
[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF EASEMENT
(Yeatman's Cove at Butler Street Terminus)

This Grant of Easement is made as of the Effective Date (as defined on the signature page hereof) by the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in favor of **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**"), and **601 PETE ROSE WAY, LLC**, a Delaware limited liability company, the address of which is 460 Virginia Avenue, Indianapolis, IN 46203 ("**Developer**," and together with the Port, "**Grantees**").

Recitals:

A. By *Limited Warranty Deed* dated August 30, 2019, and recorded in OR 13997, Page 999, Hamilton County, Ohio Records, Developer conveyed to the Port title to certain real property located at 601 Pete Rose Way, Cincinnati, Ohio 45202 (Auditor's Parcel No. 84-5-311-00), as more particularly described on Exhibit A – (*Legal Description—Benefitted Property*) hereto (the "**Benefitted Property**").

B. As evidenced by a *Memorandum of Project Lease* dated August 30, 2019, and recorded in OR 13997, Page 1545, Hamilton County, Ohio Records, Developer leases the Benefitted Property from the Port.

C. The City and Developer are parties to a certain *Development Agreement* dated [____], 2019, pursuant to which Developer will construct on the Benefitted Property a mixed-use residential and commercial project comprised of approximately 344 residential units, a parking facility with approximately 400 spaces, and approximately 7,750 square feet of commercial space (the "**Project**").

D. The City owns certain real property that abuts the Benefitted Property to the south depicted on Exhibit B (*Site Survey—City Property*) (Auditor's Parcel Nos. 84-5-294-00 and 84-5-295-00) (the "**City Property**"), under the management and control of the Board of Park Commissioners of the City of Cincinnati (the "**Park Board**"), which property contains an existing 18-inch stormwater pipe controlled by the Park Board (the "**Park Stormwater Infrastructure**").

E. In connection with the Project, Developer has requested that the City grant a private infrastructure easement to construct and install a 12-inch private stormwater pipe and associated facilities and appurtenances on the City Property, as depicted more particularly on Exhibit B, hereto (the "**Private Stormwater Infrastructure**") to tie-in and connect to the Park Stormwater Infrastructure, thereby enabling stormwater runoff captured on the Benefitted Property to be diverted through the Park Stormwater Infrastructure.

F. The City Manager, in consultation with the Park Board, has determined that granting the easement will not have an adverse effect on the City's retained interest in the City Property.

G. The City's Real Estate Services Division has determined that the approximate fair market value of the easement is \$6,100, which Developer has deposited with the City Treasurer.

H. The Park Board approved granting the easement at its meeting on July 18, 2019.

I. The City Planning Commission, having the authority to approve the change in use of City-owned property, approved the private infrastructure easement at its meeting on October 15, 2021.

J. The City's execution of this instrument is authorized by Ordinance No. [____]-2022, passed by Cincinnati City Council on [_____].

NOW THEREFORE, the parties agree as follows:

1. Grant of Easement. The City does hereby grant to Grantees, on the terms and conditions set forth herein, as an appurtenance to and for the benefit of the Benefitted Property a non-exclusive easement for the construction, installation, operation, maintenance, repair, reconstruction, removal, and replacement of the Private Stormwater Infrastructure across those portions of the City Property depicted on Exhibit B and described on Exhibit C (Legal Description – Private Stormwater Easement Area) hereto (the "**Private Stormwater Easement**").

2. Right to Connect to Park Stormwater Infrastructure. The City grants to Grantees the right to tie-in or otherwise connect to the Park Stormwater Infrastructure. Grantees shall be responsible for all costs and expenses associated with the installation, maintenance, repair, or replacement of any connection to the Park Stormwater Infrastructure, and for any and all damages relating to any breaks, leaks, or any damage to the Park Stormwater Infrastructure arising from any installation, maintenance, or repair of a connection.

3. Perpetual Maintenance of Park Stormwater Infrastructure.

(A) Park Stormwater Infrastructure Maintenance Obligation. As a material inducement for the City to grant to Grantees the Private Stormwater Easement and the right to tie-in to the Park Stormwater Infrastructure for the benefit of the Project and the Benefitted Property, Developer, at its sole expense, does hereby agree on behalf of itself, its successors, and assigns, to maintain the Park Stormwater Infrastructure from the Private Stormwater Infrastructure connection point to the sewer outfall in a continuous state of good and safe condition and repair and in compliance with City standards. (As used in the preceding sentence, "City standards" means the written standards as determined from time to time by the Park Board and the City's Stormwater Management Utility ("**SMU**") and maintained on file in its offices.)

(B) Right-of-Entry. The City shall use reasonable efforts to promptly provide Developer with a Right-of-Entry, written on the City's standard form, to grant Developer, its successors, and assigns the right to enter and re-enter on Park Board property for construction, maintenance, and repair purposes associated with the Park Stormwater Infrastructure. If, due to normal use, wear and tear, deterioration, or damage the Park Sewer Infrastructure must be partially or entirely removed or replaced, Developer shall be solely responsible for all costs associated therewith. Developer shall perform all work within the public right-of-way under a Department of Transportation and Engineering ("**DOT**") street opening permit and in accordance with all applicable codes, laws, and other governmental standards, policies, guidelines and requirements and in a manner reasonably satisfactory to DOTE. All such work shall be performed by a DOTE-licensed street contractor. In the event the Park Board determines that emergency repairs are

needed due to an imminent threat to public safety, the Park Board shall contact Developer's emergency contact person, identified below (or such other contact person as Developer may designate in writing to the Park Board), whereupon Developer shall make such emergency repair within 24 hours, failing which the Park Board shall have the right to undertake such emergency repairs and Developer shall pay for the actual costs incurred by the Park Board for such repairs within 30 days after receiving documentation of the cost from the City.

4. Alterations; Maintenance and Repairs.

(A) No Alterations. Once installed, Grantees shall not make any enlargements or other modifications to the Private Stormwater Infrastructure without the prior written consent of the Park Board.

(B) Maintenance and Repairs. Grantees, at no cost to the City, shall maintain the Private Stormwater Infrastructure in a continuous state of good and safe condition and repair. Grantees acknowledge that there may be existing easements, infrastructure lines and related facilities in the vicinity of the Private Stormwater Easement ("**Third Party Infrastructure Lines**"). In connection with Grantees' maintenance, repair and use of the Private Stormwater Infrastructure, Grantees shall not interfere with the access of infrastructure companies to maintain and repair the Third Party Infrastructure Lines and shall, at Grantees' expense, promptly repair any and all damage to Third Party Infrastructure Lines caused by Grantees, their agents, employees, contractors, subcontractors, licensees or invitees. Any relocation of Third Party Infrastructure Lines necessitated by Grantees' activities under this instrument shall be handled entirely at Grantees' expense. All activities undertaken by Grantees under this instrument shall be in compliance with all applicable codes, laws, and other governmental standards, policies, guidelines and requirements.

6. Enforcement of the Covenants; Termination of Easements.

(A) Enforcement. The obligations of Grantees hereunder shall be enforceable by an action at law or equity instituted by the City against Grantees. Any failure of the City to enforce any provision herein shall not be deemed a waiver of the City's right to do so thereafter. This Agreement shall not be amended, released, terminated, or otherwise modified without the prior written consent of the City and Grantees as memorialized in a written instrument recorded in the Hamilton County, Ohio Records.

(B) Termination. The Easements shall automatically terminate upon (i) the complete demolition of the structure on the Benefitted Property, or (ii) the complete removal of the Private Stormwater Infrastructure unless construction to replace the removed Private Stormwater Infrastructure is commenced within six months thereafter. Each party shall have the right to execute and record an affidavit in the Hamilton County Recorder's Office to memorialize such termination.

7. Insurance; Indemnification. At all times during which Grantees are undertaking construction activities within the Private Stormwater Easement area, and in addition to whatever other insurance and bond requirements as the City may from time to time require, Grantees 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. Grantees 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 Private Stormwater Easement area. Grantees hereby waive all claims and rights of recovery against the City, and on behalf of Grantees' insurers, rights of subrogation, in connection with any damage to the Private Stormwater Infrastructure, no matter how caused. Grantees 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 Private Stormwater Infrastructure. The foregoing notwithstanding, for so long as the Port owns the Benefitted Property, the City acknowledges and agrees that (i) the Port shall have no indemnity or insurance obligations to the City under this section 7 (*provided*, however, that the Port must nevertheless comply with all requirements of DOTE as pertains to working within public right-of-way), (ii) such indemnity and insurance obligations shall apply to Developer, its successors, and assigns, and (iii) if Grantees authorize a third party to work within the Private Stormwater Easement area, then, as a condition of such authorization, such third party shall be deemed to have assumed the indemnity and insurance obligations (for the protection of the City) under this section 7.

8. Covenants Running with the Land. The provisions hereof shall run with the land and shall inure to the benefit of the City and be binding upon Grantees and its successors-in-interest with respect to the Benefitted Property, subject however to the termination provisions hereof.

9. Governing Law; Severability. This grant of easement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. If any provisions hereof are determined to be invalid or unenforceable by a court of law, the remainder of this instrument shall not be affected thereby, and all other provisions of this instrument shall be valid and enforceable to the fullest extent permitted by law.

10. Notices. All notices given hereunder shall be in writing and shall be sent by U.S. certified or registered mail, return receipt requested, or delivered by a recognized courier service, or by personal delivery, to the parties at their respective addresses set forth in the introductory paragraph hereof or such other address as either party may specify from time to time by notice given in the manner prescribed herein. All notices to the City shall be addressed to the Office of the City Manager, and a copy of each such notice shall simultaneously be delivered to: City of Cincinnati, Department of Community and Economic Development, 805 Central Avenue, Suite 700, Cincinnati, OH 45202. In the event of an alleged breach by the City of this instrument, a copy of each notice of breach shall simultaneously be delivered to the Office of the City Solicitor, 801 Plum Street, Room 214, Cincinnati, OH 45202.

11. Counterparts and Electronic Signatures. This Grant of Easement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original. This Grant of Easement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

12. Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A – *Legal Description—Benefitted Property*
Exhibit B – *Site Survey – City Property*
Exhibit C – *Legal Description – Private Stormwater Easement Area*

[CITY SIGNATURE PAGE FOLLOWS]

Executed on the date of acknowledgment set forth 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 _____, 2022 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 hereby.

Notary Public
My commission expires: _____

Recommended By:

Steve Pacella, Interim Director
Cincinnati Board of Park Commissioners

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

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

[THE PORT'S SIGNATURE PAGE FOLLOWS]

ACKNOWLEDGED AND ACCEPTED BY:
**PORT OF GREATER CINCINNATI
DEVELOPMENT AUTHORITY,**
an Ohio port authority and body corporate and politic

By: _____

Printed name: _____

Title: _____

Date: _____, 2022

[DEVELOPER SIGNATURE PAGE FOLLOWS]

ACKNOWLEDGED AND ACCEPTED BY:
601 PETE ROSE WAY, LLC,
a Delaware limited liability company

By: _____

Printed name: _____

Title: _____

Date: _____, 2022

EXHIBIT A
to Grant of Easement

Legal Description—Benefitted Property

Situated in Section 12, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, Ohio, and being more particularly described as follows:

BEGINNING at an existing iron pin at the intersection of the south right of way line Pete Rose Way and the east right of way line Pike Street;

Thence along the south right of way line of Pete Rose Way, North 53°12'07" East, 86.02 feet to a set cross notch **AND** North 52°18'47" East, 265.61 feet to a set cross notch in the west right of way of Butler Street;

Thence along the west right of way line of Butler Street the following five (5) courses:

1. along a curve non-tangent to previous course deflecting to the right having a radius of 85.00 feet, an arc length of 63.95 feet, central angle of 43°06'24", the chord of said arc bears South 87°52'51" East, 62.45 feet to a set cross notch,
2. South 37°39'53" East, 112.72 feet to a set cross notch,
3. South 52°14'20" West, 3.14 feet to an existing MAG nail,
4. North 84°03'18" East, 3.69 feet to an existing MAG nail,
5. South 37°39'53" East, 6.47 feet to an existing cross notch at the northerly corner of lands conveyed to the City of Cincinnati in Official Record 10274, Page 2335 of the Hamilton County Recorder's Office;

Thence along the west line of the City of Cincinnati the following three courses:

1. South 11°37'24" West, 82.39 feet to an existing iron pin,
2. along a curve deflecting to the left having a radius of 62.44', an arc length of 125.77 feet, central angle of 115°24'36", the chord of said arc bears South 46°04'54" East, 105.56 feet to an existing cross notch,
3. South 10°57'50" East, 10.32 feet to an existing cross notch in the north line of lands conveyed to the City of Cincinnati in Official Record 6375, Page 1940 to an existing cross notch;

Thence in part along the north line of the City of Cincinnati and it's prolongation, South 52°09'20" West, 348.29 feet to an existing iron pin in the prolongation of the east right of way line of Pike Street;

Thence in part along the prolongation of Pike Street and the east right of way line of Pike Street, North 37°36'40" West, 330.77 feet the **POINT OF BEGINNING**.

ST 84-5-311

EXHIBIT B to Grant of Easement Site Survey—City Property

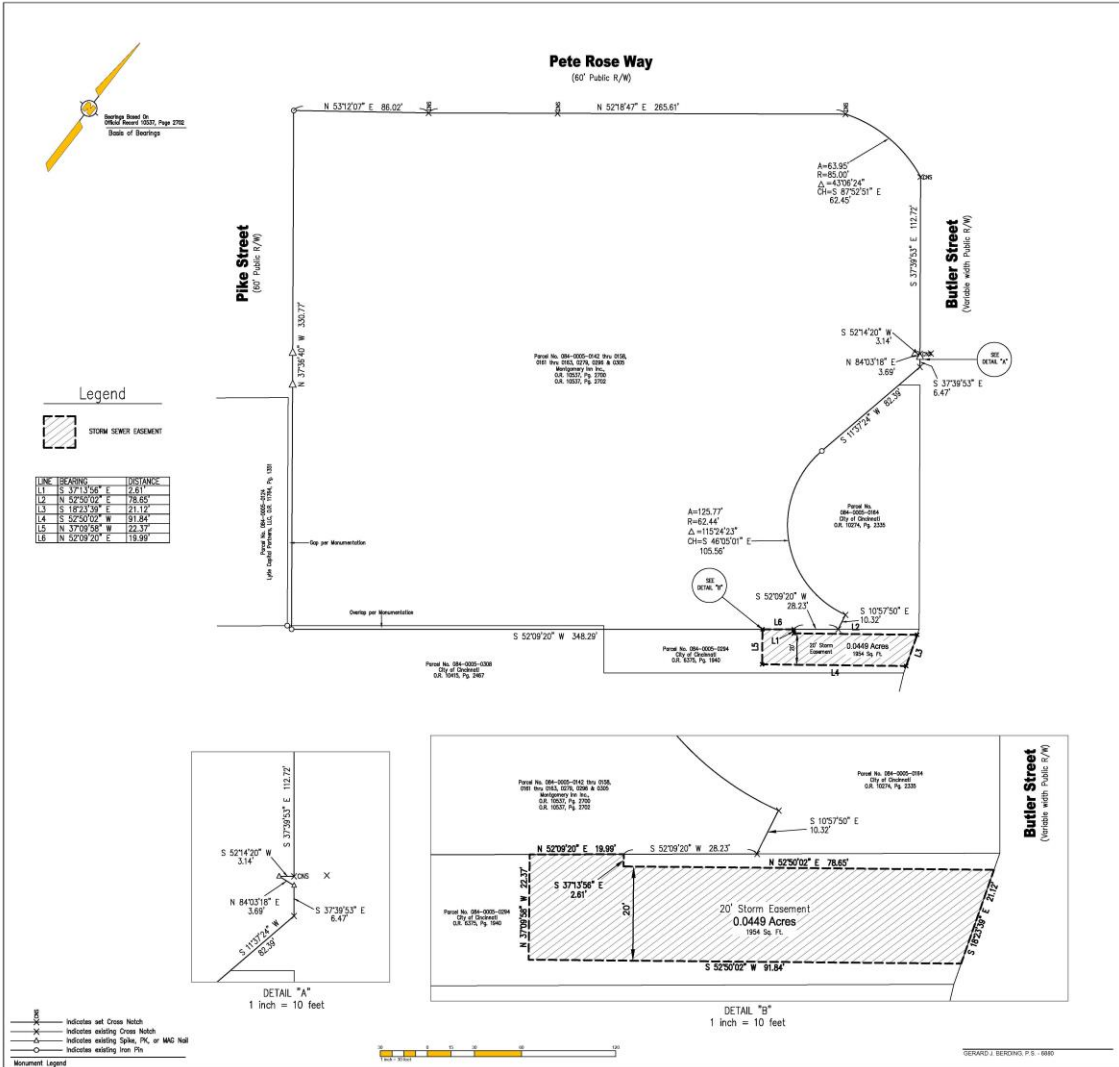


EXHIBIT C
to Grant of Easement

Legal Description – Private Stormwater Easement Area

Description for: Milhaus - Artistry
Location: Pete Rose Way, 0.0449 Acre Easement

Situated in Section 12, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, Ohio, and being more particularly described as follows:

BEGINNING at the intersection of the south right of way line Pete Rose Way and the west right of way line of Butler Street;

Thence with the west line of Butler Street the following eight (8) courses:

1. With a curve deflecting to the right having an arc length of 63.95 feet, a radius of 85.00 feet, the chord of said arc bears South 87°52'51" East, 62.45 feet;
2. South 37°39'53" East, 112.72 feet;
3. South 52°14'20" West, 3.14 feet;
4. North 84°03'18" East, 3.69 feet;
5. South 37°39'53" East, 6.47 feet;
6. South 11°37'24" West, 82.39 feet;
7. With a curve deflecting to the left having an arc length of 125.77 feet, a radius of 62.44 feet, the chord of said arc bears South 46°04'54" East, 105.56 feet;
8. South 10°57'50" East, 10.32 feet to the north line of the City of Cincinnati as recorded in Official Record 6375, Page 1940 of the Hamilton County Recorder's Office, also know as Parcel No. 084-0005-0294;

Thence with the north line of the City of Cincinnati, South 52°09'20" West, 28.23 feet to the **POINT OF BEGINNING** of a 20' wide storm easement;

Thence through the lands of the grantor the following five (5) course:

1. South 37°13'56" East, 2.61 feet;
2. North 52°50'02" East, 78.65 feet;
3. South 18°23'39" East, 21.12 feet;
4. South 52°50'02" West, 91.84 feet;
5. North 37°09'58" West, 22.37 feet to the south line of the Port of Greater Cincinnati Development Authority, as recorded in Official Record 13997, Page 999

Thence with the said south line of the Port of Greater Cincinnati, North 52°09'20" East, 19.99 feet to the **POINT OF BEGINNING. CONTAINING 0.0449 ACRES.**

Being part of those lands conveyed to the City of Cincinnati as recorded in Official Record 6375, Page 1940 of the Hamilton County Recorder's Office, also known as Parcel No. 084-0005-0294;

Bearings are based on Official Record 10537, Page 2702 of the Hamilton County Recorder's Office.