

Contract No: _____

Project:
vacation and sale of Macauley Street

PROPERTY SALE AGREEMENT

THIS PROPERTY SALE AGREEMENT (this “**Agreement**”) is made and entered into effective as of 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 is 801 Plum Street, Cincinnati, OH 45202 (the “**City**”), and **AUBURN LAND HOLDINGS LLC**, an Ohio limited liability company, the address of which is 2718 Short Vine Street, Cincinnati, OH 45219 (“**Developer**”).

Recitals:

A. The City owns approximately 0.5046 acres of land dedicated as public right-of-way known as Macauley Street in the Mt. Auburn 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 of the City’s Department of Transportation and Engineering (“**DOT**”).

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

C. Alan S. Henderson, Esq., a reputable attorney practicing in Hamilton County, Ohio, has provided the following: (i) an Attorney’s Certificate of Title dated March 24, 2021, certifying that Developer, 45 WHT LLC, the City, Marshall C. Hunt, Jr., and 35 E. McMillan Avenue LLC are the owners 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 Developer.

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, by professional appraisal, that the approximate fair market value of the Property is \$88,000, however, the City is agreeable to convey the Property for \$1.00 in consideration of approximately 0.525 acres of real property located along the E. McMillan Street and Auburn Avenue rights-of-way that Developer and its affiliate donated to the City as part of the Auburn Avenue Improvement Project, which real property the City’s Real Estate Services Division has determined, by a professional appraisal, to have a fair market value of \$193,639, a difference of \$105,639.

G. The City has determined that eliminating competitive bidding in connection with the City’s sale of the Sale Property is justified because Developer owns or controls all real property that abuts the Sale Property, or otherwise has obtained the consent of all necessary abutters to the City’s vacation and sale of the Sale Property, and as a practical matter no one other than an abutting property owner would have any use for it. Also, the sale of the Sale Property to Developer will enable Developer to assemble a buildable site to accommodate the construction of a proposed mixed use development, thereby putting the currently undeveloped land to its highest and best use and provide the City with jobs and other economic benefits.

H. 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.

I. 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 Developer at its meeting on May 22, 2020.

J. Execution of this Agreement was authorized by Cincinnati City Council by Ordinance No. _____-2021, passed on _____, 2021.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto 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 Developer, and Developer hereby agrees to purchase the Sale Property from the City for \$1.00 (the "**Purchase Price**"). Developer 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 Developer in "as is" condition. The City makes no representations or warranties to Developer 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 Developer 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 Developer (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 Developer or handle such Conditions post-Closing. Developer 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:** Developer's approval of title to the Sale Property and, if obtained by Developer, an ALTA property survey of the Sale Property;
- (ii) **Inspections, Utilities & Zoning/Building Code Requirements:** Developer'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:** Developer 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:** Developer shall have provided the City with an attorney's certificate of title certifying the names of all abutters to the Sale Property.

(B) **CR Conditions.** As a condition of Closing, the following conditions, as identified in the City's Coordinated Report (**CR #65-2029**) ("**CR Conditions**") shall be satisfied:

- (i) **DOTE:**

1. DOTE does not object to the vacation to allow for the proposed concept plan. The adjacent property owners will need to agree to the vacation, and their parking issues addressed satisfactorily by the developer.
 2. McCauley Street at McMillan Street should be converted from a street opening to a drive apron.
 3. DOTE will need to review and approve the final site plan and traffic impact study, and coordinate with the developer for site specifics relative to the roadway plans on McMillan Street and Auburn Avenue.
 4. Development must allow for additional right-of-way needed for roadway improvements for McMillan Street and Auburn Avenue from this site.
 5. The petitioner is required, at own expense, to provide the City with an acceptable legal description for the easement/sale areas that meet the recordable standards of the Hamilton County Recorder's Office. It must be approved by DOTE.
 6. 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.
- (ii) *MSD:*
1. An existing 12" diameter public sewer (ranging in depth of approximately 7' to 20') is presently located within the Macauley St ROW. A 20' wide (minimum) permanent easement centered on the existing sewer to remain in service will be required by MSDGC in the vacationing of Macauley St. The final permanent easement width may need to be increased depending on the length of the existing sewer to remain supporting the final project design. Note, an additional 3' on either side of the permanent easement will be required, along with other restrictions, as outlined per MSDGC Rules and Regulation Section 207. No structure which can interfere with the access to the public sewer or can exert loading upon a public sewer will be allowed per MSDGC Rules and Regulation Section 206.
 2. A MSDGC Excavation/Fill permit as well as bond will be necessary for any construction, construction traffic, earthwork, or any other construction activity over the existing public sewer should a portion remain within the vacated Macauley St or become part of the project's construction area. A MSDGC E/F permit will also be necessary for any other existing public sewer within or adjacent to the project's final construction area. Additional requirements will be established by the MSDGC E/F permit (such as verification and usage of existing or abandoned building services to the combined sewer through dye testing, CCTVing, etc) depending on the final project concept plan and submission of the MSDGC Request for Availability for Sewer Service (mentioned below in Item 3) for the final project.
 3. A MSDGC Request for Availability for Sewer Service (RASS) will be required by the project for the future development or redevelopment. The MSDGC RASS will determine the availability of a sewer and outline any additional MSDGC project requirements that could impact a project schedule if not considered early in project planning, such as the need to obtain any MSDGC tap or special permits, easements (such as Item 1 above), Ohio EPA Permit to Install, utilization of licensed and bonded sewer tappers with MSDGC, sewer inspection scheduling, project on-site separation of flow requirements, MSDGC Excavation/Fill permitting

and bonding (such as Item 2 above), MSDGC detention requirements per Section 303 of the MSDGC Rules and Regulations, need for a grease interception system, and/or a reminder for the project to coordinate with City of Cincinnati Stormwater Management Utility of the Department of the Greater Cincinnati Waterworks for their specific additional detailed storm water , storm water detention, and flood plain requirements.

4. The rerouting of the lateral for HN 2421 Auburn will require a MSDGC permit and will need to be shown on the project's site plans. This installation work for the rerouting shall be completed by a MSDGC licensed tapper at the project's expense. It shall not be connected to the existing lateral for HN 2413 and cannot be rerouted directly into the existing manhole. A copy of the recorded document demonstrating the private easements necessary for the rerouted lateral between property owners will need to be provided to MSDGC with the tap application.

(iii) *Duke Energy:* Duke Energy Electric has a pole line along Macauley Street. Duke Energy will need to be granted an easement for these facilities if this area is vacated.

(iv) *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 of this request will be handled entirely at the property owner's expense.

(v) *Buildings and Inspections:*

1. 35 E McMillan, adjacent to the west, relies 100% on McCauley for access to their parking facilities. This property must be granted a full access easement, no less than 20 ft. in width unless greater desired by DOTE.
2. In order to protect the viability of the historic structure at 2421 Auburn Avenue, Developer has previously agreed with MSD to conclusively demonstrate the following has been constructed and completed prior to sale
 - a. Developer shall reroute the lateral of 2421 Auburn Avenue to tie into the southernmost manhole on Macauley where 2415 Auburn is currently tied.
 - b. Developer must grant MSD an easement to allow the lateral to remain public.

(C) 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.

(D) 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.

(E) Closing Costs and Closing Documents. At the Closing, (i) Developer 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 Developer by *Quitclaim Deed* in the form of Exhibit B. Developer 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, Developer 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 Developer that the City is selling the Property "as is." Pursuant to Section 301-20, Cincinnati Municipal Code, at Closing, Developer 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 Developer 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, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their respective addresses set forth in the introductory paragraph of this Agreement. Notices shall be deemed given on the date of receipt. If Developer sends a notice to the City alleging that the City is in default under this Agreement, Developer shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

4. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF DEVELOPER. Developer makes the following representations, warranties and covenants to induce the City to enter into this Agreement:

(i) Developer is a limited liability company duly organized and validly existing under the laws of the State of Ohio, has been properly qualified to do business in 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) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for therein. This Agreement has by proper action been duly authorized, executed and delivered by Developer and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid and binding obligations of Developer.

(iii) The execution, delivery and performance by Developer of this Agreement and the consummation of the transactions contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or the organizational documents of Developer, or any mortgage, indenture, contract, agreement or other undertaking to which Developer is a party or which purports to be binding upon Developer or upon any of its assets, nor is Developer 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 Developer, threatened against or affecting Developer or any of its members, at law or in equity or before or by any governmental authority.

(v) Developer shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute or governmental proceeding or investigation affecting Developer or any of its members that could reasonably be expected to interfere substantially with its normal operations or materially and adversely affect its financial condition.

(vi) The statements made in the documentation provided by Developer to the City that are descriptive of Developer or the proposed development project have been reviewed by Developer 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) Developer does not owe any outstanding fines, penalties, judgments, water or other utility charges or other amounts to the City.

5. GENERAL PROVISIONS.

(A) Assignment. Developer shall not assign its rights or interests under this Agreement to any third party without the prior written consent of the City, which consent may be withheld in the City's sole discretion.

(B) Entire Agreement. This Agreement (including all exhibits) contain 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.

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

(D) 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 Developer agrees that venue in such court is proper. Developer hereby waives trial by jury with respect to any and all disputes arising under this Agreement.

(E) 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 permitted assigns.

(F) 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.

(G) 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.

(H) No Recording. This Agreement shall not be recorded in the Hamilton County Recorder's office.

(I) Time. Time is of the essence with respect to the performance by the parties of their respective obligations under this Agreement.

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

(K) No Brokers. The City and Developer represent to each other that they have not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(L) 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.

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

Exhibit A – *Survey Plat*

Exhibit B - *Quitclaim Deed –Sale Property*

This Agreement is executed by the parties on the dates indicated below their signatures, effective as of the later of such dates (the **"Effective Date"**).

AUBURN LAND HOLDINGS LLC,
an Ohio limited liability company

By: _____

Printed name: _____

Title: _____

Date: _____, 2021

CITY OF CINCINNATI

By: _____

Printed name: _____

Title: _____

Date: _____, 2021

Approved 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

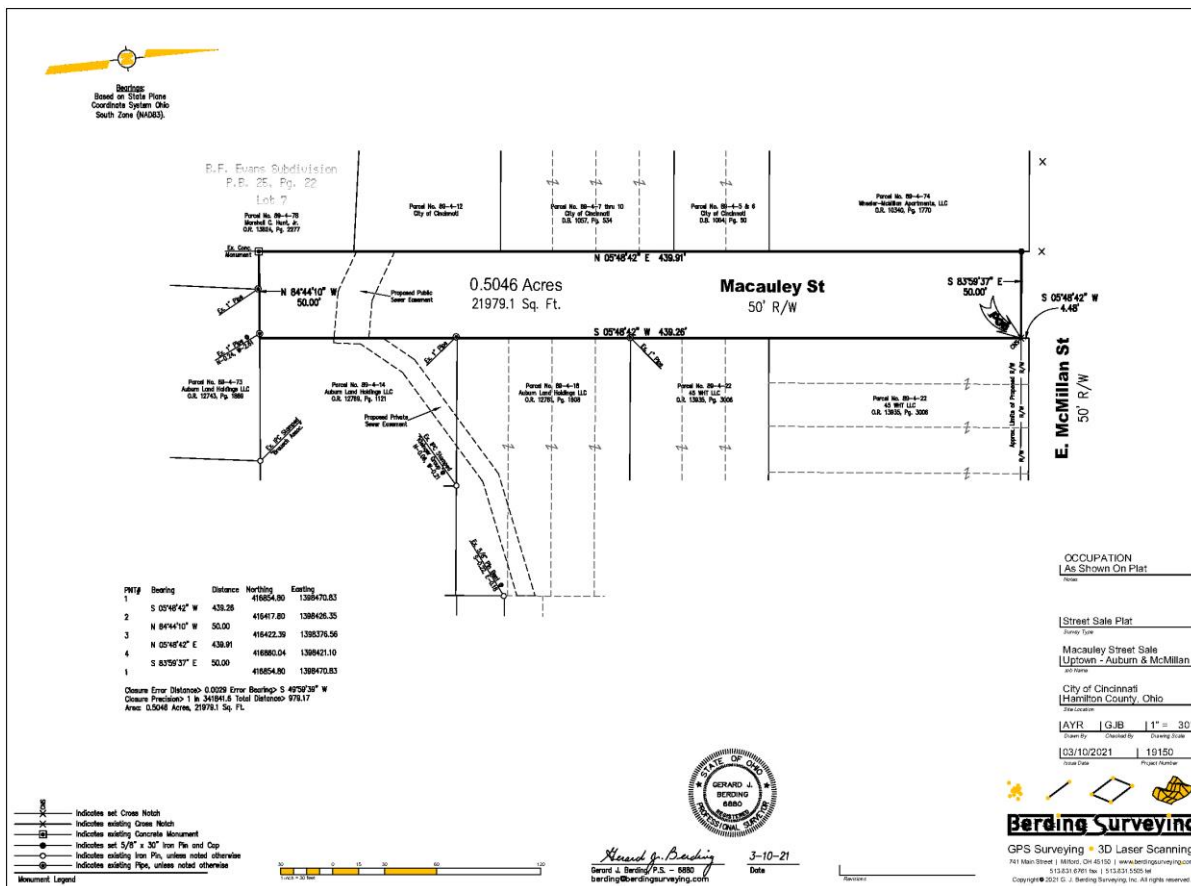


Exhibit B
to Property Sale Agreement

Form of Quitclaim Deed

SEE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE]

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), for valuable consideration paid, hereby grants and conveys to **AUBURN LAND HOLDINGS LLC**, an Ohio limited liability company, whose mailing address is 260 E. University Avenue, Cincinnati, OH 45219 ("**Grantee**"), all of the City's right, title and interest in and to the real property shown on Exhibit A (*Survey Plat*) and described on Exhibit B (*Legal Description*) hereto (the "**Property**"):

Street Address: None: vacated portion of former public right-of-way known as Macauley Street

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.

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. This 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: _____

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
Cincinnati, Ohio 45202

EXHIBIT A to Quitclaim Deed

Survey Plat

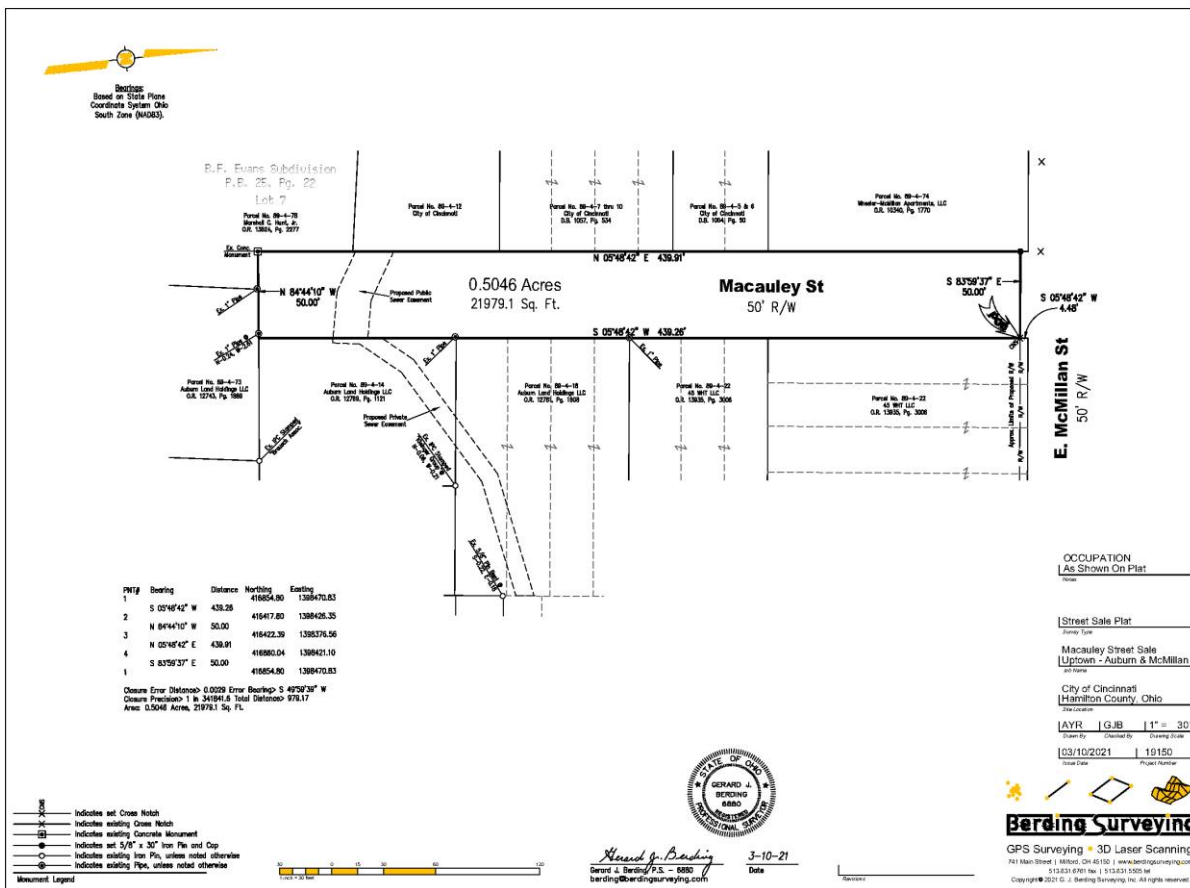


EXHIBIT B
to Quitclaim Deed

LEGAL DESCRIPTION

Berding Surveying



GPS Surveying • 3D Laser Scanning

Description for: Uptown
Location: Macauley Street, 0.5046 Acre Street Sale

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

COMMENCING at the intersection of the original south line of E. McMillan Street and east line of Macauley Street;

Thence with the east line of said Macauley Street, South 05°48'42" West, 4.48 feet to a set cross notch and the **POINT OF BEGINNING**;

Thence with the east line of said Macauley Street, South 05°48'42" West, 439.26 feet to the southeast terminus of said Macauley Street referenced by an existing one-inch pipe 0.24 feet North and 2.61 feet West;

Thence with the terminus of said Macauley Street, North 84°44'10" West, 50.00 feet to an existing concrete monument at the southwest terminus of said Macauley Street;

Thence with the west line of said Macauley Street, North 05°48'42" East, 439.91 feet to a set iron pin;

Thence with the prolongation of the approximate limits of the proposed south right of way of aforesaid E. McMillan Street, South 83°59'37" East, 50.00 feet to the **POINT OF BEGINNING**.

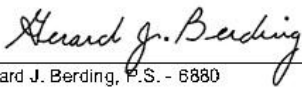
CONTAINING 0.5046 ACRES and being subject to all legal easements and highways of record.

The above described parcel being part of the right of way of Macauley Street.

The bearings are based on 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 March 10, 2021. Based on a Street Sale Plat prepared by G.J. BERDING SURVEYING, INC. on March 10, 2021.


Gerard J. Berding, P.S. - 6880

3-10-21
Date



