
[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF ENCROACHMENT EASEMENT

(aerial encroachment over and across Mehring Way)

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 (i) **CBT Partners, LLC**, an Ohio limited liability company ("**CBT**"), and (ii) **Mehring Investors, LLC**, an Ohio limited liability company ("**MI**"), the address for each of which is 895 Mehring Way, Cincinnati, Ohio 45203 (CBT and MI are each individually and collectively, "**Grantee**").

Recitals:

A. By virtue of a certain *Amended and Restated Lease Agreement* dated June 18, 2020 (as amended, the "**Lease**"), CBT leases from the City certain real property generally located south of Mehring Way and east of Mill Creek, as more particularly described on Exhibit A (Legal Description – Benefitted Property) and depicted on Exhibit B (Survey Plat) hereto (the "**CBT Property**"); and MI owns certain real property generally located north of Mehring Way, as more particularly described on Exhibit A as the "**MI Property**" (collectively, the CBT Property and MI Property is the "**Benefitted Property**").

B. The City owns the adjoining Mehring Way public right-of-way, which is under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

C. Grantee has requested the City to grant an aerial encroachment easement to construct an improvement that will encroach over and across a portion of the Mehring Way right-of-way, namely, an aerial conveyer (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 Mehring Way public right-of-way, and (ii) granting the easement will not have an adverse effect on the usability or accessibility of any existing West Mehring Way 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 \$8,250, 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 December 18, 2020.

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, a non-exclusive aerial encroachment easement to construct, maintain, operate, repair, reconstruct, replace, and remove the Improvement over and across the Mehring Way public right-of-way, as more particularly depicted on Exhibit C (Easement Plat) hereto (the “**Aerial Conveyor Easement**” or “**Aerial Conveyor 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 Conveyor Easement shall automatically terminate upon (i) the complete demolition of the Improvement’s support structure, except if such demolition is merely a temporary step in rebuilding the support structure as a result of a casualty or otherwise; (ii) any permanent alteration by Grantee that entails the elimination of the Improvement within the Aerial Conveyor Easement Area such that the Aerial Conveyor Easement would be rendered unnecessary; (iii) upon written notice from the City, if the City determines that it needs the Aerial Conveyor 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 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) The parties hereby acknowledge that a portion of the Improvements within the Aerial Conveyor Easement Area crosses the centerline of Mehring Way. As a material inducement for the City to grant to Grantee the Aerial Encroachment Easement, Grantee shall provide the City with an attorney’s certificate of title certifying the names of all abutters to the Aerial Conveyor Easement Area, and the consent of those abutters in a form acceptable to the City. Notwithstanding the foregoing, Grantee shall defend (with counsel acceptable to the City, in the City’s sole and absolute discretion), indemnify, and hold the City harmless from and against any and all claims, actions, losses, costs (including, without limitation, attorneys’ fees), liability and damages suffered or incurred by, or asserted against, the City arising from this *Grant of Encroachment Easement*, including, without limitation to, the construction, maintenance, repair, use, or other activities associated with the Improvement.

(C) 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 Encroachment 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 construction, maintenance, or repair 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 during which Grantee is undertaking construction activities within the Aerial Conveyor Easement Area, 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 Conveyor 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 #42-2020). The following additional conditions shall apply:

(A) Metropolitan Sewer District of Greater Cincinnati ("MSDGC"):

(i) MSDGC access shall be maintained at all times for the operations and maintenance of MSDGC sewers and structures within right-of-way within or near the proposed Improvement. MSDGC will need to be notified prior to the start of any construction activities to coordinate MSDGC CSO inspection and maintenance activities and any scheduled sewer maintenance activities.

(ii) A MSDGC Excavation/Fill permit as well as bond will be necessary for any construction, construction traffic, earthwork, or any other construction activity over existing sewers and within the project's construction area prior to construction. Additional requirements will be established by the permit (such as verification and usage of existing or abandoned building services to sewers through dye testing, pre- and post- construction CCTVing, etc) depending on the final project plan. No additional loading may be exerted on existing MSDGC sewers as the result of structures being proposed and geotechnical/structural design calculations will be required for MSDGC review.

(iii) Project plans should be submitted to MSDGC through the utility review process during the Project's planning and design phases. Comments provided herein in response to this CR herein do not necessarily constitute a utility, design, or permit review. Contact MSDUtilityReview@cincinnati-oh.gov for existing combined or sanitary sewer information. Additionally: [a] Minimum clearance from existing ground surfaces to any proposed overhead structure is 13.5.' At locations where proposed overhead structures cross over existing MSDGC sewers and structures, sections of proposed overhead structure and conveyor system should be designed as removable to address sewer maintenance or repair activities necessitating excavation and shoring activities, and [b] drawings should show in plan and profile the relation of proposed overhead structures, columns, foundations, footers, piers, pile caps, or piles and any other permanent structure proposed with dimensions and elevations in relation to existing sewers.

(B) Greater Cincinnati Water Works: [intentionally omitted]

(C) Duke Energy:

(i) Duke Energy Land Services has an overhead 138 KV and 69KV transmission conductor all along the CBT Property. Duke Energy Land Services must maintain access to such facilities at all times.

(ii) Duke Energy Gas has IP main along Mehring Way, and Duke Energy Gas must maintain access to such facilities at all times.

(D) Cincinnati Bell Telephone: All existing underground telephone facilities at the CBT Property and Mehring Way must remain in place, in service, and able to be accessed. Any damage to such facilities or any work done to relocate such facilities as a result of the construction of the Improvements shall be done at Grantee's sole cost and expense.

(E) Department of Public Services: Grantee shall install signage delineating the height of the Improvement above the roadway. Such signage should be placed clearly for viewing during inclement weather using reflective paint and should be displayed on both sides of the Improvement itself and posted on signage at a reasonable distance along the roadside. Illumination of the signage is not required but preferred so drivers utilizing the roadway see the obstacle.

(F) Department of Transportation and Engineering:

(i) 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, and shall be consistent with drawings approved by DOTE.

(ii) The Improvement shall be designed in accordance with the AASHTO Manual of Bridge Design, current addition. Detailed drawings and design calculations, signed and sealed by a professional engineer in the State of Ohio, need to be submitted and approved by City Structures.

(iii) Grantee is responsible for maintenance of the pavement, curb, and sidewalk.

(iv) DOTE's preferred minimum clearance under the Improvement and over the roadway shall be 18 feet.

(v) All supports related to the Improvement shall be constructed outside the right-of-way.

(vi) Grantee shall perform an annual structural inspection of the Improvement in accordance with National Bridge Inspection Standards and the Ohio Department of Transportation Manual of Bridge Inspection. A copy of such report shall be filed with the City Department of Transportation within 30 days of the date of inspection.

(vii) [intentionally omitted].

(viii) 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. Application for permits may be made at Room 425, City Hall, 801 Plum Street.

(ix) Grantee shall supply the City, annually, a copy of its General Commercial Liability Insurance policy showing the City named as "additional insured".

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 – *Easement Plat*

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

[CBT Signature Page Follows]

ACCEPTED AND AGREED TO BY:

CBT 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 **CBT 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: _____

[*MI Signature Page Follows*]

Mehring Investors, 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 **Mehring Investors, 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

CBT Property

Description for: 10.2092 Acre Parcel

Location: City of Cincinnati, Ohio

Situated in Section 23, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, being all of Lots 1-7 of Culbertson Park Subdivision (west of Baymiller Street) as recorded in Deed Book V2, Page 3 of the Hamilton County Recorder's Office and being more particularly described as follows:

BEGINNING at the northeast corner of Lot 1 Culbertson Park Subdivision and at the intersection of south line of Mehring Way and the west line of Baymiller Street;

Thence along the west line of Baymiller Street, South 11°22'16" West, 691.13 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 27.06 feet and at 42.06 feet;

Thence along said low water mark the following three (3) courses:

1. North 52°38'07" West, 132.70 feet,
2. North 53°54'20" West, 532.79 feet,
3. North 56°38'41" West, 180.73 feet to the southeast corner of lands conveyed to Cincinnati Bulk Terminals, LLC as recorded in Official Record 12085, Page 1238;

Thence along the east line of Cincinnati Bulk Terminals, LLC, North 33°37'59" East, 587.93 feet to a set MAG nail at the northeast corner of Cincinnati Bulk Terminals, passing a set iron pin at 237.93 feet

Thence along the north line of Cincinnati Bulk Terminals the following three (3) courses:

1. North 52°20'17" West, 115.29 feet to a set MAG nail,
2. North 54°33'29" West, 31.68 feet to a set MAG nail,
3. North 69°41'51" West, 65.09 feet to a set MAG nail at the south east corner of the Baltimore and Ohio Rail Road;

Thence along the east line of the Baltimore and Ohio Railroad, North 33°37'59" East, 28.88 feet to a set iron pin in the aforementioned south line of the Mehring Way;

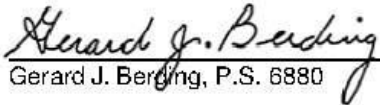
Thence along said south line, South 56°22'01" East, 230.46 feet to a set iron pin AND South 56°10'14" East, 563.17 feet to the **POINT OF BEGINNING**.

CONTAINING 10.2092 ACRES. Together with and subject to all easements of record.

Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on March 27, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on March 27 2020.

Being all of those lands conveyed to the City of Cincinnati in Deed Book 212, Page 588, Deed Book 1051, Page 183, Official Record 6432, Page 3205, and Official Record 9099, Page 6041. Further Identified as Auditors Parcels 137—0006-0010, 0012 thru 0030, 0201, 0214, 0236, 0240, 0241 and 0244.


Gerard J. Berding, P.S. 6880

March 27, 2020
Date



MI Property

Situated in Section 23, Town 4, Fractional Range 1. City Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

BEGINNING at a set iron pin of the southwest terminus of Baymiller Street said pin being South 11° 17' 02" West, 228.86 feet from the intersection of the south right of way line of Avery Street and the west right of way line of Baymiller Street;

Thence along the south line of Baymiller Street South 78° 42' 58" East, 66.00 feet to a set iron pin at the southeast terminus of Baymiller Street and the southwest corner of lands conveyed to CSX Transportation in Official Record 6976, Page M47 of the Hamilton County Recorder's Office:

Thence along the south line of CSX Transportation, South 85° 15' 22" East, 314.54 feet to a set iron pin;

Thence leaving said south line of CSX Transportation along a new division line, South 07° 01' 35" West, 289.76 feet to a set iron pin in the north line of Central Railroad Co. of Indiana;

Thence along the north line of sold Central Railroad Co. of Indiana the following seven (7) courses:

1. North 80° 10' 38" West, 12.26 feet to a set iron pin,
2. North 78° 32' 54" West, 218.01 feet to a set iron pin,
3. along a curve non-tangent to previous course deflecting to the right having a radius of 672.27 feet, an arc length of 98.86 feet, central angle of 08° 25' 31", the chord of so said arc bears North 76° 41' 22" West, 98.77 feet to a set iron pin,
4. North 72° 01' 17" West, 43.69 feet to a set iron pin,

5. along a curve non-tangent to previous course deflecting to the right having a radius of 541.00 feet, an arc length of 126.28 feet, central angle of 13° 22' 25", the chord of said arc bears North 63° 35' 07" West, 125.99 feet to a set iron pin,
6. along a curve deflecting to the right having a radius of 407.00', an arc length of 286.94 feet, central angle of 40° 23' 37", the chord of said arc bears North 37° 43' 33" West, 281.03 feet to a set iron pin,
7. North 16° 53' 43" West, 25.80 feet to a set iron pin;

Thence leaving said line of Central Railroad Co. of Indiana along a new division line, South 85° 15' 34" East, 55.00 feet to a set iron pin in the west line of Pier 66 of Baltimore & Ohio Railroad as recorded in Deed Book 3987, Page 594;

The along the lines of said Pier 66 the following three (3) courses:

1. South 38° 49' 02" East, 13.26 feet to a set iron pin,
2. North 51° 10' 58" East, 6.50 feet to a set iron pin,
3. North 38° 49' 02" West, 7.08 feet to a set iron pin.

Thence along a new division line, South 85° 15' 34" East, 66.80 feet to a set iron pin in the west line of Pier 67 of Baltimore & Ohio Railroad as recorded in Deed Book 3987, Page 594;

Thence along the lines of said Pier 67 the following three (3) courses:

1. South 60° 55' 51" East, 18.03 feet to a set iron pin,
2. North 29° 04' 09" East. 5.00 feet to o set iron pin,
3. North 60° 55' 51" West. 6.97 feet to a set iron pin;

Thence along a new division line, South 85° 15' 34" East, 30.69 feet to a set iron pin in the west line of Pier 68 of Baltimore & Ohio Railroad as recorded in Deed Book 3587, Page 594;

Thence along the lines of said Pier 68 the following three (3) courses:

1. South 04° 39' 55" West, 6.16 feet to a set iron pin,
2. South 85° 20' 05" East, 4.83 feet to a set iron pin,
3. North 04° 39' 55" East, 6 16 feet to a set iron pin;

Thence along a new division line, South 85° 15' 34" East, 34.07 feet to o set iron pin in me west line of Pier 69 of Baltimore & Ohio Railroad as recorded in Deed Book 3987, Page 594;

Thence along the west line of said Pier 69 the following three (3) courses:

1. South 05° 20' 28" West, 6.11 feet to a set iron pin,
2. South 84° 39' 32" East, 4.83 feet to a set iron pin,
3. North 05° 20' 28" East, 6.17 feet to a set iron pin,

Thence along a new division line, South 85° 15' 34" East, 31.24 feet to a set iron pin in the west line or lands conveyed to Baltimore & Ohio Railroad as recorded in Deed Book 3987, Page 594;

Thence along the lines of the Baltimore & Ohio Railroad the following three (3) courses:

1. South 11° 17' 02" West, 33.35 feet to a set iron pin,
2. South 79° 34' 58" East, 71.34 feet to a set iron pin,
3. North 11° 17' 02' East, 8.20 feet POINT OP BEGINNING.

CONTAINING 3.6039 Acres, more or less.

The above described parcel being part of Hamilton County Auditor's Parcel 138-0006-0032 as conveyed to Queensgate South Realty, LLC, as recorded in Official Record 11003, Page 484 of the Hamilton County Recorder's Office.

The bearings are based on State Plane Coordinate System, Ohio South Zone (NAD83).

All set iron pins are 5/8" x 30" in size with cap, stamped "G J BERDING SURVEYING INC."

PPN: 138-006-0286

EXHIBIT B

to Grant of Encroachment Easement

Survey Plat

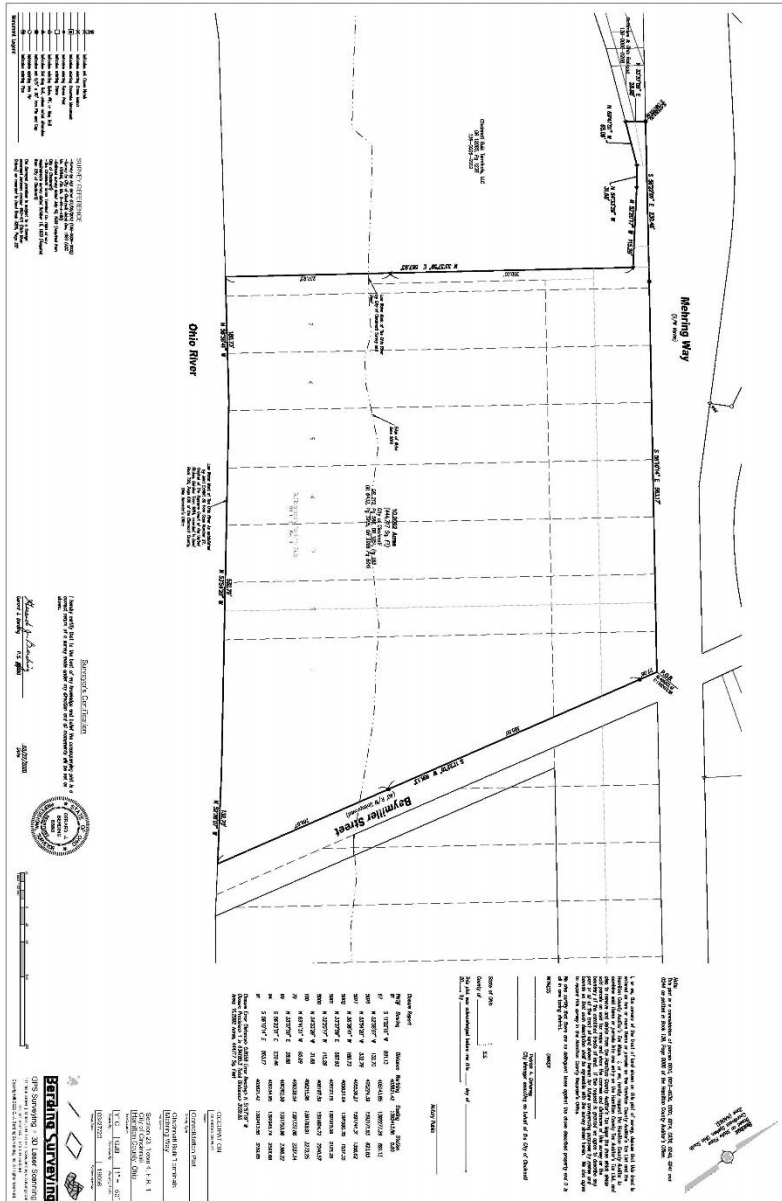


EXHIBIT C

to Grant of Encroachment Easement

Easement Plat

