

-----space above for recorder's office-----

ENCROACHMENT EASEMENT
(benefitting parcel 025-000131)

This Encroachment Easement ("Easement") is made this ____ day of _____, 2013 by the CITY OF GAHANNA, an Ohio municipal corporation, having an address of 200 South Hamilton Road, Gahanna, Ohio 43230 (the "City").

Recitals:

A. By virtue of a Plat recorded in Official Record Plat Book 3, Page 178, Franklin County, Ohio Recorder's Office, the City is the owner of the dedicated public right of way of Mill Street (the "Burdened Property").

B. By virtue of a Deed recorded in Official Record 201110170132108, Franklin County, Ohio Recorder's Office, LGI Building, LLC, an Ohio limited liability company, with offices at 2737 Colts Neck Road, Blacklick, Ohio 43004 ("Grantee"), is the owner of the real property, including the building thereon commonly known as 73-77 North Mill Street, Gahanna, Ohio 43230, consisting of Franklin County Auditor's Book/Page/Parcel No.025-000131, which is adjacent to the Burdened Property, as more particularly described on Exhibit A (herein, the "Benefitted Property").

C. Grantee is in the process of redeveloping the Benefitted Property and, in connection therewith, desires to redesign the building and expand it, a portion of which will encroach upon the Burdened Property. The portion of the Burdened Property on which there is an encroachment is shown on Exhibit B and is hereinafter referred to as the "Easement Area".

D. The City has determined that the Easement Area is an acceptable improvement to the downtown area and is agreeable to granting this Easement on the terms and conditions set forth herein.

E. City Planning Commission, having the authority to approve the variance required to allow the expansion of the non-conforming building, approved the variance at its meeting on January 23, 2013.

F. City Council, by Ordinance No. _____, 2013, duly passed on ____ day of _____, 2013, granted the Mayor the authority to execute this Easement.

NOW THEREFORE, the City does hereby agree as follows:

1. **Easement.** For One Hundred Dollars (\$100.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City does hereby grant to Grantee, on the terms and conditions set forth herein, an easement over the Easement Area for the construction, maintenance and repair of the portions of the expanded building (the "Improvements"). Said easement shall be perpetual and appurtenant to and for the benefit of the Benefitted Property. All rights herein granted to Grantee are subject and subordinate to any and all existing covenants, easements, restrictions and other matters of record affecting the Easement Area. The City makes no representations or warranties

GAHANNA CITY SEAL

to Grantee concerning the physical condition of the Easement Area or the condition of the City's title to the Easement Area. Grantee shall comply with such reasonable rules and regulations governing the use of the Easement Area as the City may from time to time enforce.

2. No Interference with Utilities. If there are any existing utility lines or other utility installations located within the Easement Area ("Existing Utilities"), Grantee shall not: physically alter or relocate any Existing Utilities, do anything that would impair access or otherwise interfere with a utility company's ability to maintain its Existing Utilities, reduce existing clearances, impair the land support, change the grade by more than one foot, or create any hazard with respect to the Existing Utilities. In the event that Grantee's activities hereunder cause damage to the Existing Utilities, Grantee shall immediately notify the appropriate utility provider. All costs of repairing damage to the Existing Utilities caused by Grantee, including without limitation, all costs of replacing any damaged utility lines and facilities that are not capable of being properly repaired as determined by the applicable utility provider in its sole discretion, shall be borne by Grantee and shall be payable by Grantee within thirty (30) days after Grantee receives documentation substantiating such costs.

3. Construction, Maintenance and Repairs.

(A) Prior to commencing construction of the Improvements, Grantee shall submit its proposed plans and construction drawings to the City for review and approval. Grantee shall make whatever modifications thereto, and shall comply with whatever requirements, as the City may require. Grantee shall obtain all necessary permits and other required governmental authorizations prior to commencing any work within the Easement Area. Grantee shall not permit any liens to attach to the Easement Area in connection with Grantee's work.

(B) All costs associated with Grantee's use of the Easement Area and the construction, maintenance, repair and replacement of the Improvements shall be borne by Grantee. If the Improvements are damaged by fire or other casualty, Grantee shall promptly repair the damage. Grantee shall at all times keep the Easement Area and Improvements in good, clean and safe condition and repair. In the cold weather, Grantee shall keep the easement reasonably free of snow and ice.

(C) Except for the Improvements, Grantee shall not make any alterations or other improvements to the Easement Area or install any signs within the Easement Area without obtaining the City's prior written consent.

4. Indemnification. 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 Improvements, 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 attorney's fees), liability and damages suffered or incurred by, or asserted against, the City in connection with the Easement Area and Improvements by Grantee, its agents, employees, contractors, licensees and invitees.

5. 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 and Grantee and their respective successors in-interest with respect to the Burdened Property and Benefitted Property, respectively.

6. Early Termination. Notwithstanding anything in this Easement to the contrary, this Easement shall automatically terminate upon the abandonment, disuse, change of use or removal of the Improvements, razing or substantial destruction of the structure. Upon the termination of this Easement, the City may require Grantee to remove the Improvements at Grantee's sole expense. Upon the termination of this Easement, either party may record an instrument memorializing such termination in the Franklin County, Ohio Recorder's Office.

7. Exhibits. The following Exhibits are attached hereto and made a part hereof:

- A – Plat of Benefitted Property
- B – Plat of Encroachment

This Encroachment Easement is executed by the duly authorized representative of the City of Gahanna on the date first set forth above.

City of Gahanna

By: _____
Rebecca W. Stinchcomb, Mayor

State of Ohio)
)SS:
County of Franklin)

On this, the _____ day of _____, 2013, before me a notary public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

Notary Public

Accepted by

By: _____
Name

Date: _____

State of Ohio)
)SS:
County of Franklin)

On this, the _____ day of _____, 2013, before me a notary public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

Notary Public

Exhibit A

Myers Surveying Company, Inc.

**2740 East Main Street, Columbus 43209 (Bexley), Ohio
614-235-8677 FAX:614-235-4559**

614-235-8677 FAX:614-235-4559

A Mortgage Location Survey prepared for and certified to:

LGI Building, LLC

Legal Description: Situated in The State of Ohio, County of Franklin, City of Gahanna Being Lot 3 Village of Gahanna, Plat Book 3, Page 178

Applicant:

Posted Address: 71, 73, 75 and 77 Mill St., Gahanna, Ohio

Apparent Encroachments: 1) Blacktop Over Property Line. 2) House Over Property Line. 3) Eaves and Gutters Over Property Line. 4) Utilities Facilities Outside Known Easement. 5) Wooden Sidewalk Crossing Property. 6) Dumpster Crossing Property.



Scale 1" = 30'
Date: 09/25/2012

Pedestrian Access Easement
Instr. No. 199807240185537

70'

wooden sidewalk

U. pole

blacktop

15' easement
IN 200502180030656

Perpetual non-exclusive easement
IN 200502180030656

LOT 3

0.0264 Acre tract

0.173 Acre tract

wood fence

0.6' (eaves)

1.3' eaves

gravel

Ingress-Egress easement
D.B. 3565, Pg. 727

9.4' 19.4'

45.2' 50.3'

75 77

2 Story Stucco & Frame

50.0' 9.5'

0.4' 0.2'

69 71 73

60.5' 14.6' 0.1'

2' eaves 70' 3' eaves

Sty. stucco

2 Sty. Stucco

10' driveway easement D.B. 3565, Pg. 186

10' driveway area D.B. 3565, Pg. 186

Block 103

10' 10' 171 +

10' 10' 171 +

block 103

block 103

14.6' 0.1'



MILL ST. 60

We hereby certify that the foregoing Mortgage Location survey was prepared from actual field measurements in accordance with Chapter 4733-38 Ohio Administrative Code, and is not a boundary survey pursuant to Chapter 4733-37 of said code.

THE INFORMATION SHOWN HEREON IS NOT TO BE UTILIZED FOR THE
INSTALLATION OF BUILDINGS, FENCES, LANDSCAPING OR OTHER PERMANENT
IMPROVEMENTS.

Myers Surveying Co., Inc.

By Herb Meyer

Professional Surveyor

Rec.	Field	DWG	Ltr.	Ck
Myers Order No. - 1-09/10/2012 Looooooooooooo 201209101				

Myers Surveying Company, Inc.

2740 East Main Street, Columbus 43209 (Bexley), Ohio

614-235-8677

FAX: 614-235-4559

LGI Building, LLC

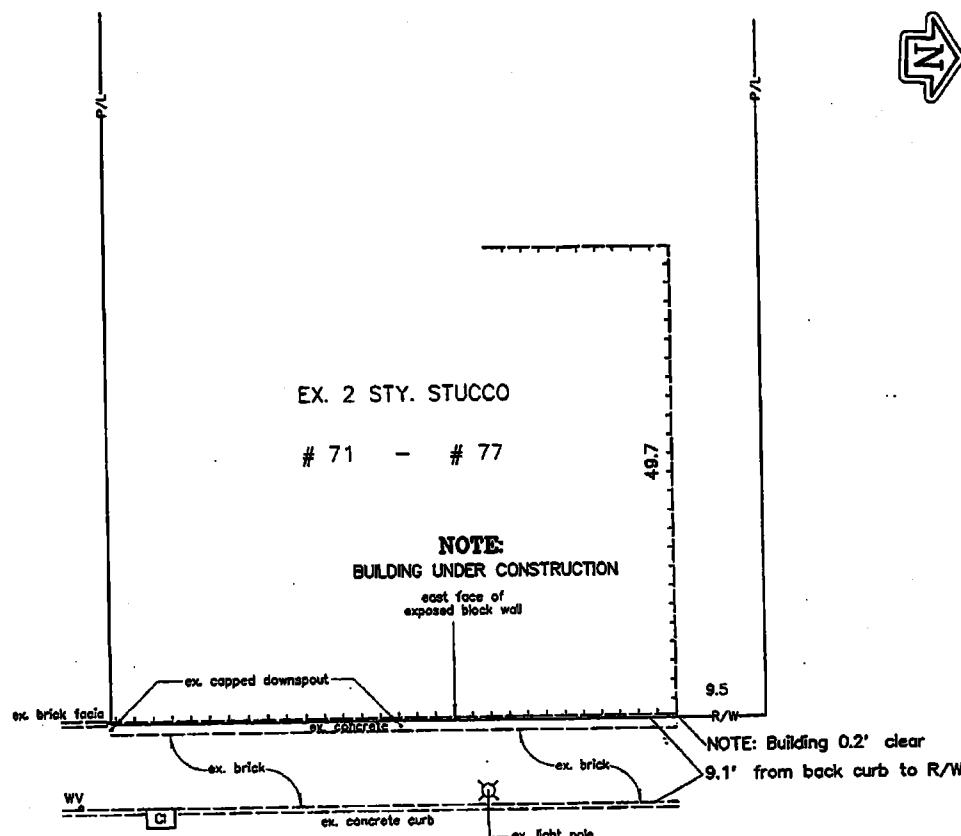
Legal Description: Situated in The State of Ohio, County of Franklin, City of Gahanna Being Lot 3 Village of Gahanna, Plat Book 3, Page 178

Applicant:

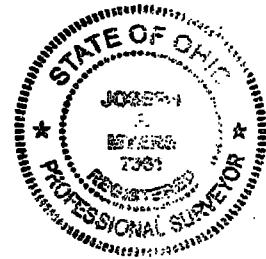
Posted Address: 71, 73, 75 and 77 Mill St., Gahanna, Ohio

15' 7.5' 0' 15'

Scale 1" = 15'
Date: 01/04/2013



MILL STREET 60'



Myers Surveying Co., Inc.

By *Dean P. Myers*

Professional Surveyor

Plat showing right of way features. We hereby certify the foregoing plat is based off of actual field measurements taken on January 4, 2013.

Myers Order No. - 1-09/10/2012

201209101

Rec.	Field	DWG	Ltr.	Ck.

Myers Surveying Company, Inc.

2740 East Main Street, Columbus 43209 (Bexley), Ohio

614-235-8677

FAX: 614-235-4559

Sheet 1 of 2

Encroachment to the Right of Way of Mill Street

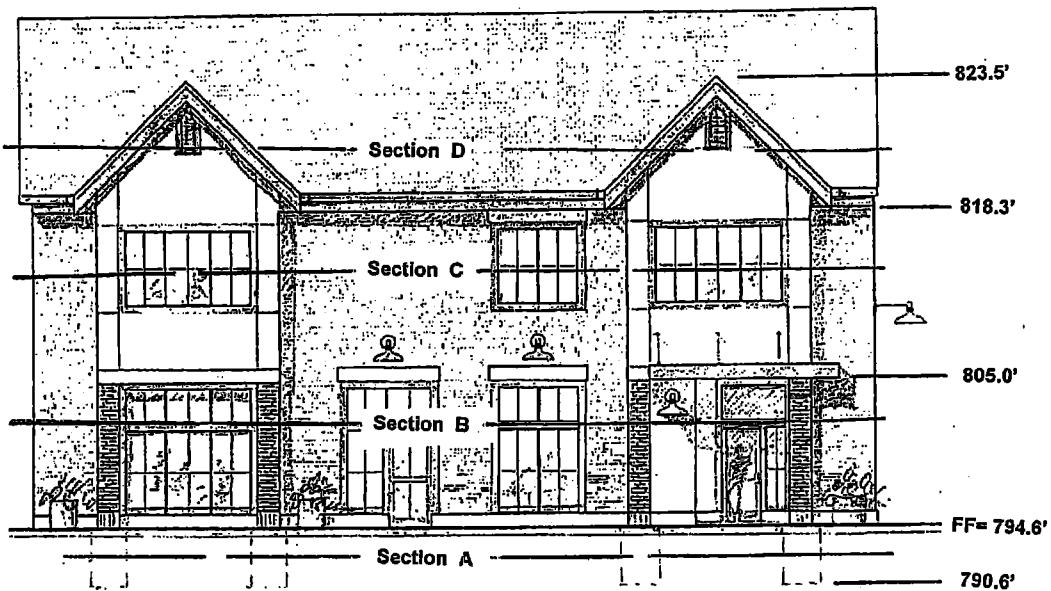
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Applicant:

Posted Address: 71, 73, 75 and 77 Mill St., Gahanna, Ohio



10' 5' 0' 10'

Scale 1" = 10'
Date: 03/13/2013

Note: Various easements are defined by hatched areas shown on cross sections A, B, C and D on sheet 2. The easement limits are to extend in straight vertical planes between elevations shown on sheet 1.



Myers Surveying Co., Inc.

By
3-13-2013
Professional Surveyor

Exhibit for Building Encroachments. Source Benchmarks (NAVD 88) is Franklin County Survey Control NE-1, Elevation = 798.867 feet. Site Benchmark is the southeast corner of concrete base of light pole in front of site (#71-#77 Mill Street), Elevation = 794.45 feet

Myers Order No. - 1-09/10/2012

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201209101

Rec.	Field	DWG	Ltr.	CL

Myers Surveying Company, Inc.

2740 East Main Street, Columbus 43209 (Bexley), Ohio

614-235-8677

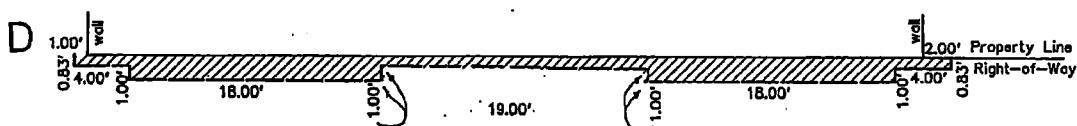
FAX:614-235-4559

Sheet 2 of 2

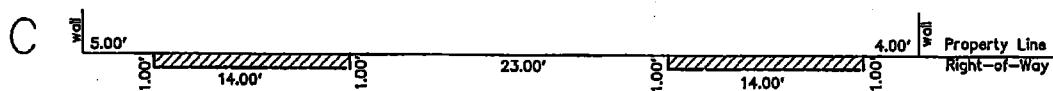
Encroachment to the Right of Way of Mill Street

Legal Description: Situated in The State of Ohio, County of Franklin, City of Gahanna Being Lot 3 Village of Gahanna, Plat Book 3, Page 178

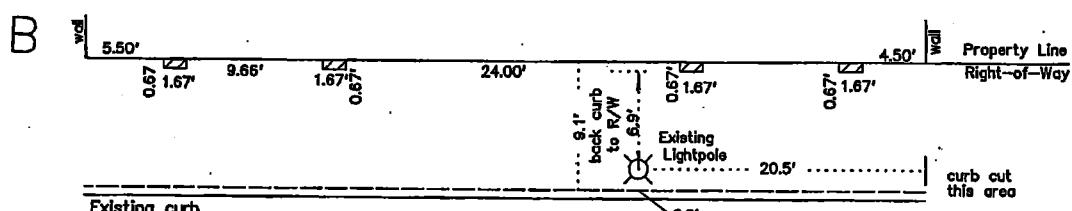
Applicant:
Posted Address: 71, 73, 75 and 77 Mill St., Gahanna, Ohio



CROSS SECTION THROUGH EAVES, GUTTERS & OVERHANGS

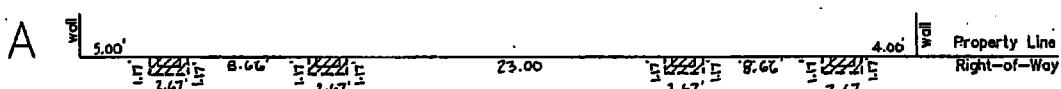


CROSS SECTION THROUGH BUILDING



CROSS SECTION THROUGH PILASTERS

Scale 1" = 10'



Pilaster foundations extend 0.5 feet maximum beyond pilasters on all three (3) sides. Typical at each pilaster.

CROSS SECTION THROUGH FOOTERS

Scale 1" = 10'

Exhibit for Building Encroachments. Source Benchmarks (NAVD 88) is Franklin County Survey Control NE-1, Elevation = 798.867 feet. Site Benchmark is the southeast corner of concrete base of light pole in front of site (#71-#77 Mill Street), Elevation = 794.45 feet

Rec.	Field	DWG	Ltr.	Ck.
Myers Order No. - 1-09/10/2012 11111111111111111111 201209101				