

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2017-50

By Nick Hasbka Sponsored By Mayor Cyril M. Kleem

AN ORDINANCE

AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO ENTER INTO A REAL ESTATE CONVEYANCE AGREEMENT WITH IRIS PROPERTIES, LLC FOR THE TRANSFER OF CITY-OWNED REAL PROPERTY WHICH SERVES NO MUNICIPAL PURPOSE, IS LOCATED ADJACENT TO THE BAGLEY ROAD UNDERPASS AND IS MORE FULLY IDENTIFIED IN THE LEGAL DESCRIPTION ATTACHED HERETO AND INCORPORATED HEREIN, AUTHORIZING THE EXECUTION OF ALL DOCUMENTS NECESSARY TO EFFECTUATE THE SAME, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Berea currently owns non-buildable real property which serves no municipal purpose, is located adjacent to the Bagley Road Underpass and is more fully identified in the legal description contained in Exhibit "A", which is attached hereto and incorporated herein by reference; and

WHEREAS, this non-buildable real property abuts the property at 487 Bagley Road, the latter of which is intended to be purchased and developed by Iris Properties, LLC as a professional office; and

WHEREAS, the public interest of the City is best served by the development of 487 Bagley Road, and the transfer of this City-owned non-buildable real property will maximize the square footage available for commercial development.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, State of Ohio:

SECTION 1. That the City-owned real property which is located adjacent to the Bagley Road Underpass and is more fully identified in Exhibit "A", attached hereto and incorporated herein, is not needed for any municipal purpose.

SECTION 2. That the Mayor or his designee be and he is hereby authorized and directed to enter into a Real Estate Conveyance Agreement with Iris Properties, LLC in substantially the same form as is described in Exhibit "B", attached hereto and incorporated herein, for the transfer of City-owned real property which is located adjacent to the Bagley Road Underpass and is more fully identified in Exhibit "A".

SECTION 3. That the Mayor or his designee be and he is hereby authorized and directed to prepare and/or execute any and all documents necessary to effectuate the purpose set forth in Section 2 hereinabove.

SECTION 4. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 5. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of a municipal department, and for the further reason that it is necessary to complete this land transfer in order to expedite the sale of the property and the subsequent re-development of the parcel. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2017-50

By Haschka Sponsored By Mayor Kleem

PASSED: October 16, 2017

[Signature]
President of Council

ATTEST: [Signature]
Clerk of Council

APPROVED: October 17, 2017
[Signature]
Mayor

APPROVED AS TO FORM:
[Signature]
Director of Law

Exhibit
"A"

HOFMANN - METZKER, INC.

REGISTERED PROFESSIONAL SURVEYORS
P. O. BOX 343 - 24 BEECH STREET
BEREA, OH 44017 (440) 234-7350
FAX: (440) 234-7351

George A. Hofmann, P.S., President
Richard D. Metzker, P.S., Vice President

Dr. Filips

DESCRIPTION
Rezoning Berea Area

Sept. 25, 2017

Situated in the City of Berea, County of Cuyahoga, and State of Ohio and being part of sublots No. 103, 104, & 105, in the Kew Gardens Subdivision as shown by the recorded plat in Volume 113, Page 28 of Cuyahoga County Records, of part of Original Middleburg Township Lots No. 3 & 4, Section No. 24 and further bounded and described as follows:

Beginning at the intersection of the centerline of Bagley Road, with the centerline of Lindberg Boulevard, said point being station 276+30.09 (Bagley Road/ 20+00 (Lindberg Boulevard) as shown by Cuyahoga County Improvement Plans #21273;

Thence North 89 degrees 25 minutes 20 seconds West, along said centerline of Bagley Road, a distance of 116.22 feet to a point;

Thence South 00 degrees 34 minutes 40 seconds West, a distance of 50.00 feet to the principal place of beginning, said point being at Station 275+13.87 (50.00 feet right):

Thence continuing South 00 degrees 34 minutes 40 seconds West, a distance of 30.00 feet to a point, said point being at Station 275+13.87 (80.00 feet right);

Thence North 89 degrees 25 minutes 20 seconds West, a distance of 159.22 feet to a point, said point being at Station 273+54.63 (80.00 feet right);

Thence North 03 degrees 06 minutes 40 seconds West, a distance of 30.06 feet to a point, said point being at Station 273+53.17 (50.00 feet right);

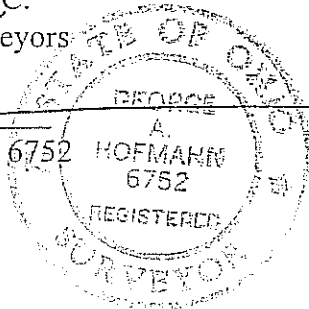
Thence South 89 degrees 25 minutes 20 seconds East, a distance of 160.70 feet to the principal place of beginning and containing 4,799.836 s.f. - 0.11 acres of land

The courses used in this description are based on the centerline of Bagley Road bearing North 89 degrees 25 minutes 20 seconds West and are used to indicate angles only.

Distances are given to feet and decimal parts thereof.

HOFMANN-METZKER, INC.
Registered Professional Surveyors

Registered Surveyor Number 6752



**REAL ESTATE CONVEYANCE AGREEMENT
Vacant Land Adjoining the Bagley Road Railroad Underpass**

This Real Estate Conveyance Agreement is made in the City of Berea, Cuyahoga County, State of Ohio, on this ____ day of _____, 2017, by The City of Berea, an Ohio Municipal Corporation, whose principal address is 11 Berea Commons, Berea, Ohio 44017, hereinafter referred to as CITY, and Iris Properties, LLC., an Ohio Limited Liability Company, whose principal address is 587 West Bagley Road, Berea, Ohio 44017, hereinafter referred to as IRIS.

In consideration of the covenants made by each party to the other, as set forth below, the parties agree as follows:

**Section I
PREMISES**

CITY will sell and convey and IRIS will purchase, on the terms and conditions set forth herein, the vacant real property situated in the City of Berea, County of Cuyahoga, State of Ohio, near the Bagley Road railroad underpass, as more fully described in Exhibit "A" (attached hereto and incorporated herein).

**Section II
PURCHASE PRICE**

The full purchase price of the property is Ten dollars and No cents (\$10.00), which will be paid in one installment at closing.

**Section III
RESTRICTIONS**

IRIS shall acquire the property subject to zoning, restrictions of record, easements and Ordinances of the City of Berea, and all taxes and assessments not yet due and payable. In addition to the easements of record, IRIS agrees to grant an additional easement to CITY allowing CITY to enter this property through other properties owned by IRIS to maintain the graded slope of land adjacent to the Bagley Road Underpass and any utilities hereon, see Exhibit A.

**Section IV
APPROVAL BY BEREA CITY COUNCIL**

This Real Estate Conveyance Agreement is contingent upon approval by the Berea City Council.

**Section V
CLOSING; TIME IS OF THE ESSENCE**

Unless extended by written agreement of the parties, this Real Estate Conveyance Agreement will be completed and the transaction closed on or before November 1, 2017. Time is of the essence of this Real Estate Conveyance Agreement.

Section VI
GOVERNING LAW

This Real Estate Conveyance Agreement shall be governed by and subject to the laws of the State of Ohio.

Section VII
ESCROW AGENT

This Real Estate Conveyance Agreement shall be placed in escrow with Maximum Title and Escrow Services, Inc. or another mutually agreed upon agent, herein referred to as the "Escrow Agent." An executed copy of this Real Estate Conveyance Agreement shall be deposited with the Escrow Agent and this document shall serve as the escrow instructions. All documents and funds necessary for the completion of this transaction shall be placed in escrow with the Escrow Agent on or before the Closing Date. The Escrow Agent herein may attach its standard conditions of acceptance hereto; however, should such standard conditions be inconsistent with or in conflict with the terms and provisions hereof, then the terms and provision of this Real Estate Conveyance Agreement shall control.

Section VIII
DUTIES OF ESCROW AGENT

On the Closing Date, the Escrow Agent shall file for record the Quit Claim Deed and any other instruments required to be recorded and shall thereupon deliver to each of the parties the documents to which they shall be respectively entitled, together with its escrow statement, provided that the Escrow Agent shall then have on hand all funds and documents necessary to complete the within real estate transaction and provided that the title company has stated in writing that it is in a position to and will issue and deliver, upon the filing of the Quit Claim Deed for record.

In closing this transaction, the Escrow Agent shall charge IRIS with all closing costs, including but not limited to the following:

- (a) The full amount of the taxes up to and including the Closing Date;
- (b) The filing fees, transfer taxes or any other fees necessary to complete the transfer referenced in this Real Estate Conveyance Agreement;
- (c) The escrow fee;
- (d) All other prorations and holdbacks set out in this Real Estate Conveyance Agreement;

and immediately thereafter, shall deliver to IRIS at Iris Properties, LLC., Attn: Dr. Caitlin Filips-Rees, 587 West Bagley Road, Berea, Ohio 44017, the recorded Quit Claim Deed, or Cuyahoga County Fiscal Officer's receipt therefor, and any prorations to which any party is entitled, and any other funds or documents required by the provisions hereof.

**Section IX
CONDITION OF PROPERTY**

IRIS has inspected the property, including the improvements on it, if any, and accepts the property in its present "AS IS" condition.

**Section X
BROKER'S COMMISSION**

CITY and IRIS represent that neither of which have procured a broker or real estate agent in this transaction. If any person shall claim the right to a commission arising out of the sale of the Properties referenced in this Real Estate Conveyance Agreement, the party dealing with such broker or real estate agent shall pay any such commission and agrees to defend, indemnify and hold the other parties harmless from any and all claims for any such commission and for any attorney's fees, litigation, and other expenses relating to any such claim.

IN WITNESS WHEREOF, the CITY OF BEREA has hereunto set its hand at Berea, Ohio, on this _____ day of _____, 2017.

Signed and acknowledge
In the presence of:

CITY OF BEREA

By _____
Cyril Kleem, Mayor

STATE OF OHIO)
)
CUYAHOGA COUNTY) ss:

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named individual, Cyril Kleem, Mayor, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Berea, Ohio, on this _____ day of _____, 2017.

Notary Public

IN WITNESS WHEREOF, the PURCHASER has hereunto set its hand at _____, Ohio, on this ____ day of _____ 2017.

Signed and acknowledged
In the presence of:

IRIS PROPERTIES, LLC.

By: _____
Caitlin Filips-Rees, Authorized Agent

STATE OF OHIO)
)
CUYAHOGA COUNTY) ss:

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named individual, Caitlin Filips-Rees, as the authorized agent of Iris Properties, LLC., who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Berea, Ohio, on this _____ day of _____, 2017.

Notary Public

EXHIBIT A - of the Conveyance Agreement

UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT IRIS PROPERTIES, LLC., the "GRANTOR" herein, for valuable consideration received and to be received to its full satisfaction, does hereby give, grant, bargain and convey to the CITY OF BEREA, a Municipal Corporation of the State of Ohio, the "GRANTEE" herein, the perpetual right-of-way and easement, for the purposes hereinafter set forth in, over and subjacent to property more fully described in Exhibit A, (hereinafter referred to as the "Easement Premises").

GRANTEE shall have the right and easement to enter upon the above described Easement Premises and to operate, maintain, repair and install existing and new storm sewers, sanitary sewers, water lines, electric lines, gas lines, telephone lines, cable lines, high-speed internet lines, earthen slopes and similar public utilities, including pipes, wires, catch basins, manholes, outlets, swales, earthen slopes and other appurtenances related to the delivery of public utilities and public rights of way. This right and easement shall include the right to remove from the Easement Premises, concrete, asphalt, pavement, trees, woody growth, fences, walls, out buildings or any other obstructions to the free operation of public utilities that in the opinion of the proper local authorities of GRANTEE, its successors or assigns, may be necessary at any time, and also to do any other thing that may be necessary or advisable in the judgement of the local authorities of the GRANTEE, its successors or assigns, in order to operate, maintain, repair and install storm sewers, sanitary sewers, water lines, electric lines, gas lines, telephone lines, cable lines, high-speed internet lines, earthen slopes and similar public utilities, including pipes, wires, catch basins, manholes, outlets, swales, earthen slopes and other appurtenances related to the delivery of public utilities and public rights of way in accordance with the ordinances, rules and regulations for the management and protection of said GRANTEE, now in force or that may hereinafter be adopted. The said right-of-way and easement is granted for the further purposes and upon the further covenants and conditions hereafter set forth:

1. All costs of operation, maintenance, repair, reconstruction and installation of said public utility lines shall be borne by the GRANTEE, and the GRANTEE, upon completion of any work in connection with the exercise of the easement right herein granted, shall restore the surface of the land substantially to the condition existing prior to the performance of any such work by the GRANTEE.
2. In order to operate, maintain, repair, reconstruction and install the above referenced public utility lines and public rights of way, GRANTOR has agreed with GRANTEE to grant to GRANTEE a permanent non-exclusive access easement, over and across adjacent property owned by GRANTOR, and more fully described in Exhibit B, for the purpose of access to the Easement Premises.
3. It is a condition of this easement that the GRANTOR hereby reserves, and shall have the right and privilege to connect to and have the normal use of the public utility lines and other improvements in said Easement Premises, to serve GRANTOR'S real property in or adjoining the Easement Premises.
4. The GRANTOR hereby reserves the right to use said premises within the limits of the above described easement as are not herein expressly prohibited by and are not inconsistent with the rights and easement hereby granted.

5. TO HAVE AND TO HOLD the above granted easement, right-of-way, for storm sewers, sanitary sewers, water lines, electric lines, gas lines, telephone lines, cable lines, high-speed internet lines, earthen slopes and similar public utilities, including pipes, wires, catch basins, manholes, outlets, swales, earthen slopes and other appurtenances related to the delivery of public utilities and public rights of way in, over and subjacent to the above described Easement Premises, for the purposes above mentioned unto said GRANTEE, the City of Berea, forever.

6. And the GRANTOR does for itself, its successors and assigns, covenant with the said GRANTEE, and its successors and assigns that at and until the sealing of these presents, it is well seized of the above described Easement Premises as a good and indefeasible estate in FEE SIMPLE and has a good right to bargain and grant the same in manner and forms as above written, and that it will WARRANT AND DEFEND SAID EASEMENT PREMISES with appurtenances thereunto belonging to the GRANTEE, its successors and assigns against all lawful claims and demands whatsoever for the purposes herein described, except restrictions, conditions, limitations, easements and rights-of-way of record and taxes and assessments not yet due and payable.

7. It is agreed that this instrument shall be for the benefit of and binding upon the GRANTOR and GRANTEE and their respective successors, assigns, heirs, administrators and personal representatives.

IN WITNESS WHEREOF, the GRANTOR has hereunto set her hand at Berea, Ohio this ____ day of _____ 2017.

Signed and acknowledged in the presence of: GRANTOR:

IRIS PROPERTIES, LLC.

 By: _____
 PRESIDENT

STATE OF OHIO)
) ss:
 CUYAHOGA COUNTY)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named, CAITLIN FILIPS-REES, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of said person.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Berea, Ohio, this ____ day of _____, 2017.

 NOTARY PUBLIC

IN WITNESS WHEREOF, the GRANTEE has hereunto set its hand at
Berea,
Ohio this ____ day of _____ 2017.

Signed and acknowledged in the presence of: GRANTEE:
CITY OF BEREA.

By: _____
CYRIL KLEEM,
MAYOR

STATE OF OHIO)
) ss:
CUYAHOGA COUNTY)

BEFORE ME, a Notary Public in and for said County and State, personally
appeared the above named Municipal Corporation, CITY OF BEREA, by CYRIL
KLEEM, its Mayor who acknowledged that he did sign the foregoing instrument
and that the same is the free act and deed of the CITY OF BEREA and the free
act and deed of him personally and as Mayor.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal
at Berea, Ohio, this ____ day of _____, 2017.

NOTARY PUBLIC

EXHIBIT A - of the Utility Easement

HOFMANN - METZKER, INC.

REGISTERED PROFESSIONAL SURVEYORS
P. O. BOX 343 - 24 BEECH STREET
BEREA, OH 44017 (440) 234-7350
FAX: (440) 234-7351

George A. Hofmann, P.S., President
Richard D. Metzker, P.S., Vice President

Dr. Filips

DESCRIPTION Rezoning Berea Area

Sept. 25, 2017

Situated in the City of Berea, County of Cuyahoga, and State of Ohio and being part of sublots No. 103, 104, & 105, in the Kew Gardens Subdivision as shown by the recorded plat in Volume 113, Page 28 of Cuyahoga County Records, of part of Original Middleburg Township Lots No. 3 & 4, Section No. 24 and further bounded and described as follows:

Beginning at the intersection of the centerline of Bagley Road, with the centerline of Lindberg Boulevard, said point being station 276+30.09 (Bagley Road/ 20+00 (Lindberg Boulevard) as shown by Cuyahoga County Improvement Plans #21273;

Thence North 89 degrees 25 minutes 20 seconds West, along said centerline of Bagley Road, a distance of 116.22 feet to a point;

Thence South 00 degrees 34 minutes 40 seconds West, a distance of 50.00 feet to the principal place of beginning, said point being at Station 275+13.87 (50.00 feet right):

Thence continuing South 00 degrees 34 minutes 40 seconds West, a distance of 30.00 feet to a point, said point being at Station 275+13.87 (80.00 feet right);

Thence North 89 degrees 25 minutes 20 seconds West, a distance of 159.22 feet to a point, said point being at Station 273+54.63 (80.00 feet right);

Thence North 03 degrees 06 minutes 40 seconds West, a distance of 30.06 feet to a point, said point being at Station 273+53.17 (50.00 feet right);

Thence South 89 degrees 25 minutes 20 seconds East, a distance of 160.70 feet to the principal place of beginning and containing 4,799.836 s.f. - 0.11 acres of land

The courses used in this description are based on the centerline of Bagley Road bearing North 89 degrees 25 minutes 20 seconds West and are used to indicate angles only.

Distances are given to feet and decimal parts thereof.

HOFMANN-METZKER, INC.

Registered Professional Surveyors

Registered Surveyor Number 6752

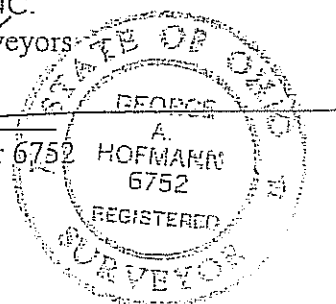
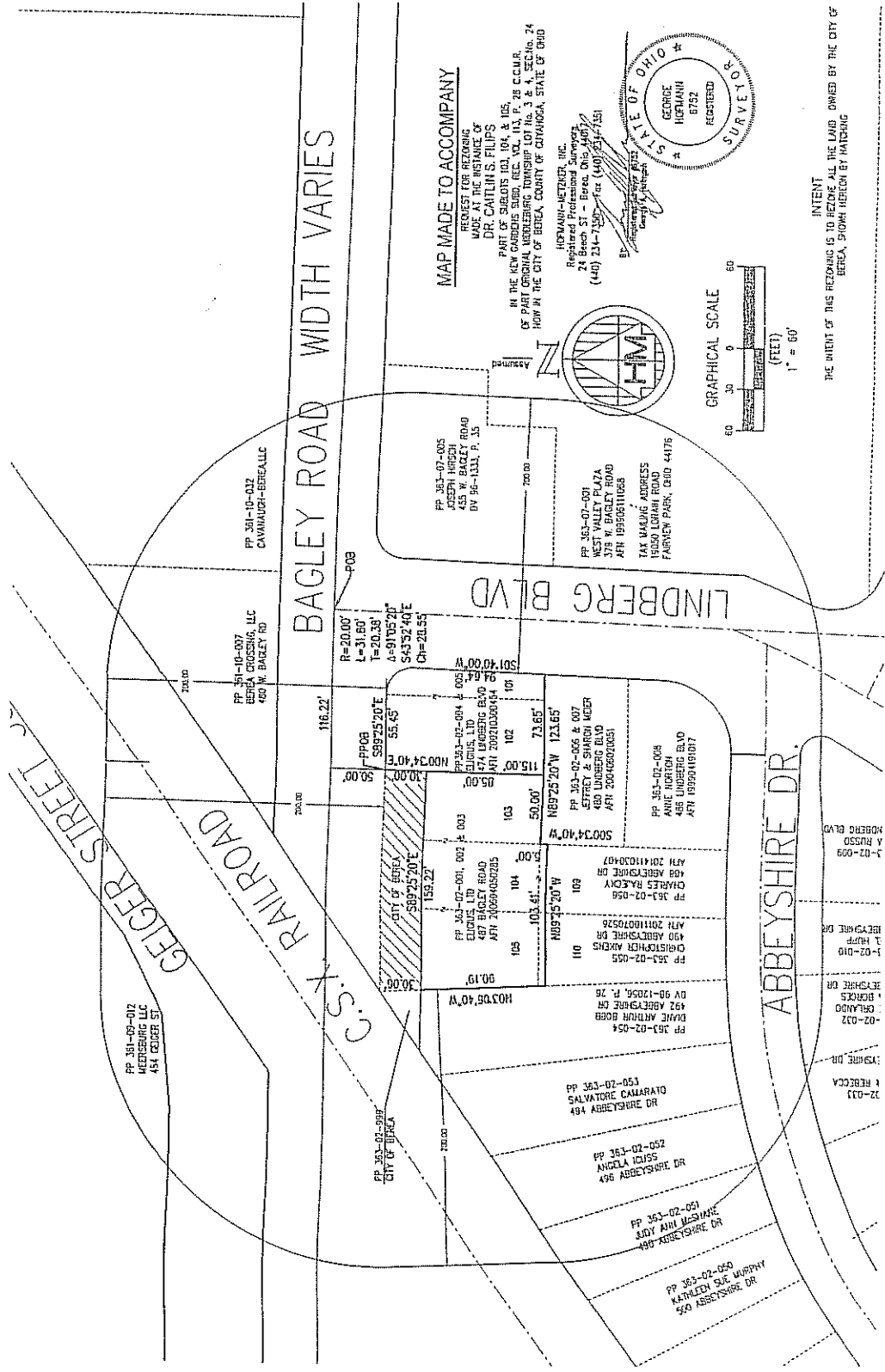


Exhibit
"A"



INTENT
THE INTENT OF THIS REZONING IS TO REZONE ALL THE LAND OWNED BY THE CITY OF
BEREA, SHOWN HEREON BY HATCHING

EXHIBIT B - of the Utility Easement

Commonly known as: 474 Lindberg Boulevard
Berea, Ohio 44017

Situated in the City of Berea, County of Cuyahoga and State of Ohio, and known as being part of Sub lots Nos. 101 and 102 in Kew Gardens Subdivision of part of Original Middleburg Township Section Number 24, Lots Numbers 3 and 4, as shown by the recorded plat in Volume 113 of Maps, Page 28 of Cuyahoga County Records, bounded and described as follows:

Beginning in the Southerly line of Bagley Road at the Northwesterly corner of said Sublot No. 102; thence South 89° 25' 20" East along the Southerly line of Bagley Road 54.61 feet to a point of curvature; thence Southeasterly along the arc of a circle reflecting to the right 31.80 feet to a point in the Westerly line of a parcel of land conveyed to the County of Cuyahoga by Deed recorded in Volume 3988, Page 510 of Cuyahoga County Records, said arc having a radius of 20 feet and a chord which bears South 43° 52' 40" East 28.55 feet; thence South 1° 40' 00" West, along the Westerly line of said land conveyed to the County of Cuyahoga 94.66 feet to its intersection with the Southerly line of said Sublot Number 101; thence North 89° 25' 20" West along the Southerly line of said Sublot Number 101 and Sublot Number 102, 72.79 feet to the Southwesterly corner of said Sublot Number 102; thence North 0° 34' 40" East, along the Westerly line of Sublot Number 102, 115 feet to the place of beginning, according to the Survey of Warren J. Root, Civil Engineer & Surveyors. The courses used in the description are given to an assumed meridian and are used to indicate angles only, be the same more or less, but subject to all legal highways.

Permanent Parcel No.: 363-02-004 and 363-02-005

Situated in the City of Berea, County of Cuyahoga, State of Ohio and known as being all of Sublot Numbers 103, 104 and 105 and part of Sublot Numbers 109 and 110 in the Kew Gardens Subdivision of part of Original Middleburg Township Lots Nos. 3 and 4, of Section No. 24, as shown by the recorded plat in Volume 113, Page 28 of Cuyahoga County Map Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Southerly line of West Bagley Road, at the Northwesterly corner of said Sublot Number 105;

Thence Easterly along the Southerly line of West Bagley Road, a distance of 161.15 feet to the Northeasterly corner of said Sub lot Number 103;

Thence Southerly along the Easterly line of said Sublot, a distance of 115 feet to the Southeasterly corner thereof;

Thence Westerly along the Southerly line of said Sublot Number 103, a distance of 50 feet to the Northeasterly corner of said Sublot Number 109;

Thence Southerly along the Easterly line of said Sub lot Number 109, a distance of 5 feet;

Thence Westerly and parallel with the Northerly line of said Sublot Numbers 109 and 110. a distance of 103.42 feet to the Westerly line of said Sublot Number 110;

Thence Northerly along the Westerly line of said Sublot Numbers 110 and 105, a distance of 120.22 feet to the place of beginning, as appears by said plat, be the same more or less, but subject to all legal highways.