

**Honorable City Planning Commission
Cincinnati, Ohio**

SUBJECT: A report and recommendation on a proposed Notwithstanding Ordinance at 4924 Winton Road in Spring Grove Village and Winton Hills.

GENERAL INFORMATION:

Location: 4924 Winton Road, Cincinnati OH, 45232

Petitioner: Harnist & Corcoran Properties, LLC

Petitioner's Address: 1457 Harrison Avenue, Cincinnati OH, 45214

Owner: DSW Investments, LLC

Owner's Address: 4924 Winton Road, Cincinnati OH, 45232

ATTACHMENTS:

- Exhibit A – Location Map
- Exhibit B – Notwithstanding Ordinance Application
- Exhibit C – Letter requesting a Notwithstanding Ordinance
- Exhibit D – Proposed Site Plan

BACKGROUND:

Harnist & Corcoran is a Heating, Ventilation, and Air Conditioning (HVAC) company currently located at 1457 Harrison Avenue in South Fairmount, from which they have been operating since 1986. The company has 40 employees and services the greater Cincinnati area. In 2020 the City of Cincinnati filed and eventually settled an eminent domain action to acquire the Harrison Avenue property for the Western Hills Viaduct Replacement Project in *City of Cincinnati v. Harnist & Corcoran Properties LLC et al.* (case no. A2003641). Harnist & Corcoran were given until October 1, 2023 to vacate their current location. After working with both the Real Estate Division of the Law Department and the Department of Community and Economic Development (DCED) to find a suitable relocation site within the City, Harnist & Corcoran entered a purchase contract with DSW Investments LLC for the subject property in July of 2022.

The subject property at 4924 Winton Road is a 2.14 acre parcel located in Spring Grove Village and Winton Hills. The property is currently zoned Single-family (SF-20), and the adjacent zones are Manufacturing Agricultural (MA) and Residential Multi-family (RM-2.0), none of which permit Harnist & Corcoran's HVAC operations. The existing structure is a legally non-conforming commercial building that has been occupied by commercial uses since its construction in 1996, and is currently occupied by DAG Construction. The site is located in close proximity to several other commercial businesses, including another HVAC business directly across the street at 4995 Winton Road with legal non-conforming status.

Harnist & Corcoran are proposing modifications to the site that will include the addition of a three-bay garage, a retrofitting of the existing garage, paving the existing gravel area, extension of the existing storm detention infrastructure, new fencing, and cosmetic improvements inside the building (see exhibit D). The legal non-conforming status of the site does not permit Harnist & Corcoran to execute the proposed modifications, which they maintain are necessary for relocation there.

The community has indicated that it would prefer the land not to be rezoned when a similar Notwithstanding Ordinance was granted in 2021 for a daycare located roughly 500 feet south at 4870 Winton Road. Additionally, the project timeline is constrained by the fact that all renovations to the relocation site must occur in advance of the vacation date of October 1, 2023. These factors have led the applicant to pursue a Notwithstanding Ordinance to permit the proposed commercial use as well as the proposed buildout and site modifications. This ordinance

only provides relief for zoning modifications, and all other City codes still apply.

ANALYSIS:

The Department of City Planning and Engagement has typically taken a position to not support NWOs because they do not comply with the Zoning Code that the department is charged with developing and enforcing. However, Cincinnati Municipal Code Section 111-5 establishes a list of factors by which a City Council committee may consider a notwithstanding ordinance application. As such, the City Planning Commission shall consider the following when making a recommendation on notwithstanding ordinances to City Council:

- 1) *Whether the proposed application will not have an adverse effect on the character of the area or the public health, safety and welfare;*

The proposed development is consistent with the surrounding area, which includes several commercial businesses, including another HVAC service directly across the street. It is consistent with the past use of the site, which has been under commercial operation for over 25 years. The proposed Notwithstanding Ordinance is consistent with the wishes of the community to preserve the existing zoning of the land.

- 2) *Whether the proposed application is consistent with the purposes of this code and the zoning district where the subject property is located including but not limited to:*

- (a) *Providing a guide for the physical development of the city.*

The proposed Notwithstanding Ordinance would permit the renovation of an existing structure that is consistent with the character of similar adjacent structures.

- (b) *Preserving the character and quality of residential neighborhoods.*

The subject property, despite its SF-20 classification, is located on a predominantly commercial and industrial strip of Winton Road, and is surrounded by multiple acres of vegetation that act as a buffer between all adjacent residential properties (see Exhibit A).

- (c) *Fostering convenient, harmonious and workable relationships among land uses.*

The subject property is located within an existing corridor of commercial and manufacturing land uses. All adjacent residential uses are buffered by multiple acres of vegetation.

- (d) *Achieving the arrangement of land uses described in the comprehensive plan for the development of the city as may have been adopted by council.*

The proposed Notwithstanding Ordinance is consistent with *Plan Cincinnati (2012)* (see "Consistency with Plans").

- (e) *Promoting the economic stability of existing land uses and protecting them from intrusions by inharmonious or harmful land uses.*

The subject property has been an established commercial use since 1996 and is located within an existing commercial and industrial corridor with multiple similar or identical businesses. The proposed Notwithstanding Ordinance will allow for the continued occupancy of the building and will not alter the character of the area as it currently exists.

- (f) *Providing opportunities for economic development and new housing for all segments of the community.*

The proposed development and Notwithstanding Ordinance will facilitate the retention and expansion of a longstanding Cincinnati business and 40 jobs.

(g) Creating pedestrian-friendly environments to reduce reliance on the automobile for travel.

All modifications to the street or sidewalk will be subject to review by DOTE according to the applicable standards.

(h) Preventing excessive population densities and overcrowding of land or buildings.

The proposed development will not impact population densities or overcrowding.

(i) Ensuring the provision of adequate open space for light, air and fire safety.

The proposed development will not adversely impact the existing open space, light and air quality, or fire safety of the site.

(j) Ensuring that development is compatible with the environment, particularly on the hillsides and along the riverfront.

All site work and regrading, excluding what is necessary for the addition of the 3-bay garage, will be subject to the regulations of the Hillside Overlay.

(k) Promoting the conservation, protection, restoration and enhancement of the historic resources of the city.

The subject property is not located within a historic district.

(l) Lessening congestion in the public streets by providing for off-street parking and loading areas for commercial vehicles.

This site contains an existing 20-space surface parking lot, with the applicant proposing 5 additional spaces. The existing fenced loading area will be paved to create 16 spaces for commercial vehicles.

(m) Providing effective signage that is compatible with the surrounding urban environment.

Proposed signage conforms to the standard regulations of the CC-A and CC-G zones.

(n) Setting standards by which a nonconforming use may continue to function and to provide for the adaptive reuse of nonconforming buildings.

The proposed Notwithstanding Ordinance would allow for the proposed modifications to the building and site, which are not currently permitted due to the legal non-conforming status of the property.

PUBLIC COMMENT AND NOTIFICATION:

Notice of the December 2, 2022 City Planning Commission meeting was sent to all property owners within 400 feet of the site, as well as both the Spring Grove Village and Winton Hills Community Councils. The applicant has communicated with the Spring Grove Village Council. Staff have received no public comment at this time.

CONSISTENCY WITH PLAN CINCINNATI:

The proposed Notwithstanding Ordinance is consistent with the Compete Initiative Area of *Plan Cincinnati* (2012) with the goal to “Foster a climate conducive to growth, investment, stability, and opportunity” and the strategy to “Grow our own by focusing on retention, expansion and relocation of existing businesses” (p. 103). The City wishes to retain Harnist & Corcoran’s long-standing business and 40 local employees within City limits. The proposed Notwithstanding Ordinance would enable this relocation and minimize adverse impacts to Harnist & Corcoran’s business operations by facilitating the transition within the required timeline.

CONCLUSIONS:

Harnist & Corcoran has been working actively with the City for the past two years to relocate their business for the Western Hills Viaduct Replacement Project. Given the nature of their business, the circumstance, and some financial restraints, this task has proven to be somewhat complex. The most suitable property identified has zoning conflicts that would need to be resolved in order to permit the relocation. Due to the wishes and previous actions of the community and the constrained timeline, Harnist & Corcoran are pursuing a Notwithstanding Ordinance as the best means of resolution.

The Department of City Planning and Engagement has typically taken the position to not support any Notwithstanding Ordinances for land use decisions. However, due to the City's desire to retain Harnist & Corcoran's business, the unique zoning circumstances of the site, the will of the community, and the minimal impact the proposed development will have on the existing character of the area, Staff finds that a Notwithstanding Ordinance is suitable to resolve this matter in a timely fashion.

RECOMMENDATION:

The staff of the Department of City Planning and Engagement recommends that the City Planning Commission take the following action:

APPROVE the proposed Notwithstanding Ordinance permitting an HVAC business (Harnist & Corcoran) at 4924 Winton Road in Spring Grove Village and Winton Hills with the following conditions:

1. The proposed development substantially conforms to the site plan as submitted, including:
 - a. Construction of an approximately 2,500 sq. ft. garage located in the rear of the existing gravel parking lot
 - b. Paving of the existing gravel parking lot
 - c. Installation of a new 10 by 15 foot sign in front of the building
 - d. Installation of a shed roof over the existing loading dock
 - e. Installation of a 6 foot high replacement fence surrounding the loading area
 - f. Parking expansion on the south side of the existing building (approximately 800 sq. ft.)
2. All site work and regrading, excluding what is necessary for the addition of the 3-bay garage, will remain subject to the regulations of the Hillside Overlay.
3. The Notwithstanding Ordinance does not provide relief from any other code except necessary zoning modifications.

Respectfully submitted:



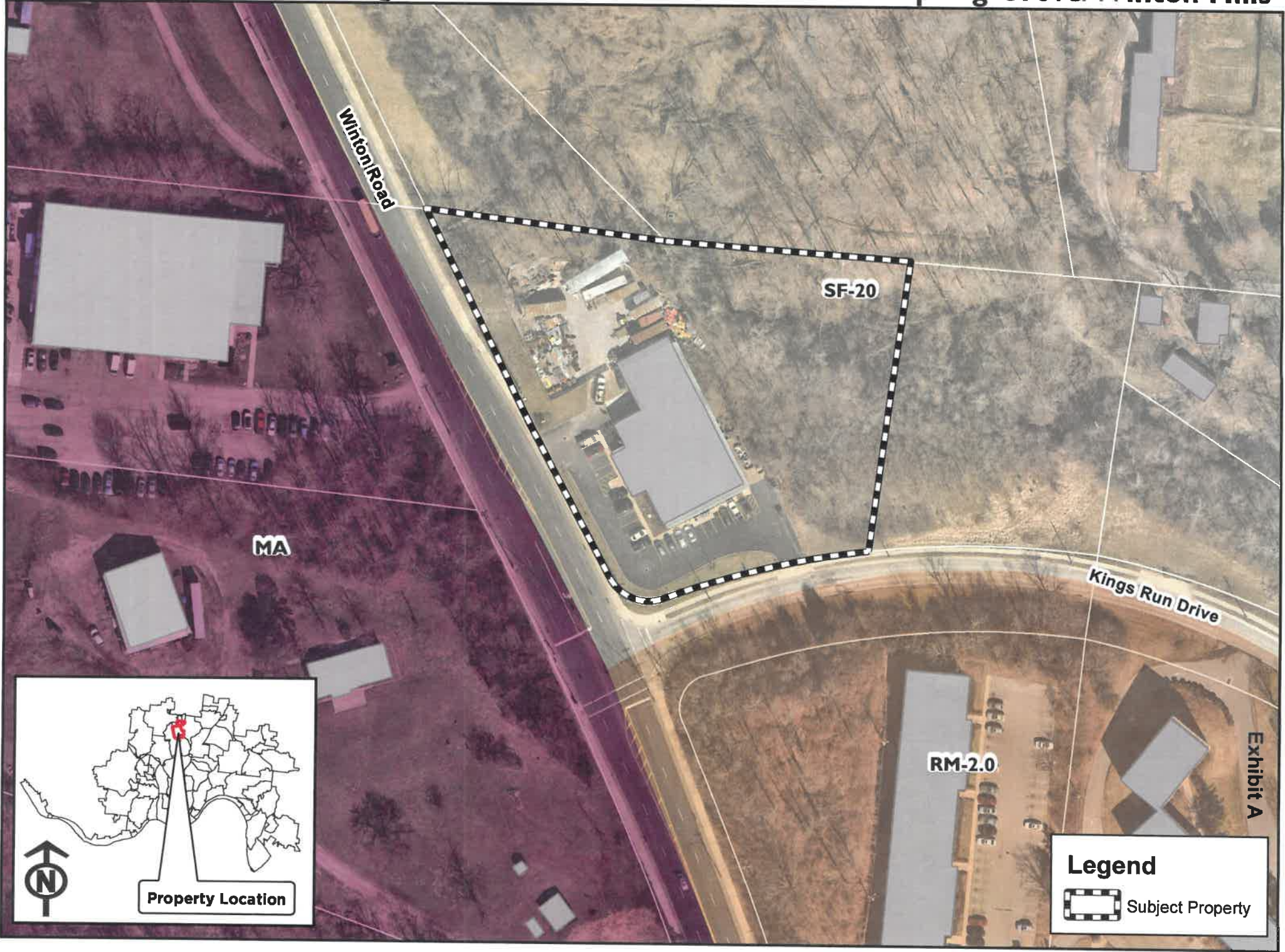
Gabrielle Couch, City Planner
Department of City Planning & Engagement

Approved:



Katherine Keough-Jurs, FAICP, Director
Department of City Planning & Engagement

Proposed Notwithstanding Ordinance at 4924 Winton Road in Spring Grove/Winton Hills





MATTHEW W. FELLERHOFF
Writer's E-Mail: mwfellerhoff@strausstroy.com

Writer's Direct Dial: 513.768.9791

November 14, 2022

City of Cincinnati
Katherine Keough-Jurs
Director of City Planning
805 Central Avenue, Suite 720
Cincinnati, Ohio 45202

RE: Application for Notwithstanding Ordinance
4924 Winton Road, Cincinnati, Ohio 45232
Hamilton County Parcel No. 238-0001-0022-00

Dear Ms. Keogh-Jurs:

I represent Harnist & Corcoran Properties, LLC ("Harnist & Corcoran") with regard to its application for a Notwithstanding Ordinance for property located at 4924 Winton Road, Cincinnati, Ohio 45232 ("Winton Road Property"). This letter sets forth the basis of the request and outlines the practical difficulties created by following existing legislative and administrative procedures. Also being submitted with this letter is (1) Application for Notwithstanding Ordinance; (2) Portion of Zoning Map depicting the Winton Road Property; (3) CAGIS Map depicting the Winton Road Property; (4) Aerial Map depicting the Winton Road Property; (5) Auditor's photograph of existing structure; (6) Letter from DSW Investments authorizing the submission of the Application of Notwithstanding Ordinance; and (7) a check in the amount of \$1,000. In addition, Harnist & Corcoran has submitted its City Business Disclosure form, Confirmation Number 734948.

Harnist & Corcoran currently owns property located at 1457 Harrison Avenue, Cincinnati, Ohio 45214 ("Harrison Avenue Property"), where Corcoran & Harnist Heating and Air Conditioning, Inc. has operated its business since 1986. In 2020, the City of Cincinnati filed an eminent domain action to acquire the Harrison Avenue Property for the Western Hills Viaduct Replacement Project. See *City of Cincinnati v. Harnist & Corcoran Properties, LLC, et al*, Hamilton County Case No. A2003641. In order to continue to operate its business, which employs 40 employees and provides heating and air conditioning service to the Greater Cincinnati Area, Harnist & Corcoran began searching for a comparable property to purchase. Given the unique nature of its business operations and financial restraints, Harnist & Corcoran had great difficulty identifying a property that would meet its operational needs and budget. With the assistance of both a commercial real estate broker, City of Cincinnati Real Estate staff, and the City of Cincinnati Department of Community & Economic Development, Harnist & Corcoran evaluated dozens of available properties over a period of two years, but was unable to identify a suitable replacement property. However, in July of 2022, it entered into a

purchase contract with DSW Investments, LLC to acquire the Winton Road Property. Harnist & Corcoran believes that, with certain improvements, this property will be an acceptable replacement for its current building and location.

The Winton Road Property consists of a commercial structure and parking area located at the corner of Winton Road and Kings Run Drive. It is currently occupied by DAG Construction. The existing commercial building was built in 1996, and has been used continuously for commercial purposes since it was constructed.

Through the course of its due diligence, Harnist & Corcoran discovered that the property is zoned SF-20, which would preclude its legal use and the build-out for Harnist & Corcoran's needed commercial use. It is believed that this property was zoned such in error, as it does not have a history of residential use and is also located in close proximity to many other commercial uses. Through a zoning verification letter, the City Planning Department confirmed that the existing use is a legal non-conforming use, which would permit its continued use, but would hinder the needed expansion of such use. In order to resolve this zoning conflict, and ensure that the site can be modified to meet its business and operational needs, Harnist & Corcoran seeks a Notwithstanding Ordinance permitting the Winton Road Property to be used for its commercial purposes, including its necessary planned buildout, which includes a basic 3 bay garage in addition to retrofitting the existing garage/warehouse, paving the existing gravel/area, extension of the existing storm detention infrastructure, new fencing, and cosmetic improvements inside the existing building. The proposed build out and use would remain consistent with how the property has been used for the past 25 years.

The need for a Notwithstanding Ordinance, as opposed to existing legislative and administrative remedies, is to ensure that Harnist & Corcoran can close on the purchase within the time frames of its purchase contract. The seller has indicated that it will not extend any time frames under the contract past the end of the year. While this may normally not be grounds for the remedy requested, Harnist & Corcoran is in the unique position of needing to relocate due to an involuntary move within the site preparation and construction time frames established for the Western Hills Viaduct Replacement Project. In the event Harnist & Corcoran is unable to secure this property by the end of the year, it is highly unlikely that Harnist & Corcoran will be able to relocate its business within the timeframes established by the City of Cincinnati and the Ohio Department of Transportation, thus creating significant hardship that could jeopardize the business operations of Corcoran & Harnist Heating and Air-Conditioning.

Harnist & Corcoran has worked cooperatively with the City of Cincinnati throughout the acquisition and relocation process. While Harnist & Corcoran would prefer to not move at all, it understands that the project is an important one which will be transformative for the West Side of Cincinnati and an important element of the City's overall transportation system. The granting of the Notwithstanding Ordinance will allow Harnist & Corcoran to secure a new location within the City of Cincinnati and ensure that the business continues to thrive and provide job opportunities and service to the region. In light of the facts as

Page 3

set forth herein, a Notwithstanding Ordinance is an appropriate and reasonable remedy to cure the zoning conflict.

Should you need any additional information, please do not hesitate to contact me.

Sincerely,

STRAUSS TROY



Matthew W. Fellerhoff

cc: Kevin Tidd, Assistant City Solicitor (via email kevin.tidd@cincinnati-oh.gov)
Alex Peppers, AICP, Deputy Director, Department of City Planning and Engagement (via email alex.peppers@cincinnati-oh.gov)

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 F 513 352 2579
 WWW.CINCINNATI-OH.GOV
 CAGIS.HAMILTON-CO.ORG

Notwithstanding Ordinance Application
INITIALIZED BY

Part A - Identification


Subject Property Address (Please print in blue or black ink only) 4924 Winton Road, Cincinnati, Ohio 45232		
Applicant - Name (Print) Harnist and Corcoran Properties, LLC	Phone No (513) 921-2227	E-mail Address timcorcoran@corcoranharnist.com
Street Number & Name 1457 Harrison Avenue	City / State / Zip Code Cincinnati, Ohio 45214	Phone No / Fax No
Relationship of Applicant to Owner: <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Lessee <input type="checkbox"/> Attorney		
Property Owner - Name (Print) DSW Investments, LLC	Phone No (513) 616-8950	E-mail Address
Street Number & Name 4924 Winton Road	City / State / Zip Code Cincinnati, Ohio 45232	Phone No / Fax No

Part B - Submission Requirements (Please provide the following for a complete application)

1. **A copy of the zoning map showing the subject property. A copy may be obtained through the Zoning Administration by emailing zoninginfo@cincinnati-oh.gov or by calling (513) 352-2430.**
2. **A written statement outlining all of the practical difficulties created by following existing legislative and administrative procedures.**
3. **Submit one (1) paper copy and one (1) digital copy of the application to the Director of City Planning at 805 Central Avenue, Suite 720, Cincinnati, Ohio 45202. Payment must be included with the application. (Payable to the City of Cincinnati)**

Part C - Authorization

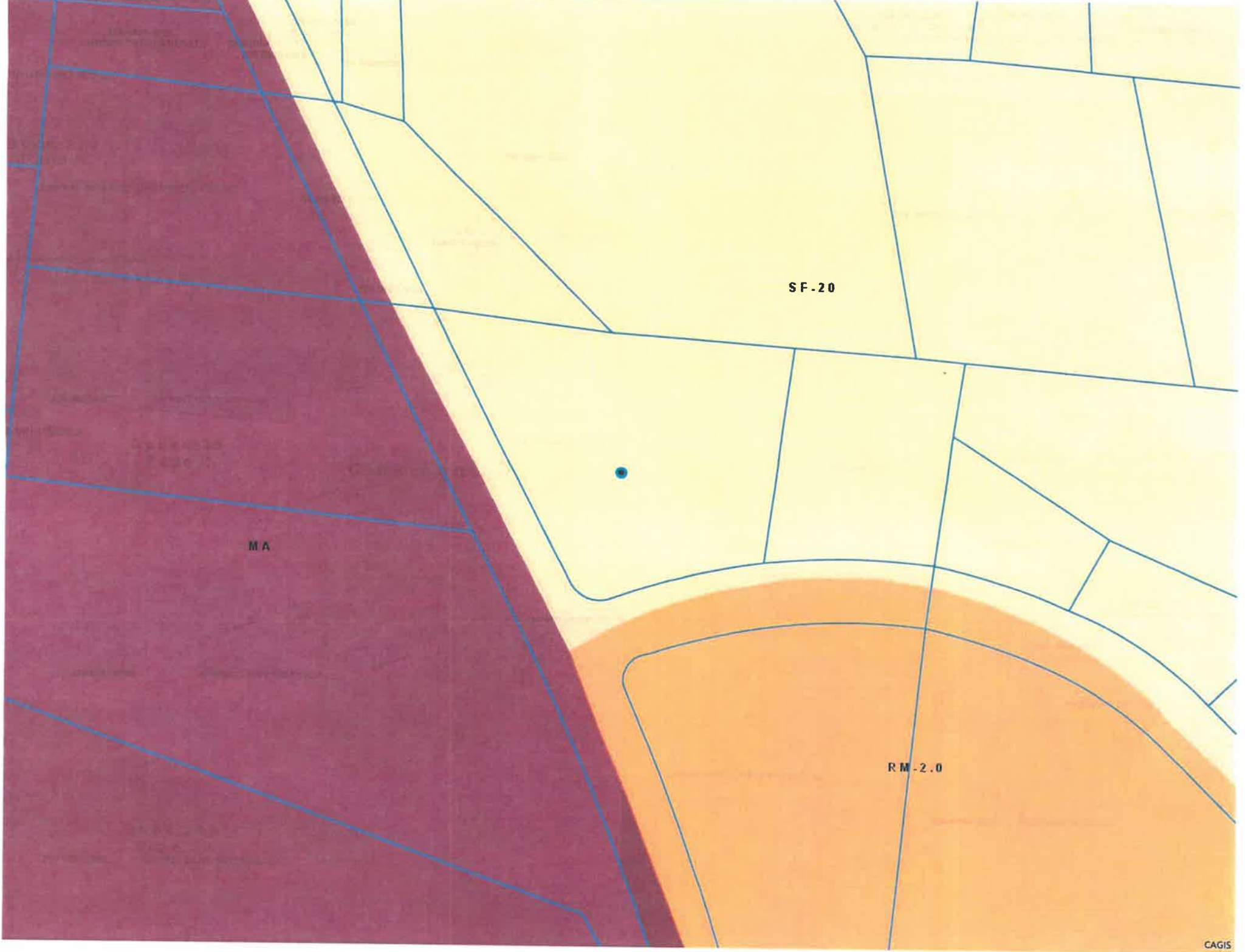
The applicant or agent undersigned does hereby certify that the information and statements given on the application, drawings, and inspections are to the best of their knowledge, true and correct. The undersigned further certifies their authorization to grant consent to the inspection by employees of the City of Cincinnati of the described premises at any time when work on those premises is ongoing and hereby grants their consent.

Applicant's Signature  Date 11/14/2022

FOR OFFICE USE ONLY

Reviewed By: _____ Processing Fee _____

City Planning Staff _____ Date Application Complete _____



SF-20

MA

RM-2.0



238-0001-0002 SUNESIS PROPERTIES LLC

238-0001-0003 CINCINNATI CITY OF

238-0001-0004 GODSEY BRENDA

238-0001-0005 GODSEY BRENDA

238-0001-0011 MA RUDN USA & STEVE SLACK

238-0001-0013 SHERWIN PATRICK & EMILY ZAEBS

238-0001-0015 SHERWIN PATRICK & EMILY ZAEBS

238-0001-0006 TDH PROPERTIES LLC

238-0001-0025

GODSEY BRENDA

238-0001-0079 SUNESIS PROPERTIES LLC

CINCINNATI CITY OF

238-0001-0026 GODSEY BRENDA

238-0001-0017 BRICKER JOHN T & LINDA D

238-0001-0025

238-0001-0077 AUBRAHN GREENHOUSES INC

238-0001-0060

238-0001-0077 BRYANT HABEGGER CO

238-0001-0022 ESW INVESTMENTS LLC

238-0001-0023 NELSON ADAM & MELANIE

238-0001-0025 FLOYD ELIZABETH

Book: 238 Page: 1

Cincinnati

238-0001-0045 NELSON ADAM & MELANIE

238-0001-0074 NELSON ADAM & MELANIE

238-0001-0059 CINCINNATI CITY OF

238-0001-0056 CINCINNATI CITY OF

PRESENT TRUTH WORSHIP CENTER

238-0001-0082

238-0001-0082 SPRING LAWN FREEHOLD LLC

238-0001-0076 WINTON KINGS LLC

238-0001-0070 WINTON KINGS LLC

Book: 219 Page: 50

238-0050-0003

238-0050-0003 SPRING LAWN FREEHOLD LLC

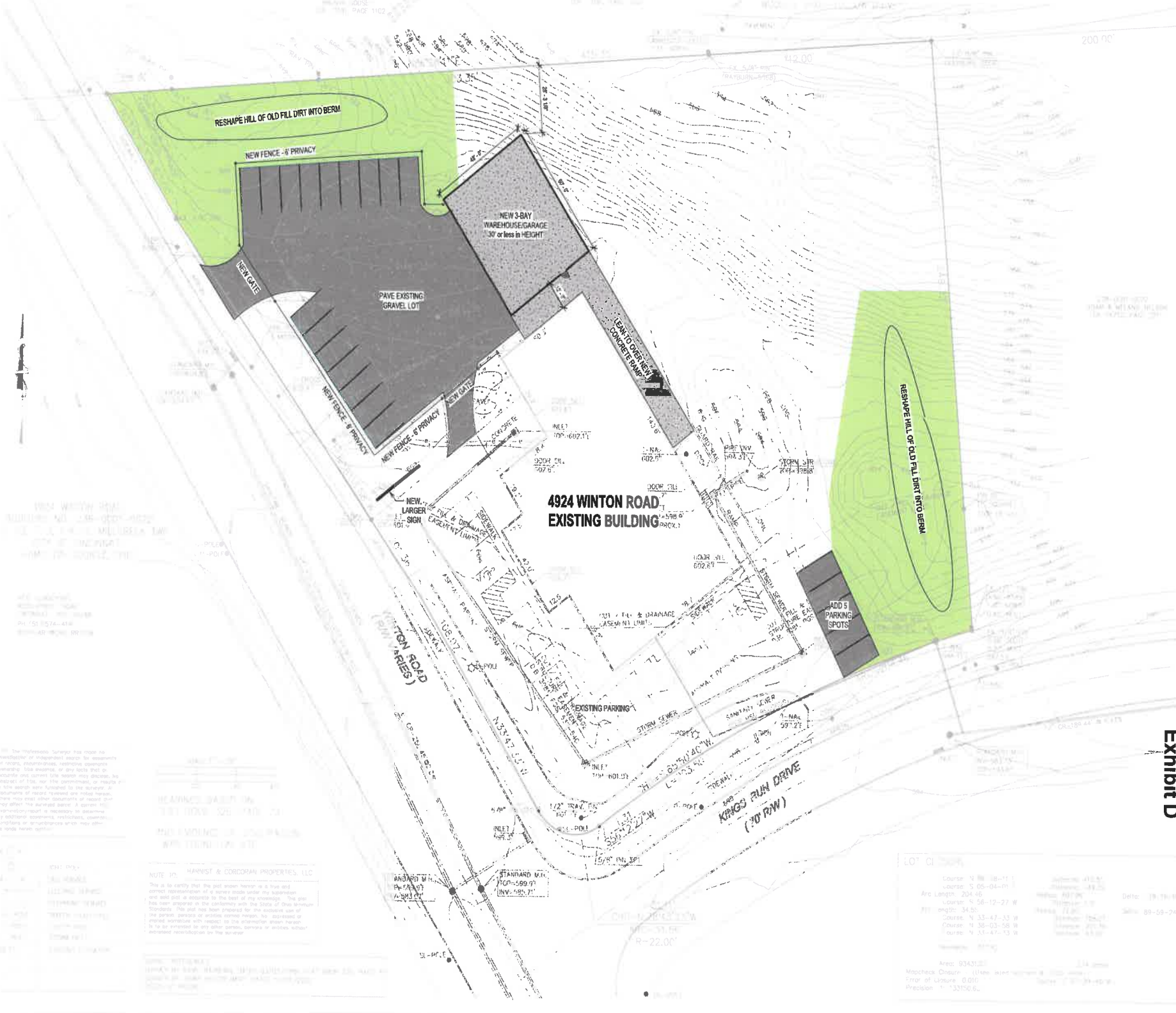


Image not authorized for Commercial Use



www.HamiltonCountyAuditor.org

238-0001-0022-00 06/05/2021



The Professional Engineer has made no investigation or independent search for easements or records, encroachments, restrictive covenants, zoning, title, or other facts that in accordance with the provisions of the contract of this plan the permittee, or holder of a title search report prepared for the survey, or the holder of a record reviewed or noted herein, may have other easements of record that may affect the surveyed parcel. A system of recordation is necessary in determining or describing easements, restrictions, covenants, and other encumbrances which may affect the surveyed parcel.

HEADINGS: NORTH
WEST
AND
EAST

NOTE TO: HARNIST & CORCORAN PROPERTIES, LLC

This is to certify that the plot shown herein is a true and correct representation of a survey made under my supervision and was plotted in accordance to the best of my knowledge. This plot has been prepared in the conformity with the State of Ohio laws. This plot was prepared for the exclusive use of the person, persons or parties named herein, has been prepared in accordance with respect to the information herein stated. It is to be extended to any other person, persons or parties without my consent or approval by the surveyor.

DATE: 10/26/2022
TIME: 10:00 AM
PROJECT: 4924 WINTON ROAD
CLIENT: HARNIST & CORCORAN PROPERTIES, LLC

COURSE	LENGTH	BEARING	AREA	DATE
Course 1	108-11.1	N 05-04-01 W	110.5	10-26-22
Course 2	204.46	S 05-04-01 W	43.25	10-26-22
Course 3	58-12-27 W	N 05-04-01 W	10.79	10-26-22
Course 4	33-47-33 W	N 05-04-01 W	12.24	10-26-22
Course 5	38-03-58 W	N 05-04-01 W	15.21	10-26-22
Course 6	31-47-33 W	N 05-04-01 W	4.80	10-26-22

Area: 9343.00
Matched: 9343.00
Error of Closure: 0.01
Precision: 1:133150.6

JOSE GARCIA
 DESIGN + CONSTRUCTION

DESIGNER
 Jose Garcia Design
 644 Chester Avenue
 Cincinnati, Ohio 45219
 (513) 751-1222

PRELIMINARY
 Site Plan Based on REYL Survey
 Dated October 26, 2022
 File #191

NOT FOR CONSTRUCTION

Corcoran & Harnist
 4924 Winton Road
 Cincinnati, Ohio 45232

Exhibit D

DATE	DESCRIPTION
2018XXXX	FOR REVIEW

PRINTED: 11/29/2022 12:04:59 PM
 COPYRIGHT JOSE GARCIA DESIGN, LLC

SITE PLAN
A-100