

Contract No. _____

Property: Duck Creek Road Parcels

PROPERTY SALE AGREEMENT

This Property Sale Agreement (this "**Agreement**") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202 (the "**City**") and **FACTORY 52, LLC**, an Ohio limited liability company, whose tax mailing address is 5905 E. Galbraith Road, Suite 4100 45236 ("**Purchaser**").

Recitals:

A. The City owns a vacant tract of land located on Duck Creek Road near I-71 and abutting the northeast corner of the former U.S. Playing Card site in the City of Norwood, Ohio, known as Hamilton County Auditor's Parcel No. 651-0019-0130-00 (which is subject to and includes State Highway Easement Parcel No. 651-0019-0181-90, consolidated for tax purposes), as more particularly described on Exhibit A (Legal Description- the Sale Property) hereto (the "**Sale Property**"), which Property is under the management of the City's Department of Transportation and Engineering ("**DOT**").

B. Purchaser now owns or is under contract to acquire the abutting former U.S. Playing Card factory site, as depicted on Exhibit B (Site Survey) hereto ("**Purchaser's Property**"), which Purchaser is redeveloping into a mixed-use development.

C. Purchaser desires to purchase the Sale Property from the City, as depicted on Exhibit B, for site control and visibility purposes.

D. The City has determined that the Sale Property is not needed for any transportation or other municipal purpose.

E. The City's Real Estate Services Division has determined, by a professional appraisal, that the fair market value of the Sale Property is \$13,750.00, which has been deposited with the City Treasurer.

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

G. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Sale Property to Purchaser at its meeting on June 4, 2021.

H. Execution of this Agreement was authorized by Cincinnati City Council by Ordinance No. []-2022, passed on [], 2022.

NOW, THEREFORE, the parties agree as follows:

1. **Purchase Price.** Subject to the terms and conditions set forth herein, the City hereby agrees to sell the Sale Property to Purchaser, and Purchaser hereby agrees to purchase the Sale Property from the City for \$13,750.00 (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.

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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 (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. Purchaser 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: 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: Purchaser 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 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 – Sale Property in substantially the form attached as Exhibit D (Consolidation Plat – Sale Property and Purchaser's Property);
- (iv) Coordinated Report Conditions (CR #7-2021):
 - (a) DOTE:
 1. The Sale Property must include Parcel No. 651-0019-0181-90, designated as the State Highway Easement portion of the Property.
 2. No Auditor's parcels shall be landlocked by this sale. If possible, potential landlocked parcels should be consolidated with parcels having legal street frontage.
 3. The existing utilities must be granted easements or relocated at Purchaser's expense.
 4. Abutting property owners must agree to the sale in writing.
 5. A DOTE street opening permit, obtained by a DOTE licensed street contractor, is required for all private improvements in the public right-of-way. All improvements in the public right-of-way must be built to City standards, policies and guidelines. Application for permits may be made at Room 425, City Hall, 801 Plum Street. Please note that plan drawings (2 sets), to be reviewed by DOTE, must be attached to the permit application.
 6. A covenant shall be placed on the property that no Off-Site Advertising is permitted to occur on the site.

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(b) MSDGC:

1. There are existing 12" and 36" sanitary sewers located within the Sale Property. A 20' wide minimum permanent sewer easement will be necessary for the existing 12" sanitary sewer and a 40' wide minimum permanent sewer will be necessary for the existing 36" sanitary sewer. The permanent sewer easements will be necessary for access, operations, and maintenance to the existing sewers and manholes. An additional 3' on either side of the permanent easements will be required, along with other MSDGC easement restrictions, as outlined per MSDGC Rules and Regulations Section 207. No structure which can interfere with the access to the public sewer or can exert loading upon a public sewer per MSDGC Rules and Regulations Section 206.
2. A MSDGC Request for Availability for Sewer Service (RASS) will be required for a future development or redevelopment project, if not already received by MSDGC.

(c) Duke Energy:

1. Duke Energy Gas requires an access easement to maintain its feeder line located outside the Property.
2. Duke Energy Electric requires an easement to access and maintain facilities located on the Property.

(d) Buildings & Inspections:

1. Purchaser must be the vested owner of record of Purchaser's Property prior to Closing and shall consolidate the Sale Property with the Purchaser's Property immediately upon transfer of the Sale Property from the City.

(B) 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.

(C) Closing Date. Provided the Conditions have been satisfied, the Closing shall take place **30 days** after the Effective Date, or on such earlier or later date as the parties may agree upon.

(D) Closing Costs and Closing Documents. At the Closing, (i) City shall confirm that Purchaser has paid 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 Purchaser by *Quitclaim Deed* in the form of Exhibit C. Purchaser 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 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

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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 any and 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. The provisions of this Agreement shall survive the City's execution and delivery of the *Quitclaim Deed* and shall not be deemed to have been merged therein.

3. Notices. All notices given by the parties hereunder shall be deemed given if personally delivered, delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. regular or certified mail, addressed to the parties at their respective addresses set forth in the introductory paragraph of this Agreement. If 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. Purchaser makes 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) Purchaser 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 Purchaser.

(iii) Purchaser'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 Purchaser is a party or which purports to be binding upon Purchaser or upon any of its assets, nor is Purchaser 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 Purchaser, threatened against or affecting Purchaser, at law or in equity or before or by any governmental authority.

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

(vi) The statements made in the documentation provided by Purchaser to the City have been reviewed by Purchaser and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.

(vii) Neither Purchaser, 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.

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

(D) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and assigns. Purchaser 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.

(H) Brokers. Purchaser represents to the City that Purchaser has not dealt with any real estate brokers and agents in connection with its purchase of the Sale Property.

(I) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(J) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the property sale shall have any personal financial interest, direct or indirect, in the property sale, and Purchaser shall take appropriate steps to assure compliance.

(K) Administrative Actions. To the extent permitted by applicable laws, and unless otherwise expressly provided in this Agreement, all actions taken or to be taken by the City under this Agreement may be taken by administrative action and shall not require legislative action of the City beyond the legislative action authorizing the execution of this Agreement.

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

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

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

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Exhibit D – Consolidation Plat - Sale Property and Purchaser's Property

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

FACTORY 52, LLC,
an Ohio limited liability company

By: _____

Printed Name: _____

Title: _____

Date: _____, 2021

[City signatures on the following page]

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

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.: 651-0019-0130 (& 651-0019-0181-90 cons.)
Property Address: Duck Creek Road, Norwood, Ohio 45212

Situated in Section 28, Town 4, Fractional Range 4, BTM, Columbia Township, Norwood, Hamilton County, Ohio and being all of the remaining property conveyed to City of Cincinnati, by deed recorded in Deed Book 1319, page 193 in the Hamilton County Recorder's Office in Cincinnati, Ohio and is more particularly described as follows:

Unless otherwise stated, any monument referred to herein as a set iron pin is a 5/8 inch diameter rebar, thirty inches in length with a plastic cap stamped "HARTIG PS-8765". All bearings referred to herein are based upon the Ohio State Plane Coordinate System, South Zone, NAD83 (2011).

BEGINNING, at an iron pin (set) at the intersection of the westerly right-of-way line of Old Duck Creek Road and the southerly right-of-way line of the Baltimore & Ohio Railroad;

THENCE, with the westerly right-of-way line of Old Duck Creek Road S18°10'52"E 90.01 feet to an iron pin (set) at the common corner of City of Cincinnati (Deed Book 1319, page 193) and State of Ohio (Deed Book 3719, Page 65);

THENCE, with the common line of City of Cincinnati and State of Ohio, being the westerly right-of-way line of Interstate 71, S27°39'48"W 127.72 feet to an existing 5/8" iron pin and cap (PS 8352) at the common corner of Playing Card Partners, LLC (Official Record Book 14047, page 2372), State of Ohio and City of Cincinnati;

THENCE, leaving said right-of-way line and with the common line of Playing Card Partners, LLC and City of Cincinnati N36°44'35"W 62.16 feet to an existing 5/8" iron pin and cap (HARTIG PS 8765);

THENCE, N06°49'49"W 129.30 feet to an existing 5/8" iron pin and cap (PS 8352);

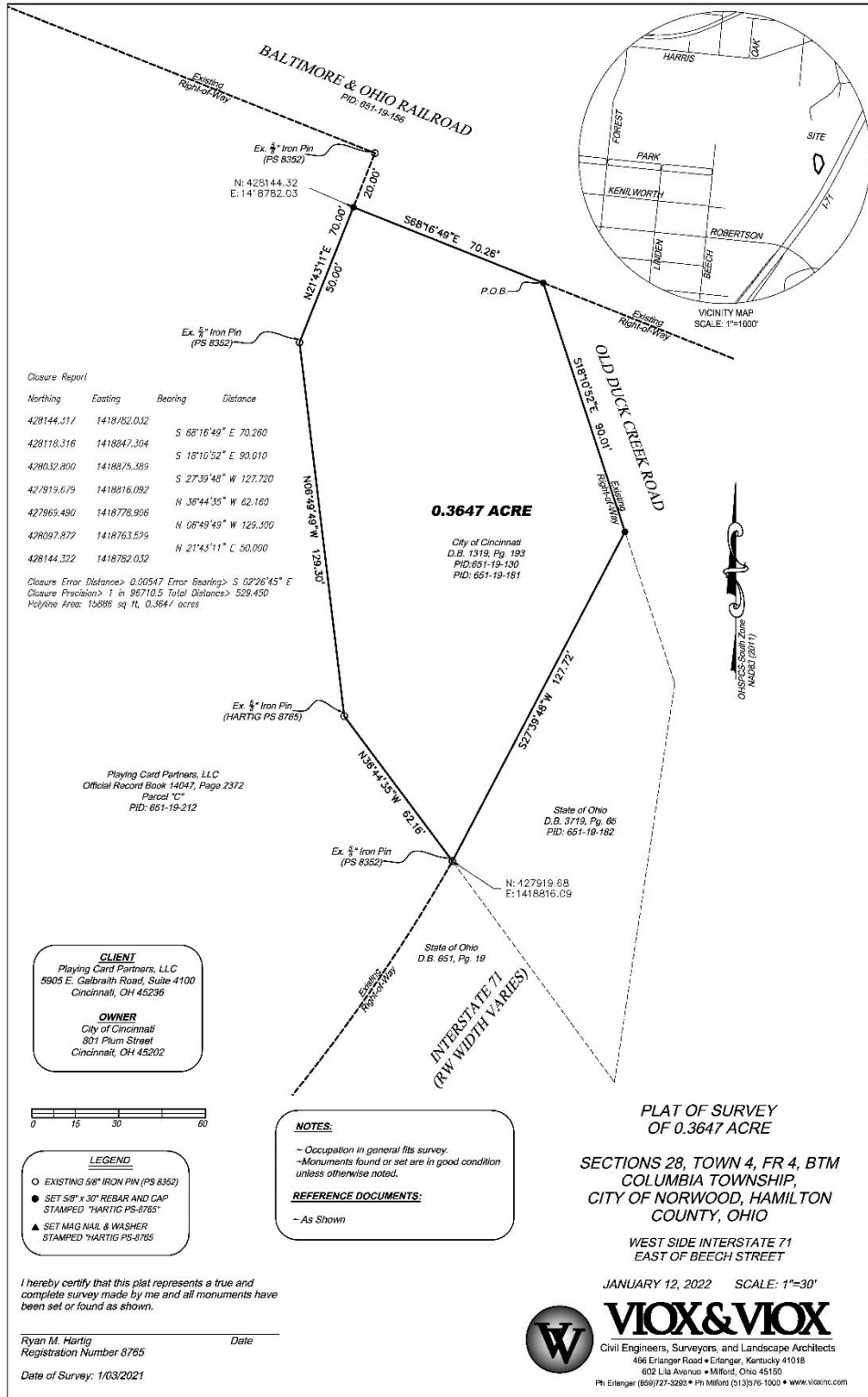
THENCE, N21°43'11"E 50.00 feet to an iron pin (set) in the southerly right-of-way line of Baltimore & Ohio Railroad;

THENCE, with said southerly right-of-way line S68°16'49"E 70.26 feet to the **POINT OF BEGINNING CONTAINING 0.3647 ACRES** and being subject to all easements and right-of-ways of record;

This description was prepared from a new survey made by Ryan M. Hartig, PS 8765, for Viox & Viox, Inc., January 3, 2022.

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EXHIBIT B
to Property Sale Agreement
Site Survey



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EXHIBIT C
to Property Sale Agreement
Form of Quitclaim Deed

[SEE ATTACHED]

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the “**City**”), for valuable consideration paid, hereby grants and conveys to **FACTORY 52, LLC**, an Ohio limited liability company, whose tax mailing address is 5905 E. Galbraith Road, Suite 4100 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: Duck Creek Rd., Norwood OH 45212
Auditor’s Parcel ID No.: 651-0019-0130-00 (& 651-0019-0181-90 cons)
Prior instrument reference: D.B. 1319, Pg. 193, Hamilton County, Ohio Records.

(A) Creation of Utility Easements:

1. Metropolitan Sewer District of Greater Cincinnati (“MSDGC”). The City hereby reserves and creates a 20’ wide permanent sanitary sewer easement and a 40’ wide permanent sanitary sewer easement as set forth on the plat attached as Exhibit C (Sanitary Sewer Easement Plat), together with the restrictions set forth thereon, for the purpose of maintaining, operating, renewing, reconstructing, and removing said utility facilities and for purposes of access to said facilities. Upon the written request of MSDGC, Grantee shall separately execute the Sanitary Sewer Easement Plat, which, when executed and recorded, will supersede the utility easements created by this paragraph.

2. Duke Energy Ohio. The City hereby reserves and creates permanent, non-exclusive utility easements in favor of Duke Energy Ohio (“Duke”) for the maintenance and repair of Duke’s (a) existing gas feeder line located near the Property and (b) existing electric facilities at the northern border of the Property. Grantee shall not block Duke’s access to the facilities, construct or install improvements or plant trees in the vicinity of Duke’s facilities that would reduce Duke’s required clearances, or do anything else that would interfere with Duke’s continuous access, maintenance and repair of its facilities or that might damage Duke’s utility facilities or create a hazard to such facilities. Duke shall have the right to remove any obstructions caused by Grantee, at Grantee’s expense. Upon the written request of Duke, Grantee shall execute a separate grant of easement instrument using Duke’s standard form, which, when executed and recorded, will supersede the utility easement created by this paragraph.

(B) Covenants and Restrictions:

1. Immediately after the transfer of the Property on the records of Hamilton County, Grantee shall consolidate the Property with Grantee's adjacent property designated as Hamilton County Auditor Parcel No. 651-0019-0212 by filing a consolidation plat approved by Grantor.

2. Grantee shall not construct or permit to be placed upon any portion of the Property any form of Off-Site Advertising.

Covenants to "Run with the Land". All of the easements, covenants and restrictions in paragraphs (A) and (B) above shall "run with the land" and be binding upon Grantee and its successors-in-interest with respect to the Property.

This conveyance was authorized by Ordinance No. __-2022, passed by Cincinnati City Council on _____, 2022.

[SIGNATURE PAGE FOLLOWS]

Executed on _____, 2022.

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022 by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public:
My commission expires: _____

Approved by:

John Brazina, Director
Department of Transportation and
Engineering

Approved as to Form:

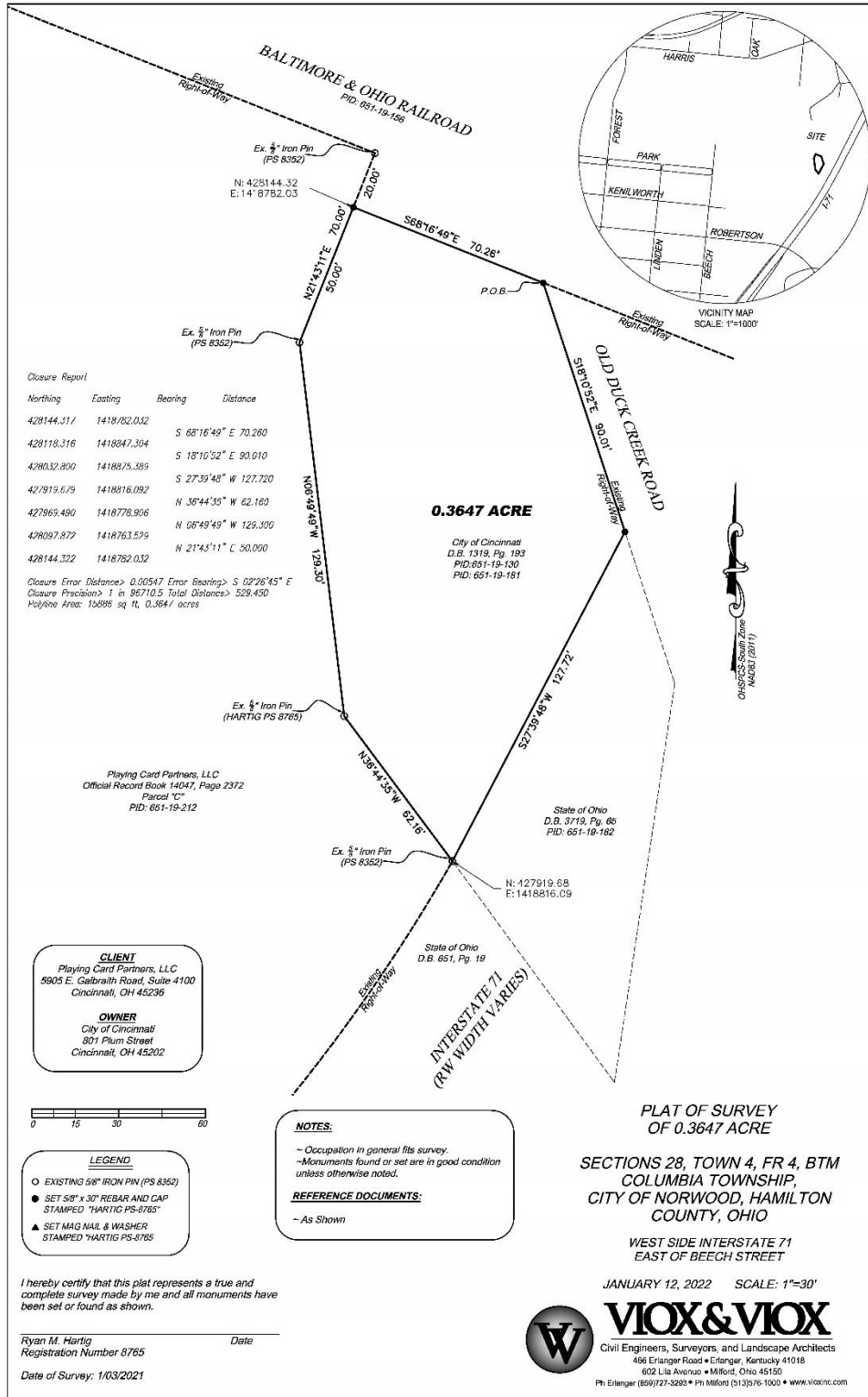
Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department,
801 Plum Street, 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

Situated in Section 28, Town 4, Fractional Range 4, BTM, Columbia Township, Norwood, Hamilton County, Ohio and being all of the remaining property conveyed to City of Cincinnati, by deed recorded in Deed Book 1319, page 193 in the Hamilton County Recorder's Office in Cincinnati, Ohio and is more particularly described as follows:

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