

## 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**”), **PLK COOPER, LLC**, an Ohio limited liability company, whose tax mailing address is 5905 East Galbraith Road, Cincinnati, OH 45236 (“**Purchaser**”), and **VANDALIA POINT, LLC**, an Ohio limited liability Company, whose tax mailing address is 114 West 14<sup>th</sup> Street, Cincinnati, OH 45202 (“**Developer**”).

### Recitals:

A. The City owns certain real property designated as public right-of-way known as Vandalia Avenue in the Northside neighborhood 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. Purchaser owns certain real property adjoining the Sale Property, as depicted on Exhibit B (Vacation Plat) hereto (“**Purchaser’s Property**”).

C. Developer is under contract to purchase Purchaser’s Property and intends to construct a 52-unit affordable housing development thereon (the “**Project**”).

D. Purchaser and Developer desire the City to vacate and convey the Sale Property prior to Developer purchases Purchaser’s Property to facilitate the Project.

E. Following the acquisition of Purchaser’s Property, Developer has agreed to dedicate public right-of-way to facilitate the widening and improvement of Vandalia Avenue with new curbs, gutters, and sidewalks as generally depicted on Exhibit C (Dedication Plat) hereto (the “**Dedication Property**”).

F. Pursuant to Chapter 723 of the Ohio Revised Code, 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.

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

H. Natalie H. Rauf, Esq., a reputable attorney practicing in Hamilton County, Ohio, has certified that Purchaser owns all the real property abutting the Sale Property.

I. The City’s Real Estate Services Division has determined, by a professional appraisal, that the fair market value of the Sale Property is \$32,500; however, the City is agreeable to convey the Property for less than fair market value, namely, for \$1.00 because the City anticipates that it will receive economic and non-economic benefits from the Project that equal or exceed the fair market value of the Property because the Developer will provide the Dedication Property to facilitate the widening and improvement of Vandalia Avenue with new curbs, gutters, and sidewalks, and it is anticipated that the Project will create new temporary construction jobs, stimulate economic growth in the Northside neighborhood, will create additional housing in Cincinnati and is consistent with the City’s objective of creating good quality housing options in the Northside neighborhood, thereby contributing to the social and economic viability and stability of the neighborhood and restore Purchaser’s Property to productive use. However, notwithstanding the foregoing, to ensure the timely dedication, construction, and completion of the street improvements on the Dedication Property, Developer has agreed to pay the fair market value of the Sale

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Property into escrow (the “**Escrow Funds**”) as additional consideration for the City agreeing to vacate and convey the Sale Property to Purchaser in advance of Developer’s closing on Purchaser’s Property.

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

K. 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.

L. Section 16 of Article VIII of the Ohio Constitution provides that it is in the public interest and a proper public purpose for the City to enhance the availability of adequate housing and to improve the economic and general well-being of the people of the City by providing or assisting in providing housing.

M. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Sale Property to Purchaser at its meeting on April 7, 2023.

N. 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. Agreement to Convey Property Interests.**

(A) Agreement to Vacate and Convey the Sale Property. Subject to the terms and conditions set forth herein, the City hereby agrees to vacate and sell the Sale Property to Purchaser, and Purchaser hereby agrees to purchase and accept the Sale Property from the City. The purchase price of the Sale Property shall be \$1.00 (the “**Purchase Price**”). Purchaser acknowledges that it is familiar with the condition of the Sale Property, and, at Closing (as defined below), the City shall convey the Sale Property to Purchaser in “as is” condition. The City makes no representations or warranties to Purchaser with respect to the condition of the Sale Property and, from and after the Closing, the City shall have no liability of any kind to Purchaser for any defects, adverse environmental condition, or any other matters affecting the Sale Property.

(B) Agreement to Dedicate the Dedication Property. Developer hereby agrees to dedicate the Dedication Property to the City within 18 months of closing on the Purchaser’s Property. Developer acknowledges that the City shall have no obligation to accept the Dedication Property as public right-of-way under the management and control of the City until and unless such real property interests have been approved by formal action of the Cincinnati City Council. The City makes no representations or other assurances to Developer that Cincinnati City Council will accept such real property interests. Developer hereby waives any and all rights and remedies under this Agreement or otherwise available at law or in equity against the City, its officers, councilmembers, and employees for the Cincinnati City Council’s failure to accept and confirm the dedication of the Dedication Property as public right-of-way. As a material inducement for the City to enter into this Agreement, at Closing, the City and Developer shall execute an *Escrow Agreement* in substantially the form attached hereto as Exhibit D (Escrow Agreement) (the “**Escrow Agreement**”), pursuant to which Developer shall deposit the Escrow Funds with Mercantile Title Agency, Inc., an Ohio Corporation, an affiliate of Developer’s legal counsel (the “**Escrow Agent**”). The Escrow Agent shall hold and transfer the Escrow Funds in the manner set forth on Exhibit D.

(C) Title and Condition of Dedication Property. Developer acknowledges that before Cincinnati City Council considers an ordinance to accept the Dedication Property, Developer shall represent and warrant that (a) it holds title to the Dedication Property in fee simple, with full power to convey; (b) there are no tenants or other third parties who are entitled to the use or possession of any part of the Dedication

Property; (c) the Dedication Property is free and clear of all liens and encumbrances, or that Developer has made satisfactory provision for release thereof, except: [i] easements, restrictions, conditions and covenants of record; [ii] legal highways; and [iii] zoning and building laws, ordinances, rules and regulations; and (d) free and clear of any and all taxes and assessments or that Developer has made satisfactory provision for payment of all real estate taxes and assessment. Developer shall assist, in whatever manner reasonably possible under the circumstances as requested by the City, to procure and deliver to the City any releases, assignments or cancellations of any and all other rights, titles and interests in the Dedication Property, whether attaching to the Dedication Property prior to or during Developer's ownership of the Dedication Property. Such interests may include, but are not limited to, those belonging to tenants, lessees, mortgagees, or others now in possession or otherwise occupying the Dedication Property, and all tax and assessment claims against the Dedication Property. Any mortgage or other monetary liens on the Dedication Property shall be discharged and paid by Developer at or before Cincinnati City Council considers an ordinance to accept the Dedication Property. Developer, at no cost to the City, shall provide the City with a phase one assessment prepared by a reputable environmental consulting firm, evidencing that the environmental condition of the Dedication Property is acceptable to the City's Office of Environment and Sustainability.

## 2. Closing.

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

- (i) Title & Survey: Purchaser's approval of title to the Sale Property and, if obtained by Purchaser, an ALTA property survey of the Sale Property;
- (ii) Inspections, Utilities & Zoning/Building Code Requirements: Purchaser's approval of inspections of the Sale Property, including, without limitation, environmental assessments and soil assessments, all matters pertaining to utility service for the Sale Property, and all zoning and building code requirements that are applicable to the Sale Property;
- (iii) Plats, Legal Descriptions and Deed: Developer 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 Purchaser as the vested legal owner as to Purchaser's Property; [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); and [z] an acceptable survey plat and legal description with closure to consolidate the Sale Property with Purchaser's Property immediately after recording of the *Quitclaim Deed*;
- (iv) Coordinated Report Conditions (CR #84-2022/ #1-2021):
  - (a) DOTE:
    - 1. [Intentionally Omitted].
    - 2. [Intentionally Omitted].

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3. [Intentionally Omitted].
4. [Intentionally Omitted].
5. No Auditor's parcels shall be landlocked by this vacation/sale. If possible, potential landlocked parcels should be consolidated with parcels having legal street frontage.
6. Developer is required, at their expense, to provide the City with an acceptable legal description for the sale area that meets the recordable standards of the Hamilton County Recorder's Office.
7. Abutting streets must be delineated with a continuous curb, sidewalk, and/or drive approach.
8. 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) Metropolitan Sewer District of Greater Cincinnati ("MSD"): The MSD Request for Availability of Sewer Service (RASS) will be required for a future development or redevelopment project. The MSD RASS will determine the availability of a sewer and outline any additional MSD project requirements that could impact a project schedule if not considered early in project conceptual planning. Such considerations may include the need to obtain any MSD tap permits, easements, Ohio EPA Permit to Install, utilization of licensed and bonded sewer tappers with MSD, sewer inspection scheduling, project on-site separation of flow requirements, MSD Excavation/Fill permitting and bonding, MSD storm water detention requirements, need for a grease interception system, and/or a reminder for the project to coordinate with City of Cincinnati Stormwater Management Utility (SMU) for their specific storm water, erosion control, and storm water detention requirements.

(c) Duke Energy: Existing facilities must remain in place, in service and able to be accessed. Any damage done to the facilities, or any work done to relocate the facilities as a result of this request will be handled entirely at the property owner's expense.

(d) Altafiber: 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.

(B) Right to Terminate. If any 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.

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(D) Closing Costs and Closing Documents. At the Closing, (i) the City shall confirm that Purchaser has paid the Purchase Price in full; (ii) the City shall convey all its right, title, and interest in and to the Sale Property to Purchaser by *Quitclaim Deed* in the form of Exhibit E (Form of Quitclaim Deed); (iii) the City and Developer shall execute the Escrow Agreement; and (iv) Developer shall deposit the Escrow Funds with the Escrow Agent. Purchaser or 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, Purchaser 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 Purchaser that the City is selling the Property "as is." Pursuant to Section 301-20, Cincinnati Municipal Code, at Closing, Purchaser shall pay to the City all unpaid related and unrelated fines, penalties, judgments, water, or other utility charges, and any and all other outstanding amounts owed by Purchaser to the City.

(E) Survival. 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 or waive any of the obligations of Developer under this Agreement not stipulated or contained in the *Quitclaim Deed*, nor shall the *Quitclaim Deed* in any way prejudice or bar the City in asserting any of its rights hereunder, all of which shall survive the execution and delivery of the *Quitclaim Deed*.

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

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

(i) Purchaser is an Ohio limited liability company duly organized and validly existing under the laws of the State of Ohio, is authorized to transact business in the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws relevant to the transactions contemplated by this Agreement.

(ii) Developer is an Ohio limited liability company duly organized and validly existing under the laws of the State of Ohio, is authorized to transact business in the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws relevant to the transactions contemplated by this Agreement.

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

(iv) Developer'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 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.

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

(vi) Developer 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 Developer that could reasonably be expected to interfere substantially or materially and adversely affect its financial condition or the Project.

(vii) The statements made in the documentation provided by Developer to the City 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.

(viii) Neither Purchaser, nor any of its affiliates, owe any outstanding fines, penalties, judgments, water or other utility charges or other amounts to the City.

(ix) Neither Developer, 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 parties agree that venue in such court is proper.

(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 City hereby consents to an assignment by the Purchaser of any and all of its rights and obligations under this Agreement to Developer upon the sale by Purchaser of Purchaser's Property to Developer. Developer shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which may be withheld in the City's sole discretion, and any attempt to do so without the City's consent shall, at the City's option, render this Agreement null and void.

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

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

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

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(H) Brokers. The parties represent to the City that neither Purchaser nor Developer have dealt with any real estate brokers and agents in connection with this transaction.

(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 parties 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. The parties hereto agree that this Agreement may be executed and delivered by electronic signature, which shall have the same force and effect as an original signature. Electronic signatures may be delivered via email or other electronic means agreed upon by the parties. The parties hereto may execute this Agreement in two or more counterparts, and each executed counterpart shall be considered an original.

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

Exhibit A – *Legal Description -the Sale Property*

Exhibit B – *Vacation Plat*

Exhibit C – *Dedication Plat*

Exhibit D – *Escrow Agreement*

Exhibit E – *Form of Quit Claim Deed*

[ *Signature Pages Follow* ]

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

**PLK COOPER, LLC,**  
an Ohio limited liability company

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2023

[ Developer signatures on the following page]



**VANDALIA POINT, LLC**  
an Ohio limited liability company

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2023

**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 No.:** None

**Property Address:** None; Vandalia Avenue f/k/a Railroad Street

Situated in Section 28, Town 3, Fractional Range 2, Miami Purchase, Millcreek Township, City of Cincinnati, Hamilton County, Ohio and being a part of an original 100' railroad right of way dedicated in P.B. 1, Pg. 2 of the Hamilton County, Ohio Recorder's Office, the boundary of which being more particularly described as follows:

Beginning at a cross notch found at the intersection of the east right of way line of Apple Street with the south right of way line of Vandalia Street (north);

Thence along said east right of way line, N05°56'32" E a distance of 19.44 feet to a cross notch set at the intersection of said east right of way line with the north right of way line of Vandalia Street;

Thence along said north right of way line, N66°56'02" E a distance of 277.45 feet to a cross notch set at the intersection of said north right of way line with the south right of way line of Blue Rock Street;

Thence along said south right of way line, S80°27'47" E a distance of 31.55 feet to a cross notch set at the intersection of said south right of way line with the aforementioned south right of way line of Vandalia Street;

Thence along said south right of way line, S66°56'02" W a distance of 313.46 feet to the Point of Beginning.

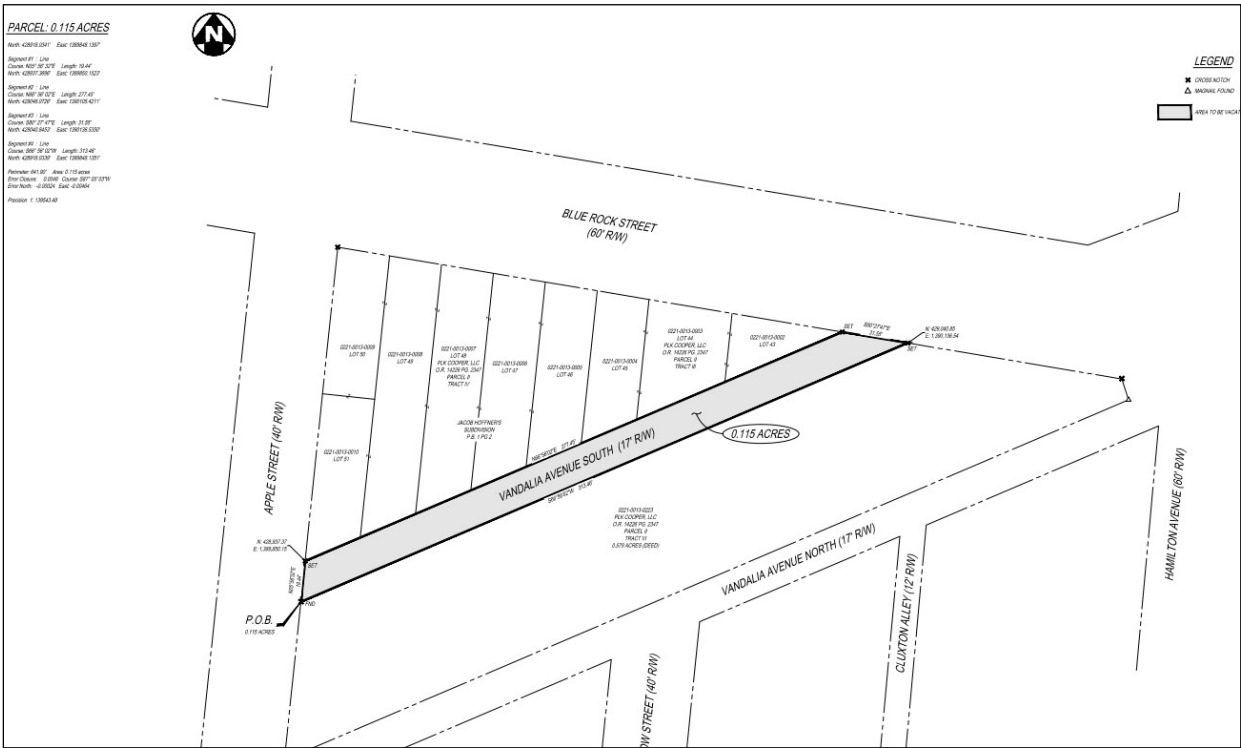
Containing 0.115 acres of land, more or less.

Bearings are based on the Ohio State Plane Coordinate System South Zone as derived from the Ohio Department of Transportation's Virtual Reference Stationing System. (VRS) (NAD 83)

The above description is based on a field survey performed by The Kleingers Group under the direct supervision of Matthew D. Habedank, Ohio Professional Land Surveyor No. 8611.

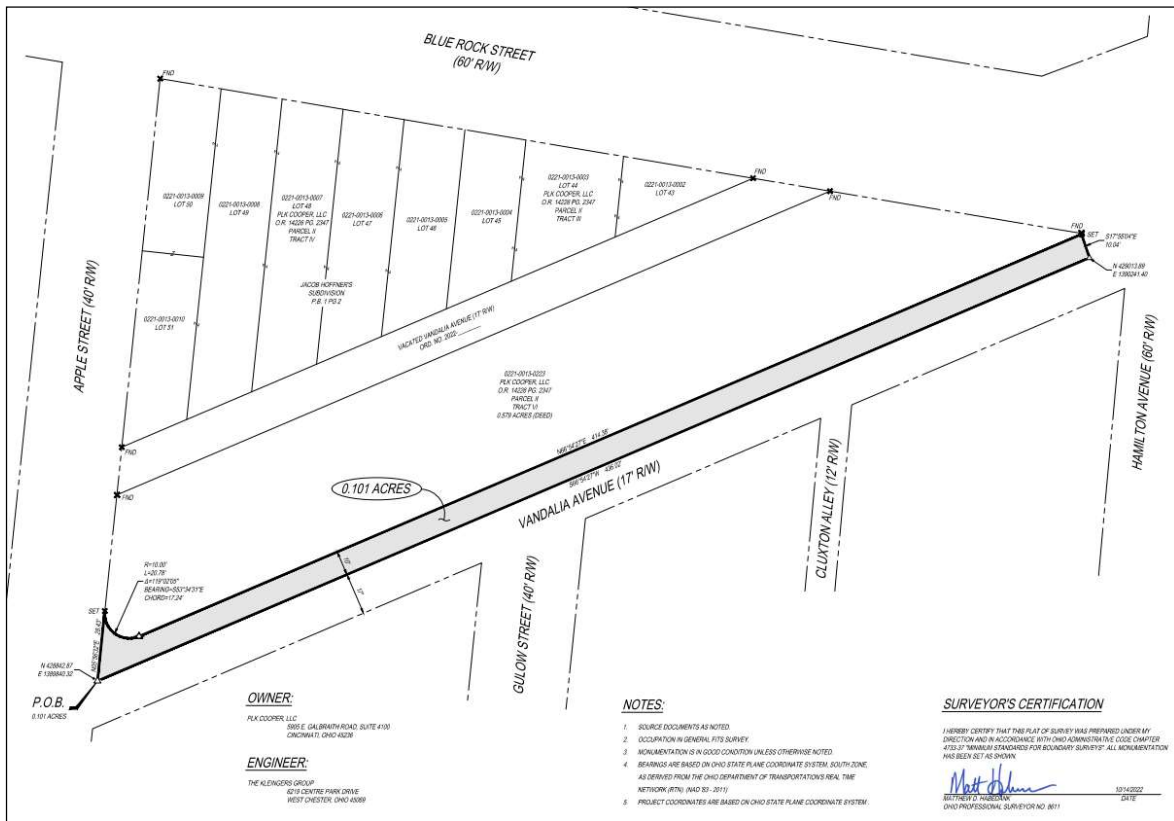
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**EXHIBIT B**  
to Property Sale Agreement  
Vacation Plat



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**EXHIBIT C**  
to Property Sale Agreement  
Dedication Plat



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**EXHIBIT D**  
to Property Sale Agreement  
*Escrow Agreement*

**ESCROW AGREEMENT**

THIS ESCROW AGREEMENT (this “Escrow Agreement”) dated as of the \_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”), by and among **VANDALIA POINT, LLC**, an Ohio limited liability company (“Developer”), **CITY OF CINCINNATI**, an Ohio municipal corporation (the “City”), and **Mercantile Title Agency, Inc.**, an Ohio corporation (“Escrow Agent”).

WHEREAS, PLK Cooper, LLC (“PLK”), Developer and the City are parties to a Property Sale Agreement dated \_\_\_\_\_ (the “Purchase Agreement”).

WHEREAS, pursuant to the Purchase Agreement, the City has agreed to sell to PLK certain property and in partial payment therefor, Developer has agreed to dedicate public right-of-way to facilitate the widening and improvement of Vandalia Avenue (the “Dedication Property”).

WHEREAS to ensure Developer’s performance of its covenants under the Purchase Agreement, including, but not limited to, the dedication of the Dedication Property, Developer has deposited the sum of Thirty-Two Thousand and No/100 Dollars (\$32,500.00) into escrow to be held in Escrow Agent’s escrow account, such amount to be held and disbursed by Escrow Agent as set forth herein.

WHEREAS, the parties hereto now wish to enter into this Escrow Agreement providing for the appointment of Escrow Agent as escrow agent to hold the Escrowed Funds and to set forth the terms and conditions under which the Escrowed Funds shall be disbursed.

NOW THEREFORE, intending to be legally bound hereby, the parties hereto agree as follows:

**1. Appointment of Escrow Agent.** The City and Developer hereby jointly appoint Escrow Agent as the escrow agent under this Escrow Agreement, and Escrow Agent hereby accepts such appointment and agrees to hold all of the funds deposited into escrow with it pursuant to Section 1B of the Purchase Agreement (collectively, the “Escrowed Funds”) in accordance with the terms hereof and to perform its other duties hereunder.

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**2. Establishment of Escrow.** Escrow Agent shall hold the Escrowed Funds in a non-interest bearing account with U.S. Bank, a national banking association and disburse it pursuant to the terms of this Escrow Agreement.

**3. Disposition of Escrowed Funds.** Escrow Agent shall disburse the Escrowed Funds as follows:

- (a) upon receipt of written notice from the City (which such notice may be provided to Escrow Agent via e-mail) that Developer has not completed the dedication of the Dedication Property on or before \_\_\_\_\_ [20 months from the Effective Date]; or
- (b) upon receipt of joint written instructions of Developer and the City (which such instructions may be provided to Escrow Agent via e-mail) directing the disposition of the Escrowed Funds, Escrow Agent shall promptly disburse the Escrowed Funds in accordance with such joint written instructions.

If there is a dispute between the parties (other than Escrow Agent) with regard to the payment of an amount from the Escrowed Funds, the fees and expenses of Escrow Agent, including, but not limited to, reasonable attorneys' fees and expenses and other costs incurred by Escrow Agent in connection with the adjudication of such dispute, shall be paid by the party that is not the prevailing party in such dispute.

**4. Resignation or Removal of Escrow Agent.** Escrow Agent may resign at any time upon ten (10) days' prior notice to the City and Developer, and may be removed by the mutual consent of the City and Developer upon thirty (30) days' prior notice to Escrow Agent. Upon receipt of Escrow Agent's notice of resignation, the City and Developer shall jointly appoint a successor escrow agent to hold the Escrowed Funds, and any such successor escrow agent shall execute and deliver to the predecessor escrow agent an instrument accepting such appointment, upon which such successor agent shall, without further act, become vested with all of the rights, powers and duties of the predecessor escrow agent as if originally named herein and the predecessor escrow agent's resignation shall become effective and such predecessor escrow agent shall be discharged from any future duties and obligations under this Escrow Agreement.

**5. Escrow Agent.** Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no duties shall be implied. Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Escrow Agreement. Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties. Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy, or content of any such document. Escrow Agent shall have no duty to solicit any payments which may be due it or the Escrowed Funds. Escrow Agent shall not be liable for any action reasonably taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that Escrow Agent's gross negligence or willful misconduct was the primary cause of

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any loss to the City or Developer. Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through agents or attorneys (and shall be liable only for the careful selection of any such agent or attorney) and may consult with counsel, accountants, and other skilled persons to be selected and retained by it. Escrow Agent shall not be liable for anything reasonably done, suffered, or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons. In the event that Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any party hereto which, in its opinion, conflict with any of the provisions of this Escrow Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep all property held in escrow until it shall be directed otherwise in writing by all of the other parties hereto or by a final order or judgment of a court of competent jurisdiction. Notwithstanding anything to the contrary contained in this Escrow Agreement, if at any time a dispute shall exist as to the duty of the Escrow Agent under the terms hereof, the right to possession, title or proceeds of any funds in escrow, or as to any dispute arising between the parties as to any matter under this Escrow Agreement, the Escrow Agent may deposit this Escrow Agreement and funds in escrow with any court of competent jurisdiction, and may interplead the parties hereto. Upon so depositing such Agreement and funds in escrow and filing its complaint in interpleader, Escrow Agent shall be released from all liability under the terms hereof, as to the funds so deposited. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE PURCHASE AGREEMENT OR THIS ESCROW AGREEMENT, IN NO EVENT SHALL ESCROW AGENT BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOST PROFITS), EVEN IF ESCROW AGENT HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSS OR DAMAGE AND REGARDLESS OF THE FORM OF ACTION.

**6. Fees and Expenses of Escrow Agent.** Developer hereby agrees to (a) pay Escrow Agent the sum of \$ \_\_\_\_\_ as its fee for serving as Escrow Agent under this Escrow Agreement, and (b) pay or reimburse Escrow Agent upon request for its extraordinary fees and for all expenses, disbursements and advances, including reasonable attorney's fees and expenses as incurred, reasonably required by Escrow Agent to be incurred or made by it in connection with the performance, delivery, modification and termination of this Escrow Agreement, such payments to be split equally among such parties, subject to any right of the prevailing party as per Section 3 hereof.

**7. Indemnity.** Developer shall indemnify, defend and save harmless Escrow Agent and its directors, officers, agents and employees (each an "Indemnitee") from all loss, liability or expense (including the reasonable fees and expenses of outside counsel) arising out of or in connection with (i) Escrow Agent's performance of this Escrow Agreement, except in the case of any Indemnitee to the extent that such loss, liability or expense is due to the gross negligence or willful misconduct of such Indemnitee, or (ii) its following any instructions or other directions from Developer and the City, except to the extent that it is following any such instruction or direction is expressly forbidden by the terms hereof. The parties hereto acknowledge that the foregoing indemnities shall survive the resignation or removal of Escrow Agent or the termination of this Escrow Agreement.

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**8. Notices.** All notices hereunder shall be in writing and shall be sufficiently given or sent if hand-delivered, sent by documented overnight delivery service or registered or certified mail, postage prepaid, return receipt requested or by telegram, fax or telecopy (confirmed by U.S. mail), receipt acknowledged, addressed as set forth below or to such other person and/or at such other address as may be furnished in writing by any party hereto to the other. Any such notice shall be deemed to have been given as of the date received, in the case of personal delivery, or on the date shown on the receipt or confirmation therefor, in all other cases.

(a) If to Developer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

(b) If to the City:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

(c) If to Escrow Agent:

Mercantile Title Agency, Inc.  
Attn: Brian K. Groemminger, Esq.  
255 East Fifth Street, Suite 1900  
Cincinnati, Ohio 45202  
Phone: 513-977-8331  
E-mail: brian.groemminger@dinsmore.com

**9. Entire Agreement and Modification.** This Escrow Agreement and the Purchase Agreement constitutes the entire agreement between the parties hereto with respect to the Escrowed Funds and supersedes all prior agreements and understandings with respect thereto. Any amendment, modification, or waiver of this Escrow Agreement shall not be effective unless in writing. Neither the failure nor any delay on the part of any party to exercise any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any occurrence.

**10. Governing Law.** This Escrow Agreement is made pursuant to, and shall be construed and enforced in accordance with, the internal laws of the State of Ohio (and United States federal law, to the extent applicable), without giving effect to otherwise applicable principles of conflicts of law.

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**11. Counterparts.** This Escrow Agreement may be executed in any two or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to constitute but one and the same agreement.

**12. Further Assurances.** Each of the parties hereto shall execute such further instruments and take such other actions as any other party shall reasonably request in order to effectuate the purposes of this Escrow Agreement.

**13. Binding Effect.** This Escrow Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, executors, and administrators. If any provision of this Escrow Agreement shall be or become illegal or unenforceable in whole or in part for any reason whatsoever, the remaining provisions shall nevertheless be deemed valid, binding and subsisting.

*Remainder of Page Intentionally Left Blank*

IN WITNESS WHEREOF, this Escrow Agreement has been executed as of the date and year first-above written.

**DEVELOPER:**

**VANDALIA POINT, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY:**

**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

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**ESCROW AGENT:**

**MERCANTILE TITLE AGENCY, INC.**

By: \_\_\_\_\_  
Brian K. Groemminger, President

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**EXHIBIT F**  
to Property Sale Agreement  
*Form of Quitclaim Deed*

[SEE ATTACHED]

{00383816-4}



**QUITCLAIM DEED**

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the “**City**”), for valuable consideration paid, hereby grants and conveys to **PLK COOPER, LLC**, an Ohio limited liability company, whose tax mailing address is 5905 East Galbraith Road, Cincinnati, OH 45236 (“**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; former public right-of-way known as Vandalia Avenue, f/k/a Railroad Street  
Auditor’s Parcel ID No.: None; (former public right-of-way)  
Prior instrument reference: Plat Book 1, Pages 2-3, Hamilton County, Ohio records

Pursuant to Ohio Revised Code Chapter 723 and Ordinance No. [ ]-2023, passed by Cincinnati City Council on [ ], 2023, the Property is hereby vacated as public right-of-way by the City.

This conveyance is subject to the exceptions, reservations, easements, covenants, and restrictions 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 exceptions, reservations, easements, covenants, and restrictions, which shall “run with the land” and be binding upon Grantee and its successors-in-interest with respect to the Property.

(A) Creation of Utility Easements: 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 the Property to maintain, operate, renew, reconstruct, and remove said utility facilities and to access said facilities.

(B) Consolidation. This conveyance shall not create an additional building site. 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*

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Executed on the date of acknowledgment below.

**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.

\_\_\_\_\_  
Notary Public:  
My commission expires: \_\_\_\_\_

Approved as to Form:

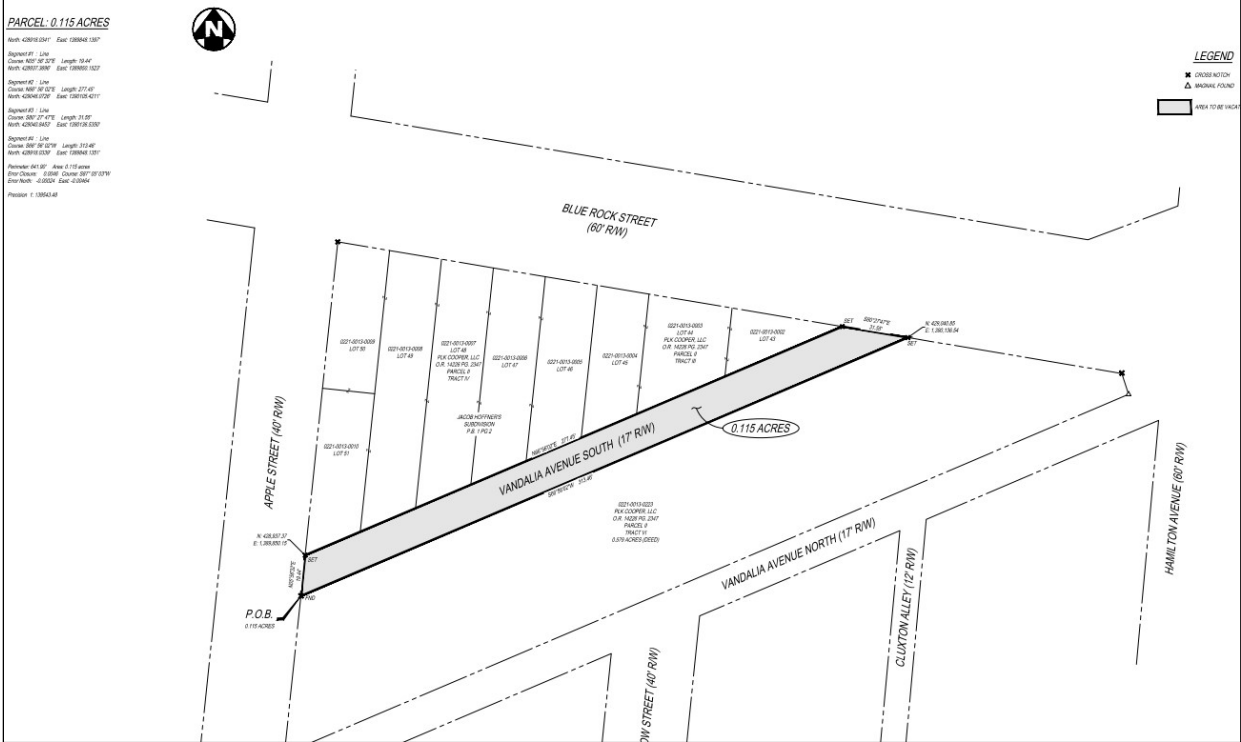
\_\_\_\_\_  
Assistant City Solicitor

This instrument prepared by:

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

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# EXHIBIT A to Quitclaim Deed Survey Plat



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**EXHIBIT B**  
to Quitclaim Deed  
*Legal Description*

**Auditor's Parcel No.:** None  
**Property Address:** None; Vandalia Avenue f/k/a Railroad Street

Situated in Section 28, Town 3, Fractional Range 2, Miami Purchase, Millcreek Township, City of Cincinnati, Hamilton County, Ohio and being a part of an original 100' railroad right of way dedicated in P.B. 1, Pg. 2 of the Hamilton County, Ohio Recorder's Office, the boundary of which being more particularly described as follows:

Beginning at a cross notch found at the intersection of the east right of way line of Apple Street with the south right of way line of Vandalia Street (north);

Thence along said east right of way line, N05°56'32" E a distance of 19.44 feet to a cross notch set at the intersection of said east right of way line with the north right of way line of Vandalia Street;

Thence along said north right of way line, N66°56'02" E a distance of 277.45 feet to a cross notch set at the intersection of said north right of way line with the south right of way line of Blue Rock Street;

Thence along said south right of way line, S80°27'47" E a distance of 31.55 feet to a cross notch set at the intersection of said south right of way line with the aforementioned south right of way line of Vandalia Street;

Thence along said south right of way line, S66°56'02" W a distance of 313.46 feet to the Point of Beginning.

Containing 0.115 acres of land, more or less.

Bearings are based on the Ohio State Plane Coordinate System South Zone as derived from the Ohio Department of Transportation's Virtual Reference Stationing System. (VRS) (NAD 83)

The above description is based on a field survey performed by The Kleingers Group under the direct supervision of Matthew D. Habedank, Ohio Professional Land Surveyor No. 8611.

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