

City of Cincinnati

CHM
AWB

An Ordinance No. _____

- 2021

AUTHORIZING the City Manager to execute a *Grant of Encroachment Easements* in favor of Warsaw Creative LLC, pursuant to which the City of Cincinnati will grant encroachment easements for existing projections encroaching upon the Considine Avenue public right-of-way in the East Price Hill neighborhood.

WHEREAS, Warsaw Creative LLC, an Ohio limited liability company (“Grantee”), owns the building located at 3120 Warsaw Avenue in the East Price Hill neighborhood; and

WHEREAS, the City of Cincinnati owns the adjoining Considine 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 encroachment easements from the City, as more particularly depicted and described in the *Grant of Encroachment Easements* attached to this ordinance as Attachment A and incorporated herein by reference, to permit a stone retaining wall, railing, and step to encroach upon portions of the Considine Avenue public right-of-way; and

WHEREAS, the City Manager, in consultation with DOTE, has determined (i) that granting the easements to Grantee is not adverse to the City’s retained interest in the public right-of-way and (ii) that granting the easements will not have an adverse effect on the usability or accessibility of any existing public right-of-way facilities; and

WHEREAS, pursuant to Cincinnati Municipal Code Sec. 331-5, the City 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 easements is approximately \$100, which Grantee has agreed to pay; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the easements at its meeting on March 19, 2021; 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 Easements* in favor of Warsaw Creative LLC, an Ohio limited liability company

("Grantee"), owner of the building located at 3120 Warsaw Avenue in the East Price Hill neighborhood, in substantially the form attached to this ordinance as Attachment A and incorporated herein by reference, pursuant to which the City of Cincinnati will grant to Grantee encroachment easements to permit a stone retaining wall, railing, and step to encroach upon portions of the Considine Avenue public right-of-way.

Section 2. That granting the easements to Grantee (i) is not adverse to the City's retained interest in the Considine Avenue public right-of-way and (ii) will not have an adverse effect on the usability or accessibility of any existing Considine Avenue public right-of-way facilities.

Section 3. That it is in the best interest of the City to grant the easements without competitive bidding because, as a practical matter, no one other than Grantee would have any use for the easements.

Section 4. That the fair market value of the easements, as determined by appraisal by the City's Real Estate Services Division, is approximately \$100, which Grantee has agreed to pay.

Section 5. That the proceeds from the grant of easements 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 Easements*, 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 EASEMENTS

(encroachments into a portion of Considine Avenue)

This Grant of Encroachment Easements 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 **Warsaw Creative LLC**, an Ohio limited liability company, the address of which is c/o Price Hill Will 3724 St. Lawrence Avenue, Cincinnati, Ohio 45205 ("**Grantee**").

Recitals:

A. By virtue of a *General Warranty Deed* dated October 1, 2019, Grantee holds title to certain real property located at 3120 Warsaw Avenue, 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 Considine Avenue public right-of-way, which is under the management of the City's Department of Transportation and Engineering ("**DOT**").

C. Grantee has requested the City to grant encroachment easements for existing projections encroaching upon the Considine Avenue public right-of-way, i.e., a stone retaining wall, railing, and step (the "**Improvements**").

D. The City Manager, in consultation with DOT, has determined that (i) the encroachment easements will not have an adverse effect on the City's retained interest in the Considine Avenue public right-of-way, and (ii) granting the encroachment easements will not have an adverse effect on the usability or accessibility of any existing Considine Avenue public right-of-way facilities.

E. The City's Real Estate Services Division has determined that the fair market value of the encroachment easements, as determined by appraisal, is \$100, 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 encroachment easements at its meeting on March 19, 2021.

G. Cincinnati City Council approved the encroachment easements by Ordinance No. ____-2021, passed on _____, 2021.

NOW THEREFORE, the parties do hereby agree as follows:

1. Grant of Encroachment Easements. 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, non-exclusive encroachment easements to maintain, repair, reconstruct, replace, and remove the Improvements on, below, and above the Considine Avenue public right-of-way, as more particularly depicted on Exhibit B, and more particularly described on Exhibit C (Legal Description-Encroachment Easements) hereto (the "**Encroachment Easements**" or "**Encroachment Easement Area**", as applicable). Grantee shall not make any modifications to the Improvements without the City's prior written consent. Notwithstanding anything herein to the contrary, the Encroachment Easements shall automatically terminate upon (i) the complete demolition of the Improvements within the Encroachment Easement Area, such that the Encroachment Easements would be rendered unnecessary; (ii) upon written notice from the City, if the City determines that it needs the Encroachment 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 Improvements is 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.

2. Construction, Maintenance, and Repairs.

(A) The Improvements shall be constructed and maintained in accordance with the plans and specifications approved by DOTE, and in accordance with applicable code standards. Once installed, Grantee shall not make any enlargements or other modifications to the Improvements without DOTE's prior written consent.

(B) Following installation, at no cost to the City, Grantee shall maintain the Improvements in a continuous state of good and safe condition and repair. Grantee acknowledges that there may be existing easements, utility lines, and related facilities in the vicinity of the Encroachment Easement Area ("**Third-Party Utility Lines**"). In connection with Grantee's construction, maintenance, repair, and use of the Improvements, 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, their agents, employees, contractors, subcontractors, tenants, licensees, or invitees. Any relocation of Third-Party Utility Lines necessitated by the maintenance, repair, reconstruction, or removal of the Improvements 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

3. 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 Encroachment 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 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 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 Improvements.

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

5. Coordinated Report Conditions (CR #74-2020). The following additional conditions shall apply:

(A) Greater Cincinnati Water Works: There is an active existing 5/8" water service branch (H-37059 5/8" Lead branch) within the Encroachment Easement Area. This branch serves the subject property. Grantee should contact OUPS if there is to be any work to be performed in this area in the future.

(B) Department of Transportation and Engineering:

(i) Grantee shall adhere to Federal, State and Municipal accessibility requirements. The existing sidewalk clear path of travel from the back of curb to the front of the railing curb measures approximately 8'-6".

(ii) Grantee shall retain all ownership and maintenance responsibilities for all existing items and conditions located within the Encroachment Easement Area.

(C) Cincinnati Bell: There are existing underground telephone facilities at this location. The existing facilities must remain in place, in service and able to be accessed. Any damage done to the facilities, or any work done to relocate the facilities as a result this easement will be handled entirely at the property owner's expense.

6. 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-Encroachment Easement Area*

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 _____, 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:

Warsaw Creative LLC,
an Ohio limited liability company

By: _____

Printed Name: _____

Title: _____

Date: _____, 2021

This instrument prepared by:
City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, OH 45202

EXHIBIT A

to Grant of Encroachment Easements

LEGAL DESCRIPTION - BENEFITTED PROPERTY

TRACT II - Auditor's Parcel No. 173-0004-0038: S\

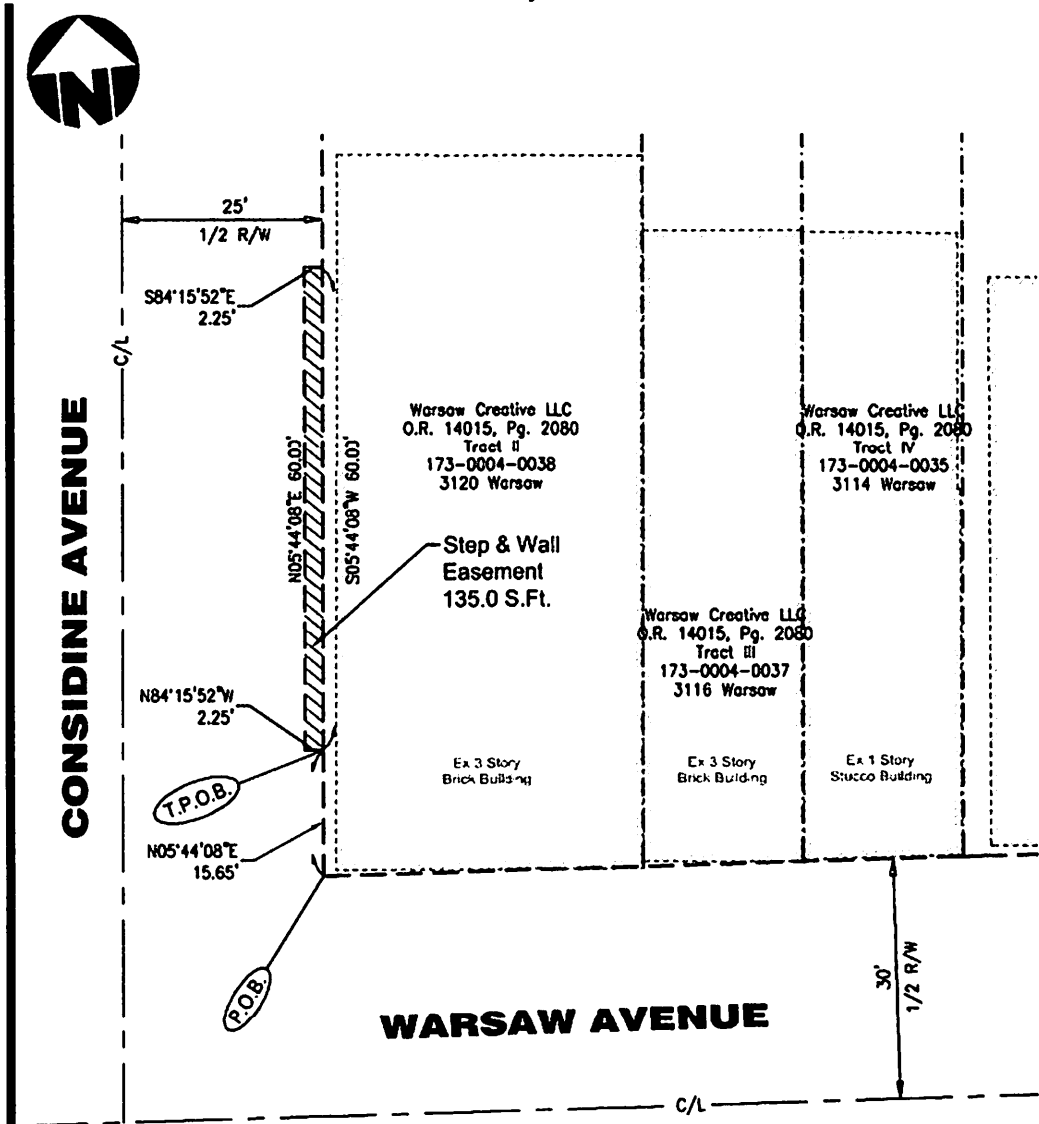
Situated in the City of Cincinnati, Ohio, Section 36, Town 4, Fractional Range 1 and more particularly described as follows:

Beginning at the northeast corner of Warsaw and Considine Avenues; thence North 1°02' East along the East line of Considine Avenue 120.00 feet to a point; thence North 89°23' East 40.00 feet to a point; thence South 1°02' West 120.00 feet to a point in the North line of Warsaw Avenue; thence South 89°23' West along the North line of Warsaw Avenue 40.00 feet to the Place of Beginning. Containing 0.11 acres of land.

EXHIBIT B

to Grant of Encroachment Easements

Survey Plat



Note: This exhibit was prepared from existing deeds and surveys of record. It does not represent a boundary survey.

Drawing:	20-0005 ES N STEP
Sheet:	1 of 1
Drawn by:	j.o.l.
Scale:	1" = 20'
Issue Date:	10-20-20

CONSIDINE AVENUE

SECTION 36, TOWN 4, F. RANGE 1 BTM
CITY OF CINCINNATI
HAMILTON COUNTY, OHIO

EASEMENT EXHIBIT



www.bayerbecker.com
1404 Race Street, Suite 204
Cincinnati, OH 45202 - 513.834.6151

EXHIBIT C

to Grant of Encroachment Easements

Legal Description – Encroachment Easement Area

Situated in Section 36, Town 4, Fractional Range 1 Between the Miamis, Storrs Township, The City of Cincinnati, Hamilton County, Ohio being a Step and Wall Easement into the existing 50-foot-wide right-of-way of Considine Avenue and being further described as follows:

Begin at the northeast corner of the intersection of the east right of way of Considine Avenue and the north right of way of Warsaw Avenue, said intersection being the southwest corner of Warsaw Creative LLC (Tract II) as recorded in Official Record 14015, Page 2080 of the Hamilton County Recorder's Office; thence, departing the north right of way of said Warsaw Avenue and with the east right of way of said Considine Avenue, North 05° 44' 08" East, 15.65 feet to the True Point of Beginning;

thence, from the True Point of Beginning, thus found and departing said Warsaw Creative LLC (Tract II) and through the lands of said Considine Avenue the following three courses: North 84° 15' 52" West, 2.25 feet;

thence, North 05° 44' 08" East, 60.00;

thence, South 84° 15' 52" East, 2.25 feet to the west line of said Warsaw Creative LLC (Tract II);

thence, with the east right of way of said Considine Avenue, South 05° 44' 08" West, 60.00 feet to the True Point of Beginning containing 135.0 square feet.

Basis of Bearings: NAD83(2011) Ohio State Plane Coordinates, South Zone (3402).

The above description was prepared from an exhibit made on October 19, 2020 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.