

Contract No. _____

Property: Surplus of undedicated East Pete Rose Way
and Butler Street right-of-way

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 **PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY**, an Ohio port authority and body corporate and politic organized and existing under Ohio law, the address of which is 3 East Fourth Street, Suite 300, Cincinnati, Ohio 45202 (the “**Port**”).

Recitals:

A. The City owns certain real property identified as Hamilton County, Ohio Auditor’s Parcel Nos. 084-0005-0159-00 and 084-0005-0160-00, comprising approximately 0.0075 acres in the Central Business District of Cincinnati, Ohio, as more particularly described on Exhibit A (Legal Description- the Sale Property) hereto (the “**Sale Property**”), which Sale Property is under the management of the City’s Department of Transportation and Engineering (“**DOT**”).

B. The Port owns certain real property adjoining the Sale Property, as depicted on Exhibit B (Site Survey) hereto (the “**Port Property**”), and desires to purchase from the City the Sale Property to consolidate said Sale Property with the Port’s Property.

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

D. The City’s Real Estate Services Division has determined, by a professional appraisal, that the fair market value of the Sale Property is \$5,500.00, which the Port has agreed to pay.

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

F. Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution, and research.

G. 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 the Port at its meeting on January 20, 2023.

H. Execution of this Agreement was authorized by Cincinnati City Council by Ordinance No. []-2023, passed on [], 2023.

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 the Port, and the Port hereby agrees to purchase the Sale Property from the City for \$5,500.00 (the “**Purchase Price**”). The Port 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 the Port in “as is” condition. The City makes no representations or warranties to the Port 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 the Port for any defects, adverse environmental condition, or any other matters affecting the Sale Property.

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2. Closing.

(A) Conditions. The closing on the City's sale of the Sale Property to the Port (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 the Port or handle such Conditions post-Closing. The Port 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: The Port's approval of title to the Sale Property and, if obtained by the Port, an ALTA property survey of the Sale Property;
- (ii) Inspections, Utilities & Zoning/Building Code Requirements: The Port'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, Legal Descriptions and Deed: The Port shall have provided the City with all plats and legal descriptions as required by DOTE, the Department of City Planning and Engagement, and the Hamilton County Auditor and Recorder in connection with the City's sale of the Sale Property, including, but not limited to: [x] an acceptable deed of record evidencing the Port as the vested legal owner as to the Port's Property; and [y] an acceptable survey plat and legal description with closure of the Sale Property to accompany the transfer and recording of the Quitclaim Deed in substantially the form attached as Exhibit C – (Form of Quitclaim Deed – Sale Property).

(iv) Coordinated Report Conditions (CR #43-2022):

(a) DOTe:

1. Any and all existing utilities must be granted easements or relocated at the Port's expense.
2. No Auditor's parcels shall be landlocked by this sale. Landlocked parcels shall be consolidated with parcels having legal street frontage.
3. The Port is required, at own expense, to provide the City with an acceptable legal description for the Sale Property that meets the recordable standards of the Hamilton County Recorder's Office.
4. The Port is required at own expense to survey any portion of the Sale Property that contains the public sidewalk to be retained as right-of-way.
5. 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: Duke Energy has gas facilities in the area running on the southernmost edge of the E. Pete Rose Way right-of-way. If the gas main is located across any portion of the Sale Property, Duke will need to acquire an easement for said gas facilities prior to sale.

(c) altafiber: Altafiber has existing underground telephone facilities in the area. Such 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 as of this request will be handled entirely at the Port's expense.

(d) Buildings & Inspections:

1. The Sale Property shall be consolidated with the Port's Property immediately upon sale.

(B) Right to Terminate. If either party determines, after exercising good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period, 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 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) City shall confirm that the Port has paid the Purchase Price in full, and (ii) the City shall convey all its right, title and interest in and to the Sale Property to the Port by *Quitclaim Deed* in the form of Exhibit C. The Port 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, the Port shall pay all real estate taxes and assessments thereafter becoming due. At Closing, the parties shall execute a settlement statement 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 the Port that the City is selling the Property "as is." Pursuant to Section 301-20, Cincinnati Municipal Code, at Closing, the Port shall pay to the City all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed by the Port 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 the Port sends a notice to the City alleging that the City is in default under this Agreement, the Port 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 the Port. The Port makes the following representations, warranties and covenants to induce the City to enter into this Agreement:

(i) The Port is a body corporate and politic, duly created and organized and validly existing under the laws of the State of Ohio and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement.

(ii) The Port has the 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 the Port, and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid and binding obligations of the Port.

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(iii) The Port'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 the Port is a party or which purports to be binding upon the Port or upon any of its assets, nor is the Port in violation or default of any of the foregoing.

(iv) There are no actions, suits, proceedings, or governmental investigations pending, or to the knowledge of the Port, threatened against or affecting the Port, at law or in equity or before or by any governmental authority that could reasonably be expected to substantially interfere with its ability to fulfill its obligations under this Agreement.

(v) The Port 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 the Port that could reasonably be expected to interfere substantially or materially and adversely affect its financial condition or its purchase of the Sale Property.

(vi) The statements made in the documentation provided by the Port to the City have been reviewed by the Port 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.

(vii) Neither the Port, nor any of its affiliates, 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 the Port agrees that venue in such court is proper. The Port 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. The Port 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.

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(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. The Port represents to the City that the Port 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 the Port 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.

(L) Counterparts; E-Signature. This Agreement may be executed via electronic signature and in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute but one and the same instrument.

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

- Exhibit A – *Legal Description -the Sale Property*
- Exhibit B – *Site Survey*
- Exhibit C – *Form of Quit Claim Deed*

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

**PORT OF GREATER CINCINNATI
DEVELOPMENT AUTHORITY,**
an Ohio port authority

By: _____

Printed Name: _____

Title: _____

Date: _____, 2023

[City signatures on the following page]

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CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

Date: _____, 2023

Recommended by:

John 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

Legal Description - the Sale Property

Auditor's Parcel Nos.: 084-0005-0159-00 and 084-0005-0160-00

Property Address: None

Situated in City of Cincinnati, Hamilton County, Ohio, and being more particularly described as follows:

BEGINNING at a set cross notch at the intersection of the new south line of Pete Rose Way and the new west line of Butler Street as shown on a dedication plat recorded in Plat Book _____, Page _____ of the Hamilton County Recorder's Office;

Thence with the new west line of said Butler Street, South 43°12'16" East, 21.05 feet to a set cross notch in the existing west line of Butler Street;

Thence with the existing west line of said Butler Street, South 37°39'53" East, 9.16 feet to a set cross notch at a corner of a tract conveyed to Port of Greater Cincinnati Development Authority in Official Record 13997, Page 999;

Thence with the north line of said Port of Greater Cincinnati Development Authority, along a curve deflecting to the left, having a radius of 85.00 feet, an arc length of 41.38 feet, a delta angle of 27°53'35", and being subtended by a chord bearing North 80°16'27" West, 40.97 feet to a set cross notch in the new south line of said Pete Rose Way;

Thence with the new south line of said Pete Rose Way, North 52°26'26" East, 25.71 feet to the **POINT OF BEGINNING**.

Containing 0.0075 Acres and being subject to all legal easements and highways of record.

The above described parcel being all of Hamilton County Auditor's Parcels 084-0005-0159 & 084-0005-0160 as conveyed to the City of Cincinnati in Deed Book 3605, Page 177 of the Hamilton County Recorder's Office.

Bearings of Bearings are based on Official Record 13997, Page 999 of the Hamilton County Recorder's Office.

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

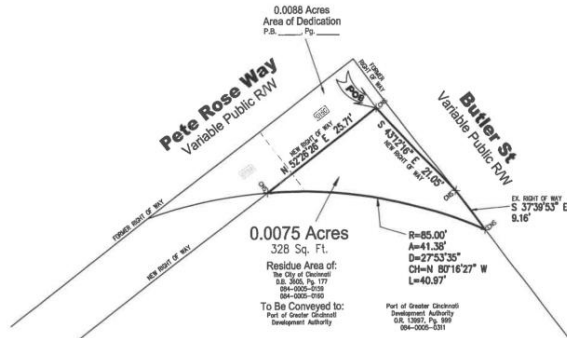
Prepared by G.J. BERDING SURVEYING, INC. on December 17, 2021. Based on a Street Sale Plat prepared by G.J. BERDING SURVEYING, INC. on December 17, 2021.

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EXHIBIT B
to Property Sale Agreement
Site Survey



Recorded:
Based on Official Record 13997,
Page 999 of the Hamilton
County Recorder's Office



Closure Report - 0.0075 Acres

PNT#	Bearing	Distance	Northing	Easting
20	S 37°39'53" E	9.16	5480.87	10134.02
6			5473.62	10139.62
Chord BEO: N 80°16'27" W Rad-In: S 27°40'21" W Rad-Out: S 04°13'14" E				
Radius PC: S 33°57'10" W Tangent: 21.11' Ch: Left				
15	N 52°28'28" E	25.71	5480.54	10099.23
21	S 43°12'14" E	21.05	5488.21	10119.81
20			5480.87	10134.02
Closure Error Distance: 0.0078 Error Bearing: N 81°50'00" W				
Closure Precision: 1 in 13442.7 Total Distance: 97.29				
Area: 0.0075 Acres, 328 Sq. Ft.				

OCCUPATION
As Shown On Plat

Street Sale Plat

MiPhaus

City of Cincinnati
Hamilton County, Ohio

AYR | GJB | 1" = 20'

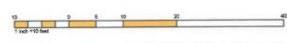
12/17/2021 | 15193.30



Berding Surveying

GPS Surveying - 3D Laser Scanning

741 Main Street | Mifflin, OH 45153 | www.berdingsurveying.com
913.891.6781 fax | 913.891.6660 tel
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Gerard J. Berding, P.S. - 6880
berding@berdingsurveying.com Date _____

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EXHIBIT C
to Property Sale Agreement
Form of Quitclaim Deed

[SEE ATTACHED]

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the “**City**”), for valuable consideration paid, hereby grants and conveys to the **PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY**, an Ohio port authority and body corporate and politic organized and existing under Ohio law, the address of which is 3 East Fourth Street, Suite 300, Cincinnati, Ohio 45202 (“**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
Auditor’s Parcel ID No.: 084-0005-0159-00 and 084-0005-0160-00
Prior instrument reference: D.B. 3605, Pg. 177, Hamilton County, Ohio Records.

This conveyance is subject to the restriction set forth below. Grantee, its successors, and assigns shall forever hold, develop, encumber, lease, occupy, improve, build upon, use, and convey the Property subject to such restriction, which shall “run with the land” and be binding upon Grantee and its successors-in-interest with respect to the Property.

(A) Consolidation. This conveyance shall not create an additional building site. Upon transfer of the Property to Grantee, Grantee shall consolidate the Property with Grantee’s adjoining property. Grantee may not convey the Property separately from Grantee’s adjoining parcel without the prior approval of the authority having jurisdiction of plats.

This conveyance was authorized by Ordinance No. ___-2023, passed by Cincinnati City Council on _____, 2023.

The following exhibits are attached hereto and made a part hereof:

Exhibit A – *Survey Plat*
Exhibit B – *Legal Description*

[SIGNATURE PAGE FOLLOWS]

Executed on _____, 2023.

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023 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: _____

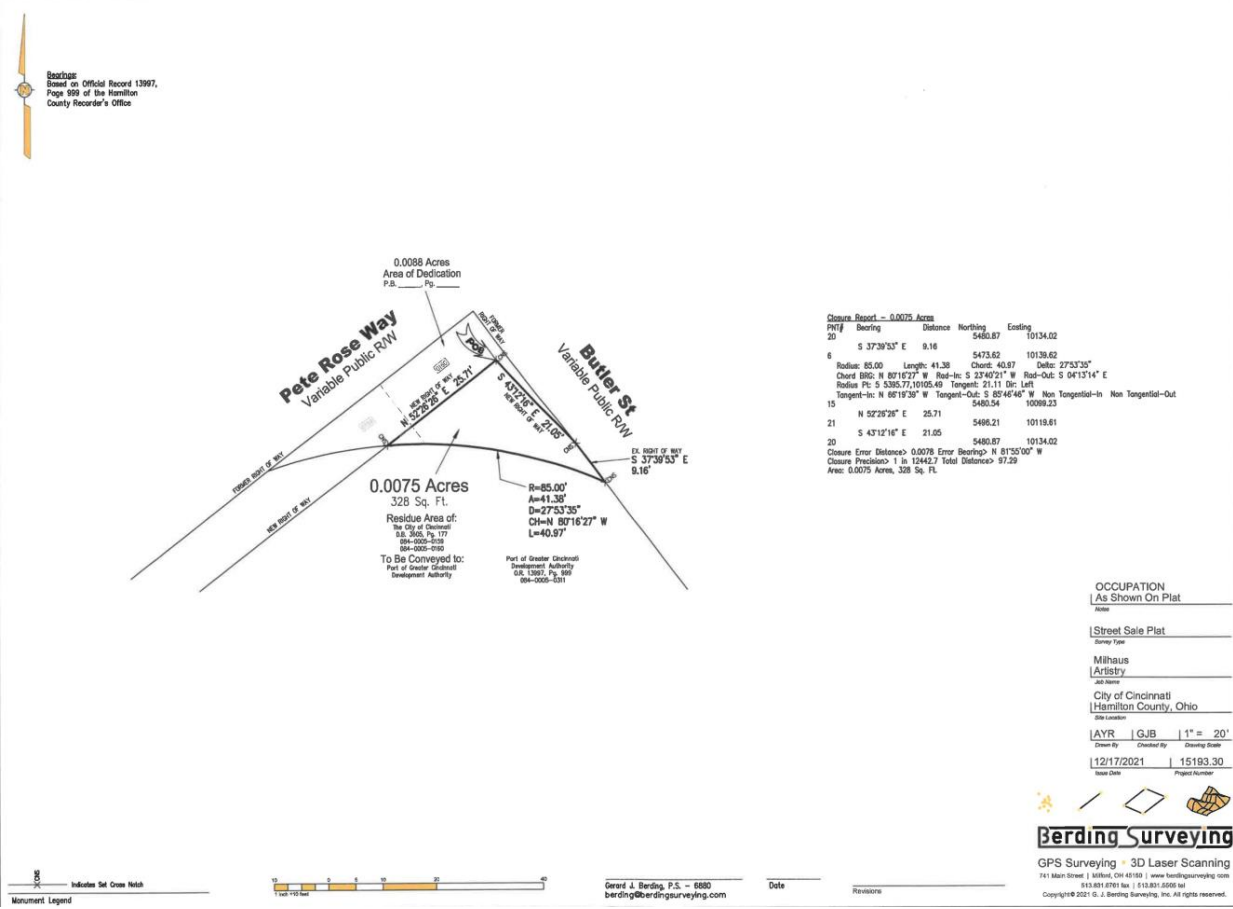
Approved as to Form:

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



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EXHIBIT B
to Quitclaim Deed
Legal Description

Situated in City of Cincinnati, Hamilton County, Ohio, and being more particularly described as follows:

BEGINNING at a set cross notch at the intersection of the new south line of Pete Rose Way and the new west line of Butler Street as shown on a dedication plat recorded in Plat Book _____, Page _____ of the Hamilton County Recorder's Office;

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