

City of Cincinnati

CHM

AWB

An Ordinance No. _____

- 2021

AUTHORIZING the City Manager to execute a *Grant of Easement* in favor of Almira Alim Darden, pursuant to which the City of Cincinnati will grant an encroachment easement upon a portion of Storrs Street in Lower Price Hill.

WHEREAS, Almira Alim Darden (“Grantee”) owns certain real property located at 2117 Storrs Street in Lower Price Hill; and

WHEREAS, the City of Cincinnati owns the adjoining Storrs Street public right-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 easement from the City for an encroachment upon a portion of the Property, namely, a stairway and landing, 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 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 an 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 July 16, 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 Almira Alim Darden (“Grantee”), owner of the property located 2117 Storrs 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 for an encroachment upon the Storrs Street public right-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 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 fair market value of the easements, as determined by 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 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

(encroachments upon a portion of Storrs 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 **Almira Alim Darden**, single, with a tax mailing address of 2117 Storrs Street, Cincinnati, OH 45204 ("**Grantee**").

Recitals:

A. By virtue of a *Quitclaim Deed* recorded on April 02, 2021, in OR 14388, Page 2763, Hamilton County, Ohio Records, Grantee holds title to certain real property located at 2117 Storrs 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 Storrs 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 encroachment upon the Storrs Street public right-of-way, i.e., stairway and landing (the "**Encroachment**").

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

E. The City's Real Estate Services Division has determined that the fair market value of the easements, as determined by professional appraisal, are \$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 July 16, 2021.

G. 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 encroachment easement to use, maintain, repair, reconstruct, replace, and remove a stairway and landing in, on, and across the portion of the Storrs Street public right-of-way, as more particularly depicted on Exhibit B and described on Exhibit C (Legal Description) hereto (the “**Stairway Easement**” or “**Stairway Easement Area**”, as applicable). Grantee shall not make any modifications to the Encroachment within the Stairway Easement Area without the City’s prior written consent.

2. Termination. Notwithstanding anything herein to the contrary, the Stairway Easement shall automatically terminate upon (i) the complete or partial demolition of the Encroachment within the Stairway Easement Area, such that the Stairway Easement would be rendered unnecessary; (ii) upon written notice from the City, if the City determines that it needs the Stairway 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 Encroachment 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. 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 Stairway 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 Stairway 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 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 #21-2020). The following additional conditions shall apply:

(A) DOTE:

(i) [Intentionally Omitted].

(ii) [Intentionally Omitted].

(iii) 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. Please note that plan drawings (2 sets), to be reviewed by DOTE, must be attached to the permit application.

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*

[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:

ALMIRA ALIM DARDEN, single

By: _____

Date: _____, 2021

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

SITUATE IN THE CITY OF CINCINNATI, COUNTY OF HAMILTON, STATE OF OHIO, AND BEING LOT NUMBER 5 OF JOHN B. PURCELL'S SUBDIVISION AS RECORDED IN DEED BOOK 122, PAGE 272 OF THE HAMILTON COUNTY, OHIO RECORDER'S OFFICE, FRONTING 26 FEET ON THE SOUTH SIDE OF STORRS STREET AND EXTENDING SOUTH SAME WIDTH 80 FEET.

ALSO, THE FOLLOWING DESCRIBED REAL ESTATE, SITUATE IN THE CITY OF CINCINNATI, HAMILTON COUNTY, OHIO AND BEING PART OF LOT NO. 6 OF JOHN B. PURCELL'S SUBDIVISION, AS RECORDED IN DEED BOOK 122, PAGE 272 OF THE HAMILTON COUNTY, OHIO RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING IN THE SOUTH LINE OF STORRS STREET AT THE NORTHWEST CORNER OF SAID LOT 6, THENCE EASTWARDLY ALONG THE SOUTH LINE OF STORRS STREET A DISTANCE OF 0.55 FEET; THENCE SOUTHWARDLY ALONG THE EAST WALL OF A TWO AND ONE-HALF STORY BRICK BUILDING A DISTANCE OF 80 FEET TO A POINT IN THE SOUTH LINE OF SAID LOT 6, 0.55 FEET EASTWARDLY FROM THE SOUTHWEST CORNER OF SAID LOT 6; THENCE WESTWARDLY ALONG THE SOUTH LINE OF SAID LOT 6, A DISTANCE OF 0.55 FEET TO THE SOUTHWEST CORNER OF SAID LOT 6; THENCE NORTHWARDLY ALONG THE WEST LINE OF SAID LOT 6 A DISTANCE OF 80 FEET TO THE PLACE OF BEGINNING.

SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

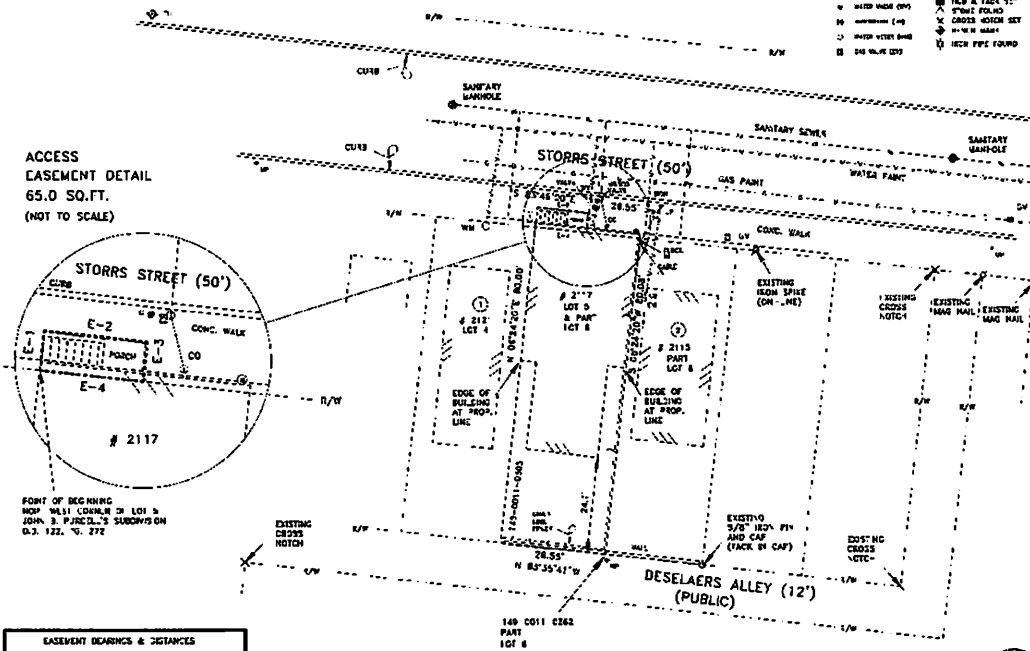
Parcel ID: 149-0011-0305-00

EXHIBIT B

to Grant of Easement

Survey Plat

- ① JOHN B. PURCELL & JUAN PABLO OSA
D.B. 13153, PG. 272 (0.4488 ACRES)
AUDITOR'S PARCEL: 149-0011-0304
- ② KIM R. TERBY TR
O.P. 13423, PG. 750 (0.4480 ACRES)
AUDITOR'S PARCEL: 149-0011-0304



EASEMENT BEARINGS & DISTANCES			
E-1	N 06°41'00\"	3.00'	
E-2	S 83°46'00\"E	13.25'	
E-3	S 08°26'20\"W	3.00'	
E-4	N 06°46'00\"W	3.00'	

FRONT OF RECORDING
NOTICE CORNER OF LOT 5
JOHN B. PURCELL'S SUBDIVISION
O.S. 122, PG. 272

- LEGEND
- STANDARD SYMBOLS THAT MAY APPEAR ON "B" EASEMENTS:
 - 1) 1/2\"/>

AUDITOR'S BOOK: 149, PAGE: 0011
PARCELS: 0305, 0362

BASIS OF REFERRING:
JOHN B. PURCELL'S SUBDIVISION
D.B. 122, PG. 272
AND
O.R. 13153, PG. 794
WITH THE SOUTH LINE OF STORRS ST.
BEING S 83°46'03\"E
AS PER SURVEY OF RECORD BY
RAYFR RECKER DATED: 12/10/07

DEED REFERENCE:
O.R. 13153, PG. 794

MARILYN O. HUNN & D. GARLAND CHICKENHILL
O.S. 13153, PG. 794 (0.4488 ACRES)
PARCEL: 149-0011-0305
149-0011-0362

1219 CH. CINCINNATI, OHIO 45202

EASEMENT PLAT FOR ACCESS

SITUATED IN
SECTION 30, TOWNSHIP 4, FRAGMENTAL RANGE 1
CITY OF CINCINNATI
HAMILTON COUNTY, OHIO
ALSO BEING LOT 5 AND PART OF LOT 6
JOHN B. PURCELL'S SUBDIVISION
AS RECORDED IN
DEED BOOK 122, PG. 272
HAMILTON COUNTY RECORDER'S OFFICE



J. T. KING & CO., INC.
CIVIL ENGINEER & LAND SURVEYOR
1000 W. WASHINGTON ST., SUITE 100
CINCINNATI, OHIO 45202
PHONE: (513) 521-1111
FAX: (513) 521-1112
WWW.JTKINGANDCO.COM

EXHIBIT C

to Grant of Easement

Legal Description

Purchase, City of Cincinnati, Hamilton County, Ohio, and being more particularly defined as follows:

Beginning at the north west corner of Lot 5 of John B. Purcell's Subdivision, as recorded in Deed Book 122, Pg. 272, in the Hamilton County Recorder's Office; said point lies in the south right of way line of Storrs Street;

THENCE, leaving the south line of Storrs Street, North 06 degrees 24 minutes 20 seconds East for a distance of 5.00 feet;

THENCE, South 83 degrees 46 minutes 00 seconds East for a distance of 13.00 feet;

THENCE South 06 degrees 24 minutes 20 seconds West for a distance of 5.00 feet;

THENCE North 83 degrees 46 minutes 00 seconds West for a distance of 13.00 feet with the south line of Storrs Street, to the place of beginning;

Containing in all 65 Square Feet more or less subject to all legal highways and easements of record;

This Legal Description was prepared from a survey by J.T. King & Co. Inc., Civil Engineers and Land Surveyors, dated December 03, 2021, and revised on May 6, 2021, and written by J. Timothy King, PE-PS, Professional Land Surveyor, State of Ohio Registration No. 6549.