

BUILDING ENCROACHMENT EASEMENT AGREEMENT

THIS BUILDING ENCROACHMENT EASEMENT AGREEMENT (this “Agreement”) is made as of this 13th day of November, 2023 (the “Effective Date”), by and between **THE CITY OF VERMILION**, a municipal corporation, with an address at 5511 Liberty Ave, Vermilion, OH 44089 (“Grantor”), and **5286 LIBERTY, LLC**, an Ohio limited liability company, with an address at 5359 Liberty Avenue, Vermilion, Ohio 44089 (“Grantee”).

WITNESSETH:

WHEREAS, Grantee is the fee owner of certain real property located in the City of Vermilion, County of Erie, State of Ohio, which property is further described on **Exhibit A** attached hereto and made a part hereof (“Grantee’s Property”);

WHEREAS, the building currently located on Grantee’s Property (the “Building”) encroaches on an approximately 19.02 square foot portion of the City’s right-of-way (“Grantor’s Property”) located adjacent to Grantee’s Property as described on **Exhibit B**, attached hereto and made a part hereof, and depicted on **Exhibit B-1** attached hereto and made a part hereof (the “Easement Area”); and

WHEREAS, Grantor desires to grant an easement to Grantee over the Easement Area on the terms and conditions provided herein.

NOW THEREFORE, For and in consideration of One Dollar (\$1.00), the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

- 1. Grant of Easement.** Subject to the conditions contained in this Agreement and all applicable laws, rules, regulations and requirements, including, without limitation, zoning regulations and requirements, Grantor hereby grants to Grantee, for use by Grantee, and its successors, assigns, agents, contractors, employees and invitees (collectively, as the case may be “Permittees”), a perpetual, exclusive easement (the “Building Encroachment Easement”) over the Easement Area. The Building Encroachment Easement granted herein shall be for the exclusive benefit of all present and future owners of Grantee’s Property, it being the intent hereof that the Building Encroachment Easement shall run with the land as a burden on the Grantor’s Property and as a benefit to the Grantee’s Property.

- 2. No Interference.** Grantee acknowledges and agrees that Grantor's right to access, modify, occupy and/or use Grantor's Property, except for the Easement Area, is not restricted in any way by the Building Encroachment Easement. Grantee agrees that it shall not take or cause any action to be taken to disrupt, prevent, interfere with or impede Grantor's access, occupation, modification and/or use of the Grantor's Property.
- 3. Taxes.** Grantee shall timely pay all real estate taxes and assessments, if any, levied against Easement Area.
- 4. Default.** The following shall constitute a default by Grantee: (i) the failure to pay any sums due Grantor under this Agreement within ten (10) business days following receipt of written notice from Grantor; or (ii) a failure by Grantee to observe and perform any other provision of this Agreement within thirty (30) days following receipt of written notice from Grantor, except that said thirty (30)-day period shall be extended for a reasonable time if Grantee commences to cure such default within said thirty (30)-day period and thereafter diligently pursues said cure to completion within a reasonable time thereafter. In the event of a default, Grantor may pursue any rights or remedies available at law or equity.
- 5. Termination.** The parties hereby agree that the Building Encroachment Easement shall terminate by merger if (i) the Grantee, or any successor-in-interest to the Grantee's Property, acquires fee simple title to the Grantor's Property or the Easement Area; or (ii) the Grantor, or any successor-in-interest to the Grantor's Property, acquires fee simple title to the Grantee's Property, or the portion of Grantee's Property that contains the Building.
- 6. Binding Nature; Term.** All provisions of this Agreement, including its benefits and burdens, run with the land and are binding upon and inure to the benefit of the heirs, assigns, licensees, invitees, successors, tenants, employees and personal representatives of the parties. In the event this Agreement is terminated pursuant to Section 5 above, Grantor may record as evidence of such termination an affidavit attesting to the termination.
- 7. Entire Agreement; Modification.** This Agreement contains the complete expression of the parties and there are no promises, representations, inducements or understandings, oral or written, except as herein provided. This Agreement may not be amended or modified except by a writing signed by the parties hereto.
- 8. Notices.** Any notices required or permitted to be given under this Agreement shall be deemed sufficient if mailed by certified or registered mail, return receipt requested; via a nationally recognized overnight delivery service; or via courier, addressed to the parties as follows:

As to Grantor:

The City of Vermilion
5511 Liberty Ave.
Vermilion, Ohio 44089
Attn: Mayor Farthofer
Email: _____

As to Grantee:

5286 Liberty, LLC
5653 Ohio St.
Vermilion, Ohio 44089
Attn: Mike Moes
mwmoes@gmail.com

- 9. Authority.** Each party hereto represents and warrants that such party has all power and authority necessary to execute this Agreement and to fulfill its obligations hereunder, and that this Agreement, when executed by such party, shall be valid and binding upon such party and its respective heirs, executors, administrators, personal and/or legal representatives, successors and assigns.
- 10. Governing Law.** This Agreement will be governed by the laws of the State of Ohio.
- 11. Counterparts.** This Agreement may be executed in multiple counterparts, all of which taken together shall constitute a single document with the same force and effect as if all parties had signed the same copy of this Agreement.
- 12. Partial Invalidity.** If any provision of this Agreement shall, for any reason, be held to be unenforceable or in violation of any applicable law, then the invalidity of such specific provision shall not be held to invalidate any other provision of this Agreement which shall remain in full force and effect.
- 13. No Liens.** Grantee shall not record nor permit or allow any contractor, subcontractor, materialman or supplier of Grantee or any agent of Grantee to record any mechanic's or other lien against the Easement Area and/or the Grantor's Property for any labor or materials in connection with any work of any character performed on the Easement Area. In the event of the recordation of any such lien, Grantee shall cause the same to be bonded, defended, or discharged, as determined in Grantee's commercially reasonable discretion, within thirty (30) days of Grantee's actual notice of filing. In the event Grantee has failed to take action as required in the preceding sentence, within the timeframe provided therein, Grantor shall have the right, but not the obligation, to cause such lien to be released and Grantee shall pay, on demand, all of Grantor's costs and reasonable attorneys' fees in connection therewith, plus interest.
- 14. Recordation.** Promptly following the full execution of this Agreement, Grantee, at its sole cost and expense, shall cause this Agreement to be recorded in the official records of Erie County, Ohio.
- 15. Representation of Title.** Grantor represents and warrants to Grantee that it has good and indefeasible fee simple title to the Easement Area for purposes of granting this Agreement.
- 16. Headings and Captions.** The headings and captions of the paragraphs of this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.
- 17. Waiver.** No waiver by any party with respect to performance or satisfaction of any covenant, condition, or obligation arising under this Agreement shall be valid unless in writing, and the same shall not be considered a waiver by such party of any other covenant, condition, or obligation hereunder or of any other untimely performance of the covenant, condition, or obligation so waived.
- 18. Further Action.** Each party agrees to take such reasonable action and execute and deliver documents or instruments necessary or customary to accomplish or facilitate the intended purpose and grant of easement hereunder.

(signature pages follow)

GRANTEE:

5286 LIBERTY LLC

an Ohio limited liability company

By: 

Name: Michael W. Moes

Title: Sole Owner, 5286 Liberty LLC

STATE OF Ohio)
) SS:
COUNTY OF Errie)

BEFORE ME, a Notary Public in and for said County and State, personally appeared **5286 LIBERTY, LLC**, an Ohio limited liability company, by **Michael Moes**, its Sole Owner who acknowledged to me that he did sign the foregoing instrument as such officer and that the same is his free act and deed, both individually and as such officer of such company. This is an acknowledgment clause. No oath or affirmation was administered to the signer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Errie County, OH, this 14th day of Nov, 2023.

Notary Public 
My Commission Expires:

This instrument prepared by:
Michelle R. Reese, Esq.
Baker & Hostetler LLP
127 Public Square, Suite 2000
Cleveland, Ohio 44114



CAROLINE R SPRINGER
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
03-10-2026

Exhibit A

Legal Description of Grantee's Property

Situated in the City of Vermilion, County of Erie and State of Ohio: Being Lot Number three hundred twenty-eight (328) and the South one-half of Lot Number three hundred twenty-seven (327), Block 24, excepting the east 13 feet of Lot 328 and the east 13 feet of the South one-half of Lot 327 as conveyed to J.R. Dickason by deed dated September 19, 1947 and recorded in volume 195, page 449, Erie County, Ohio records: all of said premises in the City of Vermilion, Erie County, Ohio.

Permanent Parcel No. 18-00570.000

The street address of this parcel is 699 Toledo Street, Vermilion, Ohio 44089

Exhibit B

Legal Description of Encroachment

Situated in part of Toledo Street in the City of Vermilion as per plat recorded in Volume 2 Page 10 of the Erie County Records, Section 1, Vermilion Township, Erie County, Ohio, and being more particularly described as follows□

Commencing at an iron pin found at the southwesterly corner of Sublot Number 319 in Block Number 24 in the City of Vermilion as per plat recorded in Volume 2 Page 10 of the Erie County Records, said point being the southeasterly corner of a parcel of land now or formerly owned by SGN Properties Ltd. as per deed recorded in RN202001566 of the Erie County Records,

Thence South 87°-45'-00" West, along the southerly line of said SNG Properties Ltd. Parcel and the southerly line of a parcel of land now or formerly owned by 5286 Liberty LLC. as per deed recorded in RN202001564 of the Erie County Records, a distance of 297.00 feet to a point at the southwesterly corner of 328 in said Block Number 24 as referenced by an iron pin set 2.00 south of said point, said point being on the southeasterly terminus of Toledo Street, said point also being the principal place of beginning for this description□

1. Thence South 87°-45'-00" West, along the southerly terminus of Toledo Street, a distance of 0.35 feet to a point on the westerly face of an existing building□
2. Thence North 04°-18'-35" West, along the westerly face of said existing building, a distance of 59.28 feet to a point at the northwesterly corner of said existing building□
3. Thence North 85°-41'-25" East, along the northerly line of said existing building, a distance of 0.30 feet to a point on the easterly right of way line of Toledo Street, being the westerly line of said Lot Number 328□
4. Thence South 04°-21'-00" East, along the easterly right of way line of Toledo Street and the westerly line of said Lot Number 328, a distance of 59.29 feet to the place of beginning and containing 0.0004 acres (19.02 sq. ft.) of land, but subject to all legal highways, easements and restrictions of record.

In the above description the courses were referred to a meridian assumed for the purpose of indicating angles only.

This description was prepared by David A. Williams, Registered Surveyor No. 7166 and was taken from an actual field survey performed on March 16, 2022.

David A. Williams

Registered Surveyor No. 7166

RECORD OF ORDINANCES

GOVERNMENT FORMS & SUPPLIES 844-224-3338 FORM NO. 30043

2023-71

Ordinance No. _____

Passed 11-13, 2023

AN ORDINANCE GRANTING AN ENCROACHMENT EASEMENT OF THE STRUCTURE AT 699 LIBERTY ON TOLEDO STREET RIGHT-OF-WAY AND DECLARING AN EMERGENCY.

WHEREAS, the Vermilion City Council desires to grant an encroachment easement of the structure at 699 Liberty on Toledo Street right-of-way.

NOW, THEREFORE BE IT ORDAINED by the Council of the City of Vermilion, Counties of Erie and Lorain, State of Ohio:

SECTION 1: That this Council of the City of Vermilion hereby grants an encroachment easement for 699 Liberty Avenue as shown in Exhibit A.

SECTION 2: This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public and in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3: That this Ordinance is declared to be an emergency for the public peace, health, safety, and welfare of the City; wherefore, this Ordinance shall take effect immediately upon its passage and approval of the mayor, providing it meets the statutory requirements for passage; otherwise, it shall take effect and be enforced from and after the earliest period allowed by law.


PASSED: 11/13, 2023


John E. Gabriel, President of Council

ATTEST: 11-13, 2023


Gwen E. Fisher, Certified Municipal Clerk

APPROVED: 11-13, 2023


Jim Forthofer, Mayor

*This document prepared as to form:
Gwen Fisher, Certified Municipal Clerk – October 26, 2023*