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[SPACE ABOVE FOR RECORDER'S USE]

## GRANT OF EASEMENT

(encroachment upon a portion of W. 8<sup>th</sup> 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 **LPH THRIVES, LLC**, an Ohio limited liability company, with a tax mailing address of 114 W. 14<sup>th</sup> Street, Cincinnati, OH 45202 ("**Grantee**").

### Recitals:

A. By virtue of a *Quitclaim Deed* recorded on August 2, 2021, in OR 14471, Page 4088, Hamilton County, Ohio Records, Grantee holds title to certain real property located at 2213 W. 8<sup>th</sup> 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 West 8<sup>th</sup> Street public right-of-way, which is under the management of the City's Department of Transportation and Engineering ("**DOTE**").

C. Grantee has requested the City to grant an easement for a bay window encroachment over the West 8<sup>th</sup> Street public right-of-way (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 West 8<sup>th</sup> Street public right-of-way, and (ii) granting the easement will not have an adverse effect on the usability or accessibility of any existing West 8<sup>th</sup> 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 \$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 March 4, 2022.

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

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 bay window in and over the West 8th Street public right-of-way, as more particularly depicted on Exhibit B and described on Exhibit C (Legal Description-Bay Window Easement) hereto (the “**Bay Window Easement**” or “**Bay Window Easement Area**”, as applicable). Grantee shall not make any modifications to the Encroachment within the Bay Window Easement Area without the City’s prior written consent.

2. Termination. Notwithstanding anything herein to the contrary, the Bay Window Easement shall automatically terminate upon (i) the complete or partial demolition of the Encroachment within the Bay Window Easement Area, such that the Bay Window Easement would be rendered unnecessary; (ii) upon written notice from the City, if the City determines that it needs the Bay Window 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 are 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 easement, utility lines, and related facilities in the vicinity of the Bay Window 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 Bay Window 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 #73-2021). 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*  
Exhibit C – *Legal Description - Bay Window Easement*

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 \_\_\_\_\_, 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:

**LPH THRIVES, 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 **LPH THRIVES, 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*

Parcel ID No.: 149-0011-0136-90 37  
2113 W. 8th

All that certain lot of land in Cincinnati, Hamilton County, Ohio, in Section 30, Township 4, Fractional Range 1, of the Miami Purchase, bounded and described as follows:

Commencing at a point in the South line of Eighth Street seventy-five (75) feet East of Depot Street and extending

Thence eastwardly twenty-five (25) feet to a point in the South line of said Eighth Street;

Thence, southwardly parallel to Depot Street one hundred twenty (120) feet more or less to

Pardee Alley; Thence, westwardly with Pardee Alley twenty-five (25) feet to a point seventy-

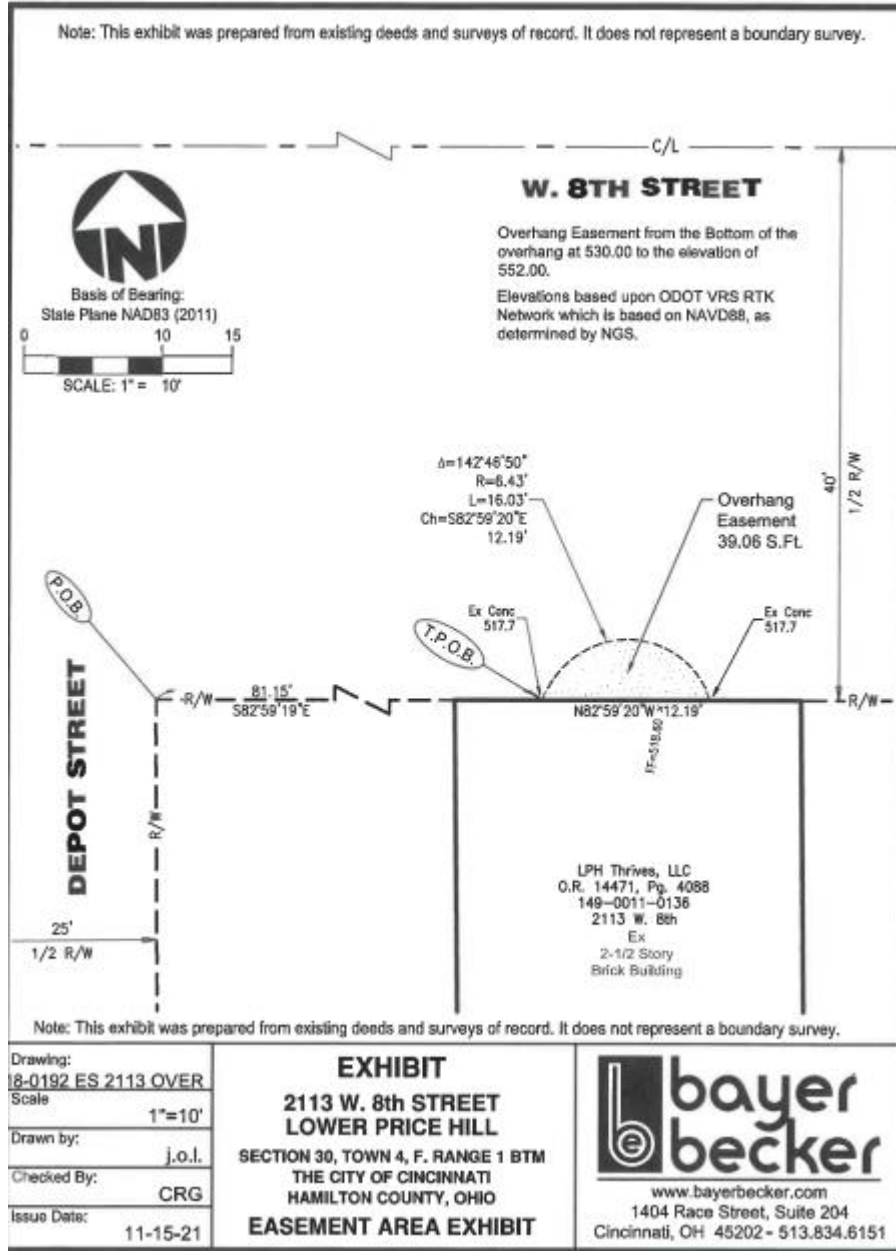
five (75) feet distant from Depot Street; Thence, northwardly one hundred twenty (120) feet

more or less to the South line of Eighth Street and the place of

**EXHIBIT B**

to Grant of Easement

*Survey Plat*



**EXHIBIT C**

to Grant of Easement

*Legal Description – Bay Window Easement*

Description: Exhibit  
Overhang Easement  
Date: November 15, 2021  
Location: 2113 W. 8th Street  
City of Cincinnati  
Hamilton County, Ohio



Situated in Section 30, Town 4, Fractional Range 1 Between the Miamis, The City of Cincinnati, Hamilton County, Ohio being an Overhang Easement from the bottom of the overhang at 530.00 feet to an elevation of 552.00 feet over part of the right of way of W. 8th Street and being further described as follows:

Begin at a point found by measuring from the intersection of the south right of way of W. 8th Street (80') and the east right of way of Depot Street (50'); thence, departing the east right of way of said Depot Street and with the south right of way of said W. 8th Street, South 82° 59' 19" East, 81.15 feet to the true point of beginning;

thence, from the True Point of Beginning thus found and through the right of way of said right of said W. 8th Street with a non-tangent curve to the right, having a central angle of 142° 46' 50", a radius of 6.43 feet, an arc length of 16.03 feet, and a chord bearing South 82° 59' 20" East, 12.19 feet to the south right of way of said right of said W. 8th Street;

thence, with right of way of said right of said W. 8th Street, North 82° 59' 20" West, 12.19 feet to the True Point of Beginning containing 39.06 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 easement exhibit made on November 15, 2021 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.