

Contract No. _____

Property: Bartle Avenue

PROPERTY SALE AGREEMENT

This Property Sale Agreement (this "**Agreement**") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202 (the "**City**") and **UPTOWN TRANSPORTATION AUTHORITY, LLC**, an Ohio limited liability company whose tax mailing address is 619 Oak Street, Suite 1100, Cincinnati, OH 45206 ("**Purchaser**").

Recitals:

A. The City owns a 0.1749 acre tract of land dedicated as public right-of-way known as Bartle Avenue in the Avondale neighborhood of Cincinnati, Ohio, as depicted on Exhibit A (*Survey Plat*) and described on Exhibit B (*Quitclaim Deed*) hereto (the "**Sale Property**"). The Sale Property is under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

B. Purchaser owns adjoining property that abuts the Sale Property, as depicted on Exhibit A hereto ("**Purchaser's Property**"). Purchaser has petitioned the City to vacate the Sale Property as public right-of-way and seeks to purchase it from the City.

C. Andrew D. Graf, Esq., a reputable attorney practicing in Hamilton County, Ohio, has provided the following: (i) an Attorney's Certificate of Title dated October 19, 2020, certifying that Purchaser is the owner of all real property abutting the Sale Property, and (ii) the written consent of all necessary abutters to the City's vacation and sale of the Sale Property to Purchaser, a copy of which is attached as Exhibit C (*Attorney's Certificate of Title*) hereto.

D. Pursuant to Ohio Revised Code Chapter 723, the legislative authority of a municipal corporation may convey the fee simple estate or other interest in land used for streets and alleys if it has determined that the property is not needed for municipal purposes.

E. The City has determined that the Sale Property is not needed for transportation or any other municipal purpose and that the sale of the Sale Property will not be detrimental to the public interest.

F. The City's Real Estate Services Division has determined, by a professional appraisal, that the fair market value of the Sale Property is \$114,300.00, which Purchaser is willing to pay.

G. The City has determined that eliminating competitive bidding in connection with the City's sale of the Sale Property is justified because Purchaser owns all real property that abuts the Sale Property, and as a practical matter no one other than an abutting property owner would have any use for it.

H. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Sale Property to Purchaser at its meeting on March 5, 2021.

I. Execution of this Agreement was authorized by Cincinnati City Council by Ordinance No. [____]-2021, passed on [____], 2021.

NOW, THEREFORE, the parties agree as follows:

1. Purchase Price. Subject to the terms and conditions set forth herein, the City hereby agrees to sell the Sale Property to Purchaser, and Purchaser hereby agrees to purchase the Sale

Property from the City for \$114,300 (the “**Purchase Price**”). Purchaser acknowledges that it is familiar with the condition of the Sale Property and, at Closing (as defined below), the City shall convey the Sale Property to Purchaser in “as is” condition. The City makes no representations or warranties to Purchaser with respect to the condition of the Sale Property and, from and after the Closing, the City shall have no liability of any kind to Purchaser for any defects, adverse environmental condition, or any other matters affecting the Sale Property.

2. Closing.

(A) Conditions. The closing on the City’s sale of the Sale Property to Purchaser (the “**Closing**”) shall not occur unless and until the following conditions have been satisfied (the “**Conditions**”); *provided, however,* that if the City, in its sole discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City’s Quitclaim Deed to Purchaser or handle such Conditions post-Closing. Purchaser shall perform all work and investigations and shall obtain and prepare all necessary documents pertaining to the satisfaction of the Conditions, at no cost to the City.

- (i) Title & Survey: Purchaser’s approval of title to the Sale Property and, if obtained by Purchaser, an ALTA property survey of the Sale Property;
- (ii) Inspections, Utilities & Zoning/Building Code Requirements: Purchaser’s approval of inspections of the Sale Property, including without limitation environmental assessments and soil assessments, all matters pertaining to utility service for the Sale Property, and all zoning and building code requirements that are applicable to the Sale Property;
- (iii) Plats and Legal Descriptions: Purchaser shall have provided the City with all plats and legal descriptions as required by DOTE, the City Planning Department, and the Hamilton County Auditor and Recorder in connection with the City’s vacation and sale of the Sale Property;
- (iv) Abutter’s Interests: Purchaser shall have provided the City with an attorney’s certificate of title certifying the names of all abutters to the Sale Property.
- (v) Coordinated Report Conditions (CR #87-2019):
 - (a) DOTE:
 1. DOTE to review and approve proposed development prior to the sale to assess the impact on adjacent right-of-way.
 2. Abutting property owners must agree to the sale in writing.
 3. The existing utilities must be granted easements or relocated at petitioner’s expense.
 4. No Auditor’s parcels shall be landlocked by this vacation/sale. If possible, potential landlocked parcels should be consolidated with parcels having legal street frontage.
 5. The petitioner is required, at their expense, to provide the City with an acceptable legal description for the sale area that meets the recordable standards of the Hamilton County Recorder’s Office.
 6. Bartels Avenue must be closed off at Martin Luther King Drive with a curb, sidewalk, and/or drive approach.

7. 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.

(b) Duke Energy:

1. Duke Energy overhead electric facilities currently located within the right of way of this portion of Bartle Avenue could potentially be impacted by the granting of the vacation and sale as requested. In order to minimize disruption to existing utilities within said rights of way, Duke Energy reserves the right of unrestricted ingress and egress. No structures may be constructed within said utility area in conflict with such electric facilities, nor may the utility area be physically altered so as to (i) reduce the clearances of the facilities; (ii) impair the ability to maintain the facilities or; (iii) create a hazard to the utility's facilities.
2. Any party damaging said facilities shall be responsible for all costs and expenses associated with the repair or replacement of the same.
3. If the said overhead electric facilities are to remain in the existing location, Duke Energy Ohio, Inc., Land Services would request that an easement be granted in our customarily used easement form at the time of the closing of the properties and prior to the objections being lifted.

(c) Cincinnati Bell:

1. There are existing underground telephone facilities at this location.
2. 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 of this request will be handled entirely at the property owner's expense.

(d) B&I:

1. Petitioner shall consolidate the Sale Property with its abutting properties upon closing on the Sale Property.

(B) Right to Terminate. If either party determines, after exercising reasonable good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period of time, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all of the Conditions have not been satisfied to the satisfaction of both parties or waived in writing and for that reason the Closing has not occurred within **90 days** after the Effective Date, this Agreement and all rights and obligations of the parties hereunder shall automatically terminate.

(C) Closing Date. Provided the Conditions have been satisfied, the Closing shall take place **30 days** after the Effective Date, or on such earlier or later date as the parties may agree upon.

(D) Closing Costs and Closing Documents. At the Closing, (i) Purchaser shall pay the Purchase Price in full, and (ii) the City shall convey all of its right, title and interest in and to the Sale Property to Purchaser by *Quitclaim Deed* in the form of Exhibit B. Purchaser shall pay all Hamilton County, Ohio recording fees, transfer tax, and any and all other customary closing costs associated with

the Closing. There shall be no proration of real estate taxes and assessments at Closing, and from and after the Closing, Purchaser shall pay all real estate taxes and assessments thereafter becoming due. At Closing, the parties shall execute a settlement statement and any and all other customary closing documents that are necessary for the Closing, in such forms as are approved by the City. The City shall not however be required to execute a title affidavit at Closing or other similar documents pertaining to title, it being acknowledged by Purchaser that the City is selling the Property "as is." Pursuant to Section 301-20, Cincinnati Municipal Code, at Closing, Purchaser shall pay to the City any and all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed by Purchaser to the City. The provisions of this Agreement shall survive the City's execution and delivery of the *Quitclaim Deed* and shall not be deemed to have been merged therein.

3. Notices. All notices given by the parties hereunder shall be deemed given if personally delivered, delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. regular or certified mail, addressed to the parties at their respective addresses set forth in the introductory paragraph of this Agreement. If Purchaser send a notice to the City alleging that the City is in default under this Agreement, Purchaser shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, OH 45202. Notices shall be deemed given on the date of receipt.

4. Representations, Warranties, and Covenants of Purchaser. Purchaser makes the following representations, warranties and covenants to induce the City to enter into this Agreement:

(i) Purchaser has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has by proper action been duly authorized, executed and delivered by Purchaser and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid and binding obligations of Purchaser.

(ii) Purchaser's execution, delivery and performance of this Agreement and the transaction contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or any mortgage, contract, agreement or other undertaking to which Purchaser is a party or which purports to be binding upon Purchaser or upon any of its assets, nor is Purchaser in violation or default of any of the foregoing.

(iii) There are no actions, suits, proceedings or governmental investigations pending, or to the knowledge of Purchaser, threatened against or affecting Purchaser, at law or in equity or before or by any governmental authority.

(iv) Purchaser shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute or governmental proceedings or investigation affecting Purchaser that could reasonably be expected to interfere substantially or materially and adversely affect its financial condition or its purchase of the Sale Property.

(v) The statements made in the documentation provided by Purchaser to the City have been reviewed by Purchaser and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.

(vi) Purchaser does not owe any outstanding fines, penalties, judgments, water or other utility charges or other amounts to the City.

5. General Provisions.

(A) Entire Agreement. This Agreement (including the exhibits hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior

discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(B) Amendments. This Agreement may be amended only by a written amendment signed by both parties.

(C) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Purchaser agrees that venue in such court is proper. Purchaser hereby waives trial by jury with respect to any and all disputes arising under this Agreement.

(D) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and assigns. Purchaser shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which may be withheld in the City's sole discretion, and any attempt to do so without the City's consent shall, at the City's option, render this Agreement null and void.

(E) Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(F) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(G) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(H) Brokers. Purchaser represents to the City that Purchaser has not dealt with any real estate brokers and agents in connection with its purchase of the Sale Property.

(I) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(J) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the property sale shall have any personal financial interest, direct or indirect, in the property sale, and Purchaser shall take appropriate steps to assure compliance.

(K) Administrative Actions. To the extent permitted by applicable laws, and unless otherwise expressly provided in this Agreement, all actions taken or to be taken by the City under this Agreement may be taken by administrative action and shall not require legislative action of the City beyond the legislative action authorizing the execution of this Agreement.

6. Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A – *Survey Plat*
Exhibit B – *Form of Quit Claim Deed*
Exhibit C – *Attorney's Certificate of Title*

[signature pages follow]

Executed by the parties on the dates indicated below their respective signatures, effective as of the latest of such dates (the "**Effective Date**").

UPTOWN TRANSPORTATION AUTHORITY, LLC,
an Ohio limited liability company

By: _____

Printed Name: _____

Title: _____

Date: _____, 2021

[City signatures on the following page]

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

Date: _____, 2021

Recommended by:

John S. Brazina, Director
Department of Transportation and Engineering

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

EXHIBIT A
to Property Sale Agreement

SURVEY PLAT

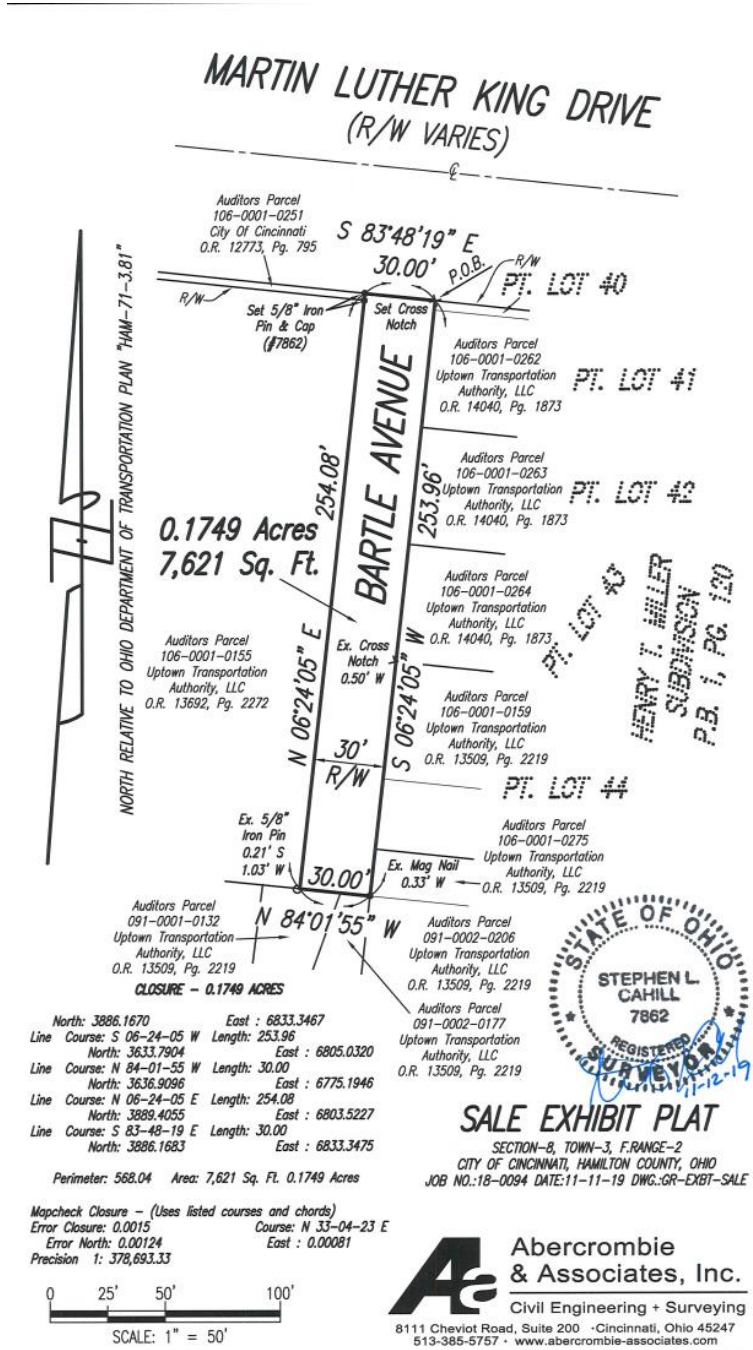


EXHIBIT B
to Property Sale Agreement
FORM OF QUIT CLAIM DEED

----- space above for recorder -----

QUITCLAIM DEED
(Portion of Bartle Avenue)

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), for valuable consideration paid, hereby grants and conveys to **UPTOWN TRANSPORTATION AUTHORITY, LLC**, an Ohio limited liability company, whose tax mailing address is 619 Oak Street, Suite 1100, Cincinnati, OH 45206, ("**Grantee**"), all of the City's right, title and interest in and to the real property depicted on Exhibit A (*Survey Plat*) and described on Exhibit B (*Legal Description*) hereto (the "**Property**").

Property Address:	None; certain portions of former public right-of-way known as Bartle Avenue.
Auditor's parcels:	None (former public right-of-way)
Prior instrument reference:	None (former public right-of-way)

Pursuant to Ohio Revised Code Chapter 723 and Ordinance No. __-2021, passed by Cincinnati City Council on _____, 2021, the Property is hereby vacated as public right-of-way by the City.

(A) Creation of Utility Easement: This conveyance is subject to R.C. Section 723.041 so that any affected public utility shall be deemed to have a permanent easement in such vacated portions of Bartle Avenue for the purpose of maintaining, operating, renewing, reconstructing, and removing said utility facilities and for purposes of access to said facilities.

This conveyance was authorized by Ordinance No. __-2021, passed by Cincinnati City Council on _____, 2021.

Executed on _____, 2021.

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 to hereby.

Notary Public
My commission expires: _____

Approved by:

John S. Brazina, Director
Department of Transportation and Engineering

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department,
801 Plum Street, Suite 214,
Cincinnati, Ohio 45202

Exhibit A
to Quitclaim Deed
Survey Plat

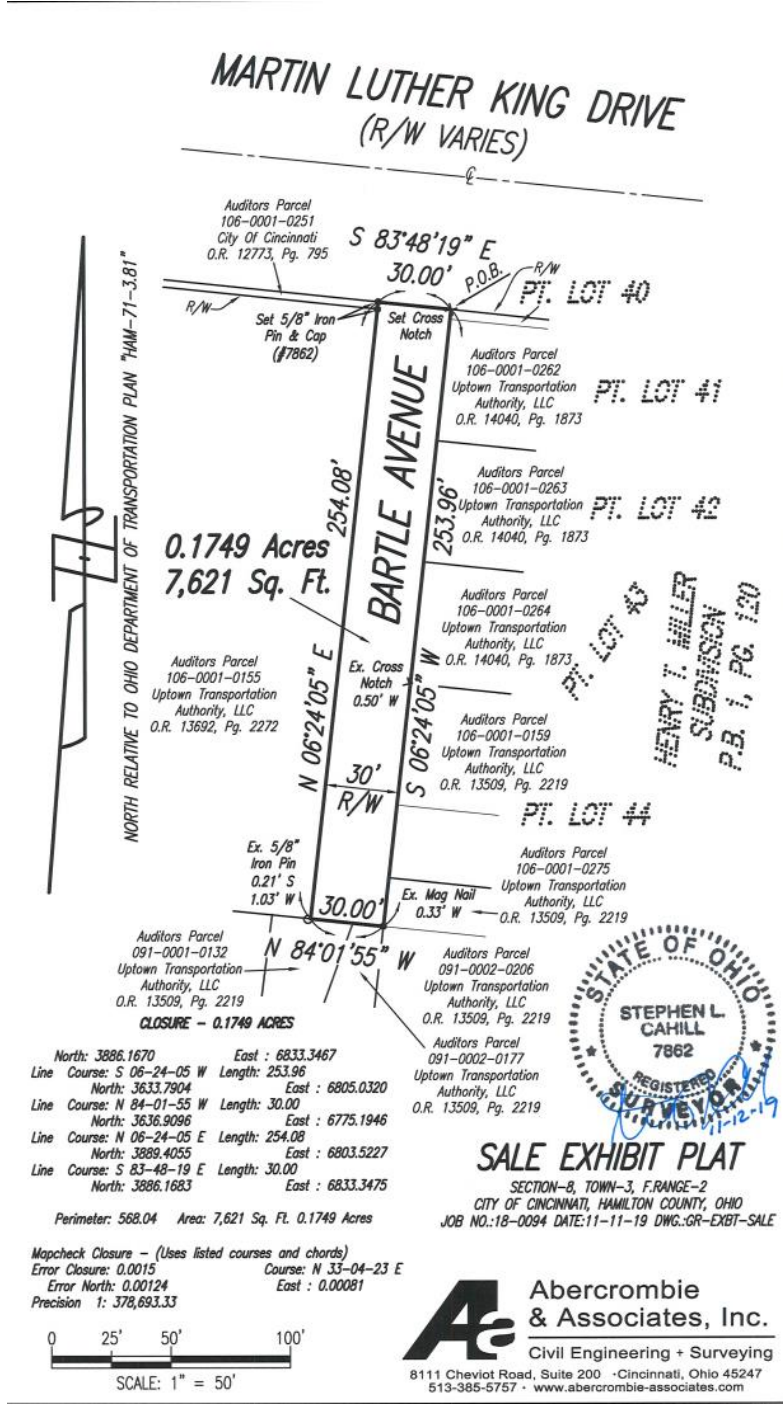


Exhibit B
to Quitclaim Deed
Legal Description

SITUATE IN SECTION 8, TOWN 3, FRACTIONAL RANGE 2, CITY OF CINCINNATI, HAMILTON COUNTY, OHIO AND BEING PART OF THE RIGHT OF WAY OF BARTLE AVENUE OF HENRY T. MILLER SUBDIVISION AS RECORDED IN PLAT BOOK 1, PAGE 120 OF THE HAMILTON COUNTY, OHIO RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A SET CROSS NOTCH AT THE INTERSECTION OF THE EASTERLY RIGHT OF WAY OF BARTLE AVENUE WITH THE SOUTHERLY RIGHT OF WAY OF MARTIN LUTHER KING DRIVE; THENCE ALONG THE EASTERLY RIGHT OF WAY OF BARTLE AVENUE, SOUTH 06°24'05" WEST, 253.96 FEET TO THE SOUTHEAST TERMINUS OF BARTLE AVENUE; BEING WITNESSED BY AN EXISTING MAG NAIL WHICH IS 0.33 FEET WEST; THENCE ALONG THE SOUTHERLY TERMINUS OF BARTLE AVENUE, NORTH 84°01'55" WEST, 30.00 FEET TO THE SOUTHWEST TERMINUS OF BARTLE AVENUE, BEING WITNESSED BY AN EXISTING 5/8" IRON PIN WHICH IS 0.21 FEET SOUTH AND 1.03 FEET WEST; THENCE ALONG THE WESTERLY RIGHT OF WAY OF BARTLE AVENUE, NORTH 06°24'05" EAST, 254.08 FEET TO A SET 5/8" IRON PIN AND CAP (#7862) AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY OF MARTIN LUTHER KING DRIVE WITH THE WESTERLY RIGHT OF WAY OF BARTLE AVENUE; THENCE ALONG THE SOUTHERLY RIGHT OF WAY OF MARTIN LUTHER KING DRIVE, SOUTH 83°48'19" EAST, 30.00 FEET TO THE PLACE OF BEGINNING.

THUS CONTAINING 0.1749 ACRES OF LAND AND BEING SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD.

BEARINGS USED IN THIS LEGAL DESCRIPTION ARE RELATIVE TO OHIO DEPARTMENT OF TRANSPORTATION RIGHT OF WAY PLAN, HAM-17-3.81.

BEING THE RESULT OF A SURVEY AND PLAT DATED 6/12/18 MADE BY STEPHEN L. CAHILL, PLS OF ABERCROMBIE & ASSOCIATES, INC, OHIO REGISTERED SURVEYOR #7862.

Exhibit C
to Property Sale Agreement
Attorney Certificate of Title

ATTORNEY'S CERTIFICATE OF TITLE
(purchase of public right-of-way)


Uptown Transportation Authority, LLC ("Petitioner"), whose address is 619 Oak Street, Suite 1100, Cincinnati, Ohio 45206, has requested to purchase the public right-of-way known as Bartle Avenue as located between Martin Luther King Drive and Tax Parcels 091-0001-0132 and 091-0002-0177 and as more particularly described in Exhibit A hereto (the "Property").

NAME OF ABUTTING OWNER	Parcel(s) owned (address/parcel ID no.)
Uptown Transportation Authority	106-0001-0155-00
Uptown Transportation Authority	106-0001-0262-00
Uptown Transportation Authority	106-0001-0159-00
Uptown Transportation Authority	091-0002-0206-00
Uptown Transportation Authority	091-0001-0132-00
Uptown Transportation Authority	091-0002-0177-00

Cincinnati, Ohio

October 19, 2020

I, the undersigned attorney at law, practicing in Hamilton County, Ohio hereby certify that the above Petitioner(s) and the above listed owner(s) is/are all of the owner(s) of the land abutting on the Property.


Andrew D. Graf
Attorney at Law

Ohio Attorney Registration No. 0068608

Bartle Street Abutting Property Owners

Street	Owner	Parcel
515 Melish Ave	Uptown Transportation Authority (UTA)	106-0001-0155-00
3041 Reading Road	Uptown Transportation Authority (UTA)	106-0001-0262-00
3035 Reading Road	Uptown Transportation Authority (UTA)	106-0001-0159-00
Reading Road	Uptown Transportation Authority (UTA)	091-0002-0206-00
Bartle Street	Uptown Transportation Authority (UTA)	091-0001-0132-00
Bartle Street	Uptown Transportation Authority (UTA)	091-0002-0177-00