

City of Cincinnati

CHM *AWB*

An Ordinance No. _____ - 2021

AUTHORIZING the City Manager to execute a *Grant of Easement* in favor of RGW Development, LLC pursuant to which the City of Cincinnati will grant a driveway encroachment easement to construct and maintain paved driveways upon portions of the Columbus Avenue public right-of-way in the Hyde Park neighborhood of Cincinnati.

WHEREAS, RGW Development, LLC, an Ohio limited liability company (“Grantee”), owns the properties located at 3657 and 3658 Columbus Avenue in the Hyde Park neighborhood of Cincinnati; and

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

WHEREAS, Grantee has requested a driveway encroachment easement from the City, as more particularly depicted and described in the *Grant of Easement* attached to this ordinance as Attachment A and incorporated by reference, to construct and maintain paved driveways upon portions of the Columbus Avenue public right-of-way; and

WHEREAS, the City Manager, in consultation with DOTE, has determined that granting the easement to Grantee 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 \$5,800, 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 18, 2020; 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 RGW Development, LLC, an Ohio limited liability company (“Grantee”), owner of the

properties located at 3657 and 3658 Columbus Avenue 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 Grantee an encroachment easement to construct and maintain paved driveways upon portions of the Columbus Avenue public right-of-way.

Section 2. That granting the easement to Grantee is not adverse to the City's retained interest in the Columbus Avenue 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, the owner of real property abutting either side of the existing right of way, 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 \$5,800, 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 easements, 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 appropriate 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 OFFICE]

Property: Columbus Avenue, Cincinnati

GRANT OF EASEMENT

This Grant of Easement is made as of the Effective Date, as defined by the signature page hereof, by the **CITY OF CINCINNATI**, an Ohio municipal corporation, with an address of 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in favor of **RGW DEVELOPMENT, LLC**, an Ohio limited liability company, whose address is 739 Kroger Valley Drive, Cincinnati, OH 45226 ("**Grantee**").

Recitals:

A. The City owns the public right-of-way known as Columbus Avenue in Cincinnati, which is under the management of the City's Department of Transportation and Engineering ("**DOT**").

B. By virtue of a *Quitclaim Deed* recorded on April 18, 2019, in Official Record 13899, Page 1771, Hamilton County, Ohio Records, Grantee owns certain real property that abuts either side of the unimproved Columbus Avenue right-of-way, namely, 3657 Columbus Avenue (west side) and 3658 Columbus Avenue (east side), as more particularly described on Exhibit A (*Legal Description - Benefitted Properties*) hereto (the "**Benefitted Properties**"). The Benefitted Properties consist of vacant land on which Grantee desires to build two single-family residences (the "**Structures**").

C. Grantee has requested a non-exclusive easement to construct pavement for driveways (the "**Pavement**") that will encroach upon portions of the Columbus Avenue right-of-way, as described on Exhibit B (*Legal Description – Easement Areas*) and depicted on Exhibit C (*Easement Plat*) hereto (the "**Driveway Encroachment Easements**", and the "**Easement Areas**", as applicable) to serve the Structures on the Benefitted Properties.

D. The surface of Columbus Avenue right-of-way requested by Grantee for the Driveway Encroachment Easements is not currently being used for transportation or other municipal purposes, and therefore the City is agreeable to grant to Grantee the Driveway Encroachment Easements.

E. The City Manager, in consultation with DOTE, has determined that granting the Driveway Encroachment Easements to Grantee will not have an adverse effect on the City's retained interest in the Columbus Avenue public right-of-way.

F. The fair market value of the Driveway Encroachment Easements, as determined by professional appraisal by the City's Real Estate Services Division, is \$5,800 which has been deposited with the City Treasurer.

G. City Planning Commission, having the authority to approve the change in use of City-owned property, approved the Driveway Encroachment Easements at its meeting on December 18, 2020.

H. Execution of this instrument was authorized by Ordinance No. ____-2021, passed by Cincinnati City Council on _____, 2021.

NOW THEREFORE, for and in consideration of the amount hereinabove stated, the receipt and adequacy of which are hereby acknowledged, the parties 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 Properties, a non-exclusive encroachment easement over the Easement Areas for those portions of the Improvements that encroach upon the Columbus Avenue right-of-way, as described on Exhibit B, and depicted on Exhibit C, hereto for the construction, surfacing, use, maintenance, repair, reconstruction resurfacing, and removal of the Improvements. Grantee acknowledges that the Driveway Encroachment Easements are non-exclusive and agrees that it shall not do anything to interfere with the use of the Easement Areas by the City for municipal purposes. As a material inducement to the City to grant the Driveway Encroachment Easements, Grantee hereby agrees on behalf of itself, its successors-in-interest, and assigns to erect at no expense to the City, a fence along the Benefitted Properties' northern boundary lines and extending along the northern boundary line of the Easement Areas (the "**Fence**").

2. **Construction of the Improvements.** Grantee shall be solely responsible for all costs associated with the design and construction of the Pavement and the Fence (collectively, the "**Improvements**"). Prior to construction, Grantee shall submit all drawings and obtain all permits as required by DOTE. Grantee shall ensure full compliance with all City standards, policies and guidelines and shall promptly remove and correct non-conforming work as directed by DOTE. Upon Grantee's completion of construction of the Improvements, the Improvements shall not be altered, removed or relocated, nor shall any other improvements be constructed within the Easement Areas, without the City's prior written consent. Grantee shall be solely responsible for repairing any and all damage to above-ground or underground utilities in the vicinity caused by Grantee's construction, maintenance and repair of the Improvements.

3. **Maintenance and Repairs.** Grantee, its successors-in-interest, and assigns at no cost to the City, shall at all times keep and maintain the Improvements (and any and all other future improvements within the Easement Areas that may be constructed by Grantee, its successors-in-interest, and assigns, with the City's prior written consent) in a continuous state of good and safe condition and repair as determined by DOTE, including without limitation promptly repairing any and all damage thereto, no matter how caused. Grantee hereby acknowledges and covenants on behalf of itself, its successors-in-interest, and assigns that the Improvements shall be jointly and severally managed, maintained, repaired, replaced and paid for by Grantee, its successors-in-interest, and assigns. Grantee acknowledges that there may be existing easements, utility lines and related facilities in the vicinity of the Easement Areas ("**Third Party Utility Lines**"). In connection with Grantee's activities within the Easement Areas, Grantee shall not interfere with the access of any relevant utility company to maintain and repair the Third Party Utility Lines, and shall, at Grantee's expense, promptly repair any and all damage to the Third Party Utility Lines caused by Grantee, its agents, employees or contractors. Any relocation of Third Party Utility Lines necessitated by Grantee's activities shall be handled entirely at Grantee's expense. All work undertaken by Grantee hereunder shall be in compliance with all applicable codes, laws, and other governmental standards, policies, guidelines and requirements.

4. **Default.** If Grantee, its successors-in-interest, or assigns fail to perform any required work under sections 2 or 3 hereof, 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 jointly and severally liable to DOTE for the payment of such work. Any outstanding amount due under this instrument shall create a lien on the Benefitted Properties 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.

5. Waiver; Indemnification. As a material inducement to the City to grant the Driveway Encroachment Easements described herein, for the benefit of the Benefitted Properties, (i) Grantee on behalf of itself, its successors-in-interest, and assigns 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 Driveway Encroachment Easements or incidents occurring within the Easement Areas, no matter how caused, and (ii) Grantee, its successors-in-interest, and assigns agree to defend (with counsel reasonably acceptable to the City), indemnify, and hold the City harmless from and against any and all claims, 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, use, maintenance, repair, alteration, relocation, removal, and any and all other activities undertaken by Grantee pursuant to this instrument or otherwise related to the Improvements. If deemed appropriate by the City now or in the future, Grantee, its successors-in-interest, and assigns shall maintain a policy of liability insurance pertaining to its use of the Improvements, in a form acceptable to the City, naming the City as an additional insured.

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 and Grantee and their respective successors-in-interest, and assigns with respect to the Easement Areas and the Benefitted Properties.

7. Termination. Notwithstanding anything in this instrument to the contrary, if at any time the City decides to further improve (or permit the improvement of) Columbus Avenue for transportation or other municipal purposes, the City shall have the right to require Grantee to redesign, relocate and/or remove the Improvements, at no cost to the City; provided, however that no such redesign, relocation or removal shall result in the permanent blockage of pedestrian or vehicular access to the Benefitted Properties.

8. Coordinated Report Conditions. Notwithstanding anything in this instrument to the contrary, the following conditions shall apply:

(A) DOTE:

(i) Existing turn-around and road ends signage shall not be disturbed and that vehicles, including Police/Fire/Single Unit Delivery) shall be able to continue to maneuver safely.

(ii) The Improvements shall not cause drainage problems that will adversely impact surrounding properties. Grantee, its successors-in-interest, and assigns shall be responsible for any and all property damage caused by stormwater runoff and drainage issues caused by, or related to, the Improvements.

(iii) Driveway aprons within the public right-of-way must be 7" thick concrete in accordance with City Standard Drawing ACC. NO. 21436. Remainder of driveway in the right of way must be constructed with a hard surface such as concrete, asphalt or pavers.

(iv) 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.

(v) No private utilities shall be installed in the right-of-way unless the petitioner requesting the installation of such private utilities shall first become a member and maintain membership of OUPS (Ohio Utility Protection Service), by calling 1-800-362-2764, if not already a member. Membership is required before a permit will be issued. Failure to maintain membership will result in the property owner being responsible for repairs due to damage caused by excavations performed by utility companies, the city, or a permitted contractor.

9. **Exhibits.** The following exhibits are attached hereto and made a part hereof:
Exhibit A – *Benefitted Property*
Exhibit B – *Legal Description -Easement Areas*
Exhibit C – *Easement Plat (depicting Grantee's Property & Easement Area)*

[Remainder of this Page is Intentionally Blank; Signature Pages to Follow]

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 acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Recommended by:

John S. Brazina, Director
Department of Transportation and Engineering

Approved as to Form:

Assistant City Solicitor

ACKNOWLEDGED AND ACCEPTED BY:
RGW DEVELOPMENT, LLC,
an Ohio limited liability company

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by _____, the _____ of **RGW DEVELOPMENT, LLC**, an Ohio limited liability company, on behalf of the limited liability company. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street
Cincinnati, OH 45202

EXHIBIT A
BENEFITTED PROPERTIES

Tract I:
Parcel Id(s): 040-0005(0228 (& 229 cons.))

Description for: RGW – 0.2074 Acres
Location: City of Cincinnati, Wasson Way & Columbus Avenue (West Side)

Situated in Section 27, Town 4, Fractional Range 2, City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

COMMENCING at an existing MAG Nail at the intersection of the centerline of Paxton Avenue and the south right-of-way line of Wasson Road;

Thence with the said south line of Wasson Road, North 84°16'22" West, 598.88 feet a point in the west line of Columbus Avenue;

Thence with the said west line of Columbus Avenue, South 05°52'06" West, 27.31 feet to a set Iron Pin and the POINT OF BEGINNING.

Thence continuing with the said west line of Columbus Avenue, South 05°52'06" West, 51.52 feet to a set Cross Notch at the northeast corner of a tract conveyed to Andrew E. W. Jones, as recorded in Official Record 13250, Page 1671 of the Hamilton County Recorder's Office;

Thence along the north line of said Andrew E. W. Jones, North 84°10'22" West, 125.00 feet to a recovered Iron Pin and Cap stamped G J Berding Surveying Inc, at the southeast corner of a tract conveyed to Travis A. Cotterman, as recorded in Official Record 10890, Page 65 of the Hamilton County Recorder's Office and the northeast corner of a tract conveyed to Denise N. Crawley as recorded in Official Record 13379, Page 178 of the Hamilton County Recorder's Office;

Thence along the east and north lines of said Andrew E. W. Jones, North 05°52'06" East, 30.00 feet to a set Iron Pin AND North 84°10'22" West, 125.00 feet to a set Iron Pin in the east line of Monteith Avenue;

Thence along the east line of said Monteith Avenue, North 05°52'06" East, 20.77 feet to a set Iron Pin;

Thence South 84°20'39" East, 250.00 feet to the POINT OF BEGINNING.

CONTAINING 0.2074 ACRES.

The above described parcel being part of those lands conveyed to Norfolk & Western Railway, as recorded in Deed Book 2196, Page 452 of the Hamilton County Recorder's Office and identified as Hamilton County Auditor's Parcel No. 040-0005-0228 & 0229 (Cons);

The bearings are based on the State Plane Coordinate System, Ohio South Zone (NAD83).

All iron pins set are 5/8" X 30" rebar with cap stamped "G J BERDING SURVEYING, INC".

Prepared by G.J. BERDING SURVEYING, INC. on December 4, 2018. Based on an Plat of Survey prepared by G.J. BERDING SURVEYING, INC. on December 4, 2018.

Tract II:

Parcel Id: 039-0006-0009

Description for: RGW – 0.1588 Acres

Location: City of Cincinnati, Wasson Way & Columbus Avenue (East Side)

Situated in Section 27, Town 4, Fractional Range 2, City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

COMMENCING at an existing MAG Nail at the intersection of the centerline of Paxton Avenue and the south right-of-way line of Wasson Road;

Thence with the said south line of Wasson Road, North 84°16'22" West, 577.55 feet to a recovered Iron Pin and Cap stamped G J Berding Surveying Inc at the northwest corner of a tract conveyed to the City of Cincinnati, as recorded in Official Record 13259, Page 1793 of the Hamilton County Recorder's Office and known as Hamilton County Auditor's Parcel No. 039-0005-0168;

Thence along the west and south lines of said City of Cincinnati, South 05°28'21" West, 30.00 feet to a recovered Iron Pin and Cap stamped G J Berding Surveying Inc AND South 84°16'22" East, 18.47 feet to a set Iron Pin in the east line of Columbus Avenue, and the POINT OF BEGINNING.

Thence continuing along said south line of the City of Cincinnati, South 84°16'22" East, 172.90 feet to a set Iron Pin at the northwest corner of a tract conveyed to Michael R. Boldt & Amy M. Boldt, as recorded in Official Record 13585, Page 853 of the Hamilton County Recorder's Office;

Thence along the west line of said Michael R. Boldt & Amy M. Boldt, South 05°52'08" West, 40.00 feet to a set Iron Pin at the northeast corner of a tract conveyed to Todd D. Kelly & Mary L. Pearce, as recorded in Official Record 13660, Page 1922 of the Hamilton County Recorder's Office;

Thence along the north line of said Todd D. Kelly & Mary L. Pearce, and the north lines of tracts conveyed to Michael Alan Jarjosa, as recorded in Official Record 13374, Page 1311 of the Hamilton County Recorder's Office, Todd N. Marinelli as recorded in Official Record 10606, Page 1791 of the Hamilton County Recorder's Office and Joshua D. Joseph & Erin E. Boyer as recorded in Official Record 13029, Page 1051 of the Hamilton County Recorder's Office, North 84°16'22" West, 172.90 feet to a set Iron Pin in the east line of aforesaid Columbus Avenue;

Thence along said east line of Columbus Avenue, North 05°52'06" East, 40.00 feet to the POINT OF BEGINNING.

CONTAINING 0.1588 ACRES.

The above described parcel being part of those lands conveyed to Norfolk & Western Railway, as recorded in Deed Book 2196, Page 452 of the Hamilton County Recorder's Office and identified as Hamilton County Auditor's Parcel No. 039-0006-0009;

The bearings are based on the State Plane Coordinate System, Ohio South Zone (NAD83).

All iron pins set are 5/8" X 30" rebar with cap stamped "G J BERDING SURVEYING, INC".

Prepared by G.J. BERDING SURVEYING, INC. on December 4, 2018. Based on an Plat of Survey prepared by G.J. BERDING SURVEYING, INC. on December 4, 2018.

EXHIBIT B
LEGAL DESCRIPTION EASEMENT AREAS

Situate in Section 27, Town 4, Fractional Range 2, Miami Purchase, Columbia Township, City of Cincinnati, Hamilton County, Ohio, being an Ingress/Egress and Access Easement over and across a portion of Columbus Avenue south of the intersection with Wasson Road, more particularly described as follows:

Beginning at the southeast corner of a 0.2074-acre parcel of land conveyed to RGW Development, LLC by deed recorded in Official Record 13899, Page 1771, Tract I, said point also being in the east line of Lot 30 of Sunset Park Subdivision recorded in Plat Book 12, Page 26A, , Hamilton County, Ohio Recorder's Office;

Thence with the east line of said 0.2074 acres, North 05°52'06" East, 43.18 feet to a point;

Thence South 84°07'54" East, 40.00 feet to a point in the west line of a 0.1588-acre parcel of land conveyed to RGW Development, LLC by deed recorded in Official Record 13899, Page 1771, Tract II, Hamilton County, Ohio Recorder's Office;

Thence with the west line of said 0.1588 acres, South 05°52'06" West, 34.25 feet to the southwest corner of said 0.1588 acres;

Thence South 83°17'13" West, 40.98 feet to the point of beginning.

Containing 0.0355 acres of land.

Subject to all legal highways, easements and restrictions of record.

The above description was prepared from a Plat of Survey by McGill Smith Punshon, Inc. dated August 24, 2020. The bearings in the above description are based on, Ohio South Zone, State Plane Coordinate System.



Prepared by: McGill Smith Punshon, Inc.
Date: August 24, 2020
MSP No.: 20124.01

20124013-11641g.egr



McGill Smith Punshon, Inc.
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**EXHIBIT C
EASEMENT PLAT**

