

City of Cincinnati

CHM *AWB*

An Ordinance No. _____ - 2021

AUTHORIZING the City Manager to execute a *Grant of Encroachment Easement* in favor of the Port of Greater Cincinnati Development Authority and NAP 8 & Main LLC pursuant to which the City of Cincinnati will grant an aerial encroachment easement for a projecting canopy located at 721 Main Street that encroaches upon a portion of the Main Street public right-of-way in the Central Business District of Cincinnati.

WHEREAS, the Port of Greater Cincinnati Development Authority, an Ohio port authority (“Port Authority”), owns certain real property located at 721 Main Street in the Central Business District of Cincinnati, which property the Port Authority leases to NAP 8 & Main LLC, an Ohio limited liability company (“Developer,”) via a long-term lease, and that Developer together with the Port Authority shall be collectively designated as “Grantees;” and

WHEREAS, the City of Cincinnati owns the adjoining Main Street public right-of-way, which is under the management of the City’s Department of Transportation and Engineering (“DOTE”); and

WHEREAS, the Grantees have requested an aerial encroachment easement from the City, as more particularly depicted and described in the *Grant of Encroachment Easement* attached to this ordinance as Attachment A and incorporated by reference, for a projecting canopy that encroaches upon a portion of the Main Street public right-of-way; and

WHEREAS, the City Manager, in consultation with DOTE, has determined that granting the easement to the Grantees is not adverse to the City’s retained interest in the public right-of-way; and

WHEREAS, pursuant to Section 331-5 of the Cincinnati Municipal Code, 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 appraisal that the fair market value of the easement is approximately \$570, which has been deposited with the City Treasurer; 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 December 20, 2019; 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 Encroachment Easement* in favor of the Port of Greater Cincinnati Development Authority, an Ohio port authority (“Port Authority”) and NAP 8 & Main LLC, an Ohio limited liability company (“Developer”), collectively designated as “Grantees,” as the respective owner and long-term lessee of the real property located at 721 Main Street in Cincinnati, in substantially the form attached to this ordinance as Attachment A and incorporated by reference herein, pursuant to which the City of Cincinnati will grant to the Grantees an aerial encroachment easement over a portion of the Main Street public right-of-way for a projecting canopy that encroaches upon the public right-of-way.

Section 2. That granting the easement to the Grantees is not adverse to the City’s retained interest in the Main Street 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 the Grantees 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 \$570, which has been deposited with the City Treasurer.

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 Encroachment 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 ENCROACHMENT EASEMENT

(aerial encroachment upon Main Street)

This Grant of Encroachment Easement is made 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 **PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY**, an Ohio port authority and body corporate and politic organized and existing under Ohio law, the address of which is 3 East Fourth Street, Suite 300, Cincinnati, Ohio 45202 (the "**Port Authority**"), and **NAP 8 & MAIN LLC**, an Ohio limited liability company, the address of which is 212 East 3rd Street, Suite 300, Cincinnati, Ohio 45202 ("**Developer**", and together with the Port Authority, "**Grantees**").

Recitals:

A. By virtue of a Deed recorded in Official Record 13821, Page 2929 Hamilton County, Ohio Recorder's Office, the Port Authority owns the real property located at 721 Main Street, Cincinnati, Ohio, generally located at the southwest corner of the intersection of E. 8th and Main Streets in the Central Business District of Cincinnati, as more particularly described on Exhibit A - (*Legal Description - Benefitted Property*) hereto (the "**Benefitted Property**").

B. As evidenced by a *Memorandum of Project Lease* dated December 21, 2018, and recorded on December 26, 2018, in OR 13821, Page 2933, Hamilton County, Ohio Records, Developer leases the Benefitted Property from Port Authority.

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

D. Developer has requested an aerial encroachment easement from the City for an improvement that encroaches upon a portion of the Main Street right-of-way (namely, an aerial encroachment for a projecting canopy (the "**Improvement**").

E. The City Manager, in consultation with DOT, has determined that the easement will not have an adverse effect on the City's retained interest in the public right-of-way.

F. The City's Real Estate Services Division has determined that the fair market value of the easements, as determined by appraisal, is \$570, which has been deposited with the Real Estate Services Division.

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 December 20, 2019.

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 Encroachment Easement. The City does hereby grant to Grantees, 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 erect and maintain the Improvement over the Main Street public right-of-way, as more particularly depicted on Exhibit B (Survey Plat) and described on Exhibit C (Legal Description – Canopy Easement) hereto (the “**Canopy Easement**” or “**Canopy Easement Area**”, as applicable). Grantees shall not make any modifications to the Improvement without the City’s prior written consent. Notwithstanding anything herein to the contrary, the Canopy Easement shall automatically terminate upon (i) the complete demolition of the building; (ii) any permanent alteration of the building that entails the elimination of the Improvement within the Canopy Easement Area such that the Canopy Easement would be rendered unnecessary; or (iii) upon written notice from the City, if the City determines that it needs the Canopy Easement Area or any portion thereof for a municipal purpose or upon DOTE’s determination that the Improvement is creating a public safety issue.

2. Maintenance and Repairs. Grantees, at no cost to the City, shall at all times maintain the Improvement in a continuous state of good and safe condition and repair. Grantees acknowledge that there may be existing easements, utility lines and related facilities in the vicinity of the Canopy Easement (“**Third Party Utility Lines**”). In connection with Grantees’ activities within the Canopy Easement Area, Grantees shall not interfere with the access of any relevant utility company to maintain and repair the Third Party Utilities Lines, and shall, at Grantees’ expense, promptly repair any and all damage to the Third Party Utility Lines caused by Grantees, their agents, employees or contractors. Any relocation of Third Party Utility Lines necessitated by Grantees’ activities shall be handled entirely at Grantees’ expense. All work undertaken by Grantees hereunder 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 Grantees are undertaking construction activities within the Canopy Easement Area, and in addition to whatever other insurance and bond requirements as the City may from time to time require, Grantees 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. Grantees 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 Canopy Easement Area. Grantees hereby waive all claims and rights of recovery against the City, and on behalf of Grantees’ insurers, rights of subrogation, in connection with any damage to the Improvement, no matter how caused. Grantees 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. The foregoing notwithstanding, for so long as the Port Authority owns the Benefitted Property, the City agrees that (i) the Port Authority shall have no indemnity or insurance obligations to the City under this section 3 (*provided*, however, that the Port Authority must nevertheless comply with all requirements of DOTE as pertains to working within public right-of-way), (ii) such indemnity and insurance obligations shall apply to Developer, its successors, and assigns, and (iii) if Grantees authorize a third party to work within the Canopy Easement Area, then, as a

condition of such authorization, such third party shall be deemed to have assumed the indemnity and insurance obligations (for the protection of the City) under this section 3.

4. Covenants Running with the Land. The provisions hereof shall run with the land and shall inure to the benefit of the City and be binding upon Grantees and their successors-in-interest with respect to the Benefitted Property.

5. Coordinated Report Conditions (CR #67-2019). The following additional conditions shall apply:

(a) DOTE:

- (i) The Improvement must comply with each of the following parameters of Cincinnati Municipal Code Section 723-17:
 - 1. Vertically at least eight feet above the sidewalk (ten feet if energized).
 - 2. Horizontally no closer than two feet from the street curb line.
 - 3. Fully supported from the building with no vertical supports extending below the bottom of the canopy, awning, or building mounted sign compliant with clearance requirements for overhead utility lines.
 - 4. Horizontally no closer than five feet from a utility pole.
- (ii) All metal for the proposed structure should be non-rusting so not to stain the sidewalk surface and building surface.
- (iii) The Improvement's construction drawings must be prepared and sealed by a professional engineer or architect registered in the State of Ohio. The design loads must be in accordance with applicable building code standards and be stated on the drawings. Drawings must include mounting and framing details.
- (iv) The sidewalk must remain open during installation. If installation is to take longer than two hours, a street use permit, obtained from DOTE, is required. Apply for permits in Room 425 at City Hall, 801 Plum Street.
- (v) The Improvement must have all necessary building code and zoning code approvals issued by the Department of Buildings and Inspections, including, without limitation, a Certificate of Appropriateness issued by the Historic Conservation Board or Urban Conservator, as applicable.

6. Counterparts and Electronic Signatures. This Grant of Encroachment Easement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original. This Grant of Encroachment Easement 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.

7. 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 – Canopy Easement*

Executed by the City of Cincinnati on the date of acknowledgement indicated below (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

ACCEPTED AND AGREED TO BY:

PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY,
an Ohio port authority

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 the **Port of Greater Cincinnati Development Authority**, an Ohio port authority, on behalf of the port authority. 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: _____

ACCEPTED AND AGREED TO BY:
NAP 8 & Main 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 **NAP 8 & Main LLC**, an Ohio limited liability company, on behalf of the limited liability 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

Property Address: 721 Main Street, Cincinnati, Ohio 45202
Auditor's Parcel No.: 079-0008-0180-00

Situated in Section 18, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, Ohio and being a 0.2794 acre consolidation of parcels as conveyed to NAP 8 & Main, LLC by deed recorded in Official Record 13462, Page 1489 and located at the southwesterly corner of 8th Street (66' R/W) and Main Street (66' R/W). All references being to the Recorder's Office, Hamilton County, Ohio, and being more particularly described as follows:

Beginning, for reference, in a Magnail found in the intersection of the southerly right of way line of said 8th Street and the easterly right of way line of Bowen Alley (16' R/W); thence In said southerly right of way line of 8th Street, North 74° 00' 00" East, 94.08 feet to a Magnail Set in the northeasterly corner of a parcel conveyed to System Parking Inc. by deed recorded in Official Record 12439, page 994, said Magnail being the **TRUE PLACE OF BEGINNING** of the consolidation of parcels herein described; thence the following 6 courses:

1. Continuing in said southerly right of way line of 8th Street, North 74° 00' 00" East, 100.00 feet to an "X" Cut in Concrete Set in the westerly right of way line of said Main Street; thence
2. In said westerly right of way line of Main Street, South 15° 54' 31" East, 123.83 feet to a point witnessed by a building corner 0.4'N/0.4'E, said point being a corner common to a parcel conveyed to Jiang Capital Group, LLC by deed recorded in Official Record 12742, Page 1026; thence
3. Leaving said westerly right of way line of Main Street and in the line common to said Jiang Capital Group, LLC, South 74° 00' 00" West, 90.16 feet to a Magnail Set in a corner common to said Jiang Capital Group, LLC and also in the easterly line of a 4' alley; thence
4. In said easterly line of a 4' alley, North 16° 00' 38" West, 22.10 feet to a Magnail Set in the terminus of said 4' alley; thence
5. In said terminus of the 4' alley, South 74° 00' 00" West, 9.93 feet to a 5/8" Iron Pin Found in a line common to a parcel conveyed to Keen Investment Inc. by deed recorded in Registered Land Certificate No. 151024, said Iron Pin also being in a corner common to said System Parking, Inc.; thence
6. In the line common to said System Parking, Inc., North 15° 50' 12" West, 101.73 feet to the **TRUE PLACE OF BEGINNING** of consolidation of parcels herein described.

EXHIBIT B

to Grant of Encroachment Easement

Survey Plat

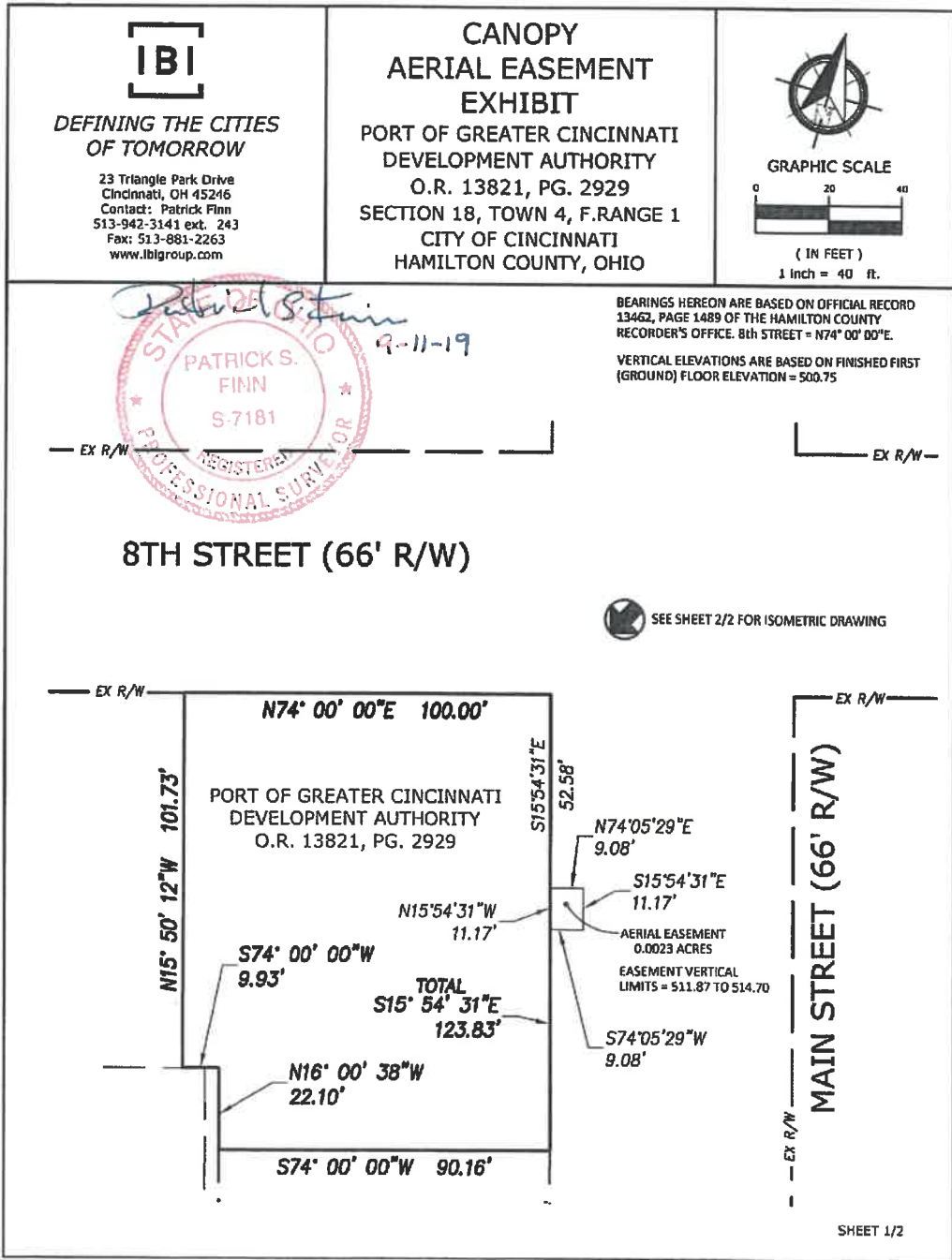


EXHIBIT C

to Grant of Encroachment Easement

Legal Description – Canopy Easement

Situated in Section 18, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, Ohio and being a Canopy Aerial Easement located within the existing Right of Way of Main Street (66' R/W) and being in the westerly right of way line of said Main Street, south of the southerly right of way line of 8th Street (66' R/W). All references being to the Recorder's Office, Hamilton County, Ohio, and being more particularly described as follows:

Beginning, for reference, in the intersection of said southerly right of way line of 8th Street and said westerly right of way line of Main Street and being in the northeasterly corner of a parcel conveyed to Port of Greater Cincinnati Development Authority by deed recorded in Official Record 13821, Page 2929; thence

In said westerly right of way line of Main Street, South 15° 54' 31" East, 52.58 feet to a point at elevation 500.75 (Finished First Floor-Ground); thence

In a positive vertical direction, 11.12 feet to elevation 511.87 and being the **TRUE PLACE OF BEGINNING** of the Aerial Easement herein described; thence the following 4 courses:

1. Leaving said westerly right of way line of Main Street, North 74° 05' 29" East, 9.08 feet to a point; thence
2. South 15° 54' 31" East, 11.17 feet to a point; thence
3. South 74° 05' 29" West, 9.08 feet to a point in said westerly right of way line of Main Street; thence
4. In said westerly right of way line of Main Street, North 15° 54' 31" West, 11.17 feet to the **TRUE PLACE OF BEGINNING** of the Canopy Aerial Easement herein described.

This Easement is restricted to vertical limits within elevations 511.87 to 514.70, a depth of 2.83 feet.

Containing 101 square feet or 0.0023 acres.

Bearings are based on O.R. 13462, Pg. 1489, 8th Street = North 74° 00' 00" East, Hamilton County, Ohio.

This description was prepared by Patrick S. Finn, Ohio Registered Surveyor No. 7181, JBI Group, Cincinnati, Ohio, and is based on a field survey performed in May, 2018.

