West Fourth, and McFarland Streets public rights-of-way, and (ii) granting the easement will not have an adverse effect on the usability or accessibility of any existing Elm, West Fourth, and McFarland Streets public rights-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 \$9,500, which has been deposited with the Real Estate Services Division.

F. Pursuant to Cincinnati Municipal Code Sec. 331-5, the City has determined 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.

G. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the easement at its meeting on October 15, 2021.

H. 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 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 aerial encroachment easement to maintain, repair, reconstruct, replace, and remove the Improvement over the Elm, West Fourth, and McFarland Streets public rights-of-way, as more particularly depicted on Exhibit B 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.

2. Termination. 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.

3. Construction; Maintenance and Repairs.

(A) Construction. 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) Maintenance and Repairs. 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, its 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.

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 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 all other matters associated with the Improvement.

5. Default. If Grantee, its successors-in-interest, or assigns fail to perform any required work under this instrument and fails 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 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 #54-2021). The following additional conditions shall apply: None.

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*

[Signature Page Follows]

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:

TEXTILE PARTNERS, 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 **TEXTILE PARTNERS, 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 the City of Cincinnati, County of Hamilton and State of Ohio:

Situated in Section 18, Town 4, Fractional Range 1, Miami Purchase in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Beginning at a point in the intersection of the South line of Fourth Street and the West line of Elm Street;

Thence with the West line of said Elm Street South 16 deg. 00' East to a distance of 169.00 feet to a point in the North line of McFarland Street;

Thence with the North line of said McFarland Street South 74 deg. 17' West and a distance of 135.49 feet to a point said point being the Southeast corner of Registered Land Certificate Number 36985;

Thence along the East line of the said Registered Land Parcel the following 3 courses:

North 16 deg. 00' West and a distance of 84.50 feet to a point;

North 74 deg. 23' East and a distance of 35.43 feet to a point;

North 16 deg. 00' West and a distance of 84.73 feet to a point in the South line of said Fourth Street;

Thence along the South line of said Fourth Street North 74 deg. 23' East 100.06 feet to the point of beginning.

Being all of Lots 27, 28, 29, 30, 40, 41, 42 and Part of Lots 31 & 43 of William McFarland Sub Square 2 as recorded in Deed Book H, Pages 78-79.

Property Address: 205-209 West Fourth Street, Cincinnati, OH

