

19-122

EXHIBIT A

Executed

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COOPERATIVE AGREEMENT

among

COUNTY OF SUMMIT, OHIO

and

SUMMIT COUNTY LAND REUTILIZATION CORPORATION, OHIO

and

ASIK PROPERTIES, LLC

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Dated as of  
March \_\_, 2019

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## COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT made and entered into as of March \_\_\_, 2019 by and among the COUNTY OF SUMMIT, OHIO, a county organized and existing under the laws of the State and its Charter (the "County"), the SUMMIT COUNTY LAND REUTILIZATION CORPORATION dba SUMMIT COUNTY LAND BANK, an Ohio non-profit community improvement corporation organized and existing under the laws of the State (the "Land Bank"), and ASIK PROPERTIES, LLC, an Ohio limited liability company organized and existing under the laws of the State, ("Asik") under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals being used therein as defined in Article I hereof):

### Recitals:

- A. The County is the owner of the real property located at 1035 Sweitzer Ave., Akron, OH 44311, identified as Parcel Nos. 6761194, 6756955 and 6755011 in the Summit County Records, consisting of approximately 12.47 acres of land, and containing several buildings and structures thereon (the "Property"), as further depicted on Exhibit A attached hereto.
- B. The County, the Land Bank and Asik (collectively, the "Cooperative Parties") intend to cooperate with each other in order to divide, consolidate, sell, lease, purchase, option and otherwise redevelop the Property.
- C. The County desires to combine and subsequently divide the Property into three new parcels.
- D. Following the creation of the three new parcels, the County desires to sell the same to the Land Bank, and the Land Bank desires to purchase the same from the County.
- E. Upon acquisition, the Land Bank desires to (i) sell one of the newly created parcels to Asik for redevelopment, (ii) grant an option to purchase a second parcel to Asik for future redevelopment, and (iii) lease the third parcel back to the County for a period of time, as set forth herein, and then subsequently redevelop the third parcel.
- F. The Cooperative Parties further desire to set forth in this Cooperative Agreement the cost that each shall pay for the purchase of the Property or any portion thereof, and to further provide for the payment of the costs of the transactions contemplated herein.
- G. The Cooperative Parties intend to undertake the transactions described in this Cooperative Agreement, subject to the terms and conditions of this Cooperative Agreement. The Cooperative Parties believe that the undertakings of each contemplated by this Agreement will support governmental functions, promote economic development in the County, and create jobs and employment opportunities in the County, and each of the Cooperative Parties has full right and lawful authority to enter into this Agreement and to perform and observe the provisions hereof on its respective part to be performed and observed.

NOW THEREFORE, in consideration of the premises and the mutual representations and agreements hereinafter contained, and subject to the terms and limitations of this Agreement, the Cooperative Parties agree as follows:

[Balance of Page Left Intentionally Blank]

ARTICLE I

Definitions

Section 1.1. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 hereof shall have the meanings set forth therein unless the context or use clearly indicates another meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined therein.

Section 1.2. Definitions. As used herein:

“Agreement” or “Cooperative Agreement” means this Cooperative Agreement as amended and supplemented from time to time.

“Legislative Authority” means the Council of the County.

“Notice Address” means:

as to the County:

County of Summit, Ohio  
Ohio Building, 8th Floor  
175 South Main Street  
Akron, Ohio 44308  
Attn: Executive

with a copy to:

County of Summit, Ohio  
Ohio Building, 8th Floor  
175 South Main Street  
Akron, Ohio 44308  
Attn: Director of Law and  
Risk Management

as to the Land Bank:

Summit County Land Bank  
1180 S. Main St.  
Suite 230  
Akron, OH 44301  
Attn: Executive Director

as to Asik

Asik Properties, LLC  
130 E. Voris St.  
Suite A  
Akron, OH 44311

or such additional or different address, notice of which is given under Section 4.1 of this Agreement.

“Person” or words importing persons means firms, associations, partnerships (including without limitation general and limited partnerships), limited liability companies, joint ventures, societies, estates, trusts, corporations, public or other governmental bodies, other legal entities and natural persons.

“State” means the State of Ohio.

Section 1.3. Interpretation. Any reference herein to the County or to a Legislative Authority or to any member or officer includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code or any other legislation or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the Cooperative Parties under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number and vice versa; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of this Agreement. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.4. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

(End of Article I)

## ARTICLE II

### Representations and Covenants

Section 2.1. Representations of the County. The County represents that: (a) it is a county duly organized and validly existing under the laws of the State and its Charter; (b) it is legally empowered to enter into and perform the transactions contemplated by this Agreement; (c) the execution, delivery and performance of this Agreement does not and will not violate or conflict with any provision of law applicable to the County, and does not, and will not, conflict with or result in a default under any agreement or instrument to which the County is a party or by which it is bound which would have an adverse effect on the County's ability to perform its obligations under this Agreement (other than such adverse effect which is not material); (d) its Legislative Authority has duly authorized the execution, delivery and performance of this Agreement; and (e) this Agreement, when executed and delivered by the County, will constitute the legal, valid and binding obligations of the County, enforceable against it in accordance with the respective terms thereof.

Section 2.2. Representations of the Land Bank. The Land Bank represents that: (a) it is a non-profit community improvement corporation duly organized and validly existing under Chapter 1724 of the Ohio Revised Code; (b) it is legally empowered to enter into and perform the transactions contemplated by this Agreement; (c) the execution, delivery and performance of this Agreement does not and will not violate or conflict with any provision of law applicable to the Land Bank, and does not, and will not, conflict with or result in a default under any agreement or instrument to which the Land Bank is a party or by which it is bound which would have an adverse effect on the Land Bank's ability to perform its obligations under this Agreement (other than such adverse effect which is not material); (d) its board of directors has duly authorized the execution, delivery and performance of this Agreement; and (e) this Agreement, when executed and delivered by the Land Bank, will constitute the legal, valid and binding obligations of the Land Bank, enforceable against it in accordance with the respective terms thereof.

Section 2.3. Representations of Asik. Asik represents that: (a) it is a limited liability company duly organized and validly existing under the laws of the State; (b) it is legally empowered to enter into and perform the transactions contemplated by this Agreement; (c) the execution, delivery and performance of this Agreement does not and will not violate or conflict with any provision of law applicable to Asik, and does not, and will not, conflict with or result in a default under any agreement or instrument to which Asik is a party or by which it is bound which would have an adverse effect on Asik's ability to perform its obligations under this Agreement (other than such adverse effect which is not material); (d) its members have duly authorized the execution, delivery and performance of this Agreement; and (e) this Agreement, when executed and delivered by Asik, will constitute the legal, valid and binding obligations of Asik, enforceable against it in accordance with the respective terms thereof.

(End of Article II)

## ARTICLE III

### Cooperative Arrangements

Section 3.1. Cooperative Arrangements. For the reasons set forth in the Recitals to this Agreement, the Cooperative Parties have determined to cooperate with one another in accordance with the terms of this Agreement.

Section 3.2. Subdivision of the Property. On or after the effective date of this Agreement, the County shall survey the Property and shall prepare and file a consolidation plat, accompanying legal descriptions and deeds whereby all three parcels comprising the Property will be combined into a single parcel ("Combined Parcel"). Thereafter, the County shall prepare and file a plat, accompanying legal descriptions and deeds whereby it will subdivide the Combined Parcel into three parcels- the easternmost parcel, consisting of approximately 5.25 acres (the "Asik Sale Parcel"), the middle parcel, consisting of approximately 4.60 acres (the "Asik Option Parcel"), and the westernmost parcel, consisting of approximately 2.62 acres (the "Land Bank Retained Parcel"), the three identified parcels, as they are to be subdivided, being set forth on Exhibit B, attached hereto and incorporated herein by reference. The County shall ensure that the combination and subsequent split of the Property into the Asik Sale Parcel, Asik Option Parcel and Land Bank Retained Parcel will accurately reflect the parcels depicted on Exhibit B, to the extent possible. The Land Bank will pay all costs associated with the survey of the Property and the preparation of any legal descriptions and plats, and the Land Bank shall be reimbursed for the cost of the same out of the proceeds of the subsequent sale of the Asik Sale Parcel as set forth in Section 3.4, below. In the event the Land Bank does not close the sale of the Asik Sale Parcel to Asik, the County shall reimburse the Land Bank for all costs associated with the survey of the Property and the preparation of any legal descriptions and plats.

Section 3.3. County Sale of Asik Sale Parcel, Asik Option Parcel and Land Bank Retained Parcel to Land Bank. Following the creation of the Asik Sale Parcel, Asik Option Parcel and Land Bank Retained Parcel by the County, the County and Land Bank shall enter into a Real Estate Sales Agreement whereby the County shall sell to the Land Bank, and the Land Bank shall purchase from the County, the Asik Sale Parcel, Asik Option Parcel and Land Bank Retained Parcel. The purchase price for the same shall be \$1.00 per parcel. The Property will be sold "As-Is" by limited warranty deed, and County will transfer good and marketable title free and clear of all liens and encumbrances, except permitted encumbrances. Closing will occur on a date mutually agreed to by the parties. The closing will be conditioned upon Land Bank entering into a Real Estate Sales Agreement to sell the Asik Sales Parcel to Asik, and further conditioned upon concurrent closing of the same. Land Bank shall pay all costs associated with the sale of the Asik Sale Parcel, Asik Option Parcel and Land Bank Retained Parcel by the County to the Land Bank, with the exception of the County's legal fees, which shall be paid by the County. The Land Bank shall be reimbursed for the cost of the same out of the proceeds of the subsequent sale of the Asik Sale Parcel as set forth in Section 3.4, below.

Section 3.4. Land Bank Sale of Asik Parcel to Asik. Concurrent with the execution of the Real Estate Sales Agreement between County and Land Bank for the sale of the Asik Sale Parcel, Asik Option Parcel and Land Bank Retained Parcel, the Land Bank and Asik shall execute



a Real Estate Sales Agreement whereby the Land Bank will sell to Asik the Asik Sale Parcel provided (a) the split of the Property accurately reflects the parcels depicted in Exhibit B, and (b) such Real Estate Sales Agreement is acceptable to Asik in form and substance as Asik determines in its reasonable discretion. The purchase price for the same shall be \$131,250.00, which represents a cost of \$25,000.00 per acre, and may be adjusted by the actual size of the Asik Sale Parcel. Additionally, Asik shall pay to Land Bank a transaction fee in the amount of \$5,000.00 upon closing. The Asik Sale Parcel shall be sold "As-Is" by limited warranty deed, and Land Bank will transfer good and marketable title free and clear of all liens and encumbrances, except permitted encumbrances. Closing shall occur on a date mutually agreed to by the parties, but, in any event not later than June 28, 2019. The closing shall be conditioned upon the Land Bank and County closing the Real Estate Sales Agreement for the sale of the Asik Sale Parcel, Asik Option Parcel and Land Bank Retained Parcel to the Land Bank, and the Land Bank acquiring the Asik Sale Parcel. Asik shall pay all costs associated with the sale of the Asik Sale Parcel, with the exception of the Land Bank's legal fees, which shall be paid by the Land Bank. Proceeds of the sale of the Asik Sale Parcel from the Land Bank to Asik shall be used to reimburse Land Bank's costs incurred pursuant to Sections 3.2 and 3.3, above, and 3.8, below, and the net proceeds shall be deposited and used as set forth in Section 3.7, below.

Section 3.5. Land Bank Grant of Option to Purchase Asik Option Parcel to Asik. Immediately upon acquisition of the Asik Option Parcel, the Land Bank and Asik shall execute an Option to Purchase Agreement whereby the Land Bank shall grant to Asik the option to purchase the ASIK Option Parcel, provided (a) the split of the Property accurately reflects the parcels depicted on Exhibit B, (b) Asik and Land Bank have entered into a Real Estate Sales Agreement whereby the Land Bank will sell to Asik the Asik Sale Parcel, and (c) such Option to Purchase is acceptable to Asik in form and substance as Asik determines in its reasonable discretion. The terms of the Option to Purchase Agreement shall provide that ASIK may elect to exercise its option to purchase the Asik Option Parcel at any time prior to December 31, 2020, but, in the event Asik exercises its option to purchase prior to December 31, 2020, the closing of the sale of the Asik Option Parcel by Land Bank to Asik shall not occur prior to December 31, 2020. Furthermore, the Land Bank may, at the direction of the County, extend the date of the closing of the sale of the Asik Option Parcel one (1) time for a period not exceeding six (6) months, and provided that the closing of the sale of the Asik Option Parcel shall in all events occur not later than June 30, 2021.

The Option to Purchase Agreement shall provide that the purchase price for the Asik Option Parcel shall be \$115,000.00, which represents a cost of \$25,000.00 per acre, and may be adjusted by the actual size of the Asik Option Parcel. Additionally, Asik shall pay to Land Bank a non-refundable fee for the option in the amount of \$5,000.00, which shall be credited towards the sales price in the event Asik exercises its option to purchase the property. The Asik Option Parcel shall be sold "As-Is" by limited warranty deed, and Land Bank will transfer good and marketable title free and clear of all liens and encumbrances. Closing will occur on a date mutually agreed to by the parties, subject to the limitations set forth in the preceding paragraph. Asik shall pay all costs associated with the sale of the Asik Option Parcel, with the exception of the Land Bank's legal fees, which shall be paid by the Land Bank.

In the event Asik does not timely exercise its option under the Option to Purchase Agreement to purchase the Asik Option Parcel, then the Land Bank shall retain ownership of the

same, and shall be solely responsible for the maintenance, repair, demolition or abatement of any structures on the Asik Option Parcel. In such event, the Land Bank may sell the Asik Option Parcel to any viable third-party, provided, however, that the Land Bank shall obtain written consent to the sale from the County prior to entering into a real estate sales agreement with such viable third-party.

Proceeds of the sale of the Asik Option Parcel from the Land Bank to Asik shall be used to reimburse Land Bank's costs incurred in the sale of the same, which should be limited to legal fees, if any, and the net proceeds shall be deposited and used as set forth in Section 3.7, below.

Section 3.6. Land Bank Retained Parcel. Immediately following acquisition of the Land Bank Retained Parcel by the Land Bank, the County and Land Bank shall enter into a lease agreement whereby County will lease the same from the Land Bank for a term commencing upon the execution of the lease agreement and terminating on December 31, 2020 (the "Lease"). The County shall have the sole option to extend the term of the Lease by six months to June 30, 2021. The County shall pay to the Land Bank the total rent of \$1.00 for the total term of the Lease. Additionally, the County shall pay all costs to operate, maintain and repair the property during the term of the Lease, and shall pay all applicable utilities, taxes and assessments against the property. The County shall have the right to terminate the Lease early by providing notice to the Land Bank at least 60 days in advance. The Land Bank shall only have the right to terminate the Lease agreement early as a result of a material breach by the County. The Lease shall contain standard language consistent with the terms of leases commonly entered into by the County and/or the Land Bank.

Following the expiration of the term of the Lease, or earlier termination pursuant thereto, the Land Bank may retain ownership of the Land Bank Retained Parcel or may sell the same to any viable third-party for redevelopment. In the event the Land Bank retains ownership, it shall be solely responsible for the maintenance, repair, demolition or abatement of any structures or buildings on the property. The Land Bank shall be expressly permitted in the Lease to enter into a real estate sales agreement or grant an option to purchase the Land Bank Retained Parcel to any viable third-party, provided that the sale to that viable third-party shall not close prior to the expiration of the Lease, and any applicable extension thereto.

Section 3.7. Proceeds of Sales and Fees. Upon the sale by the Land Bank of the Asik Sale Parcel and the Asik Option Parcel to Asik, the proceeds of each sale shall be retained by the Land Bank, net any costs paid by the Land Bank pursuant to this Cooperative Agreement or the applicable real estate sales agreements. Additionally, in the event Asik does not elect to purchase the Asik Option Parcel, and the Land Bank sells the same to a viable third-party, the Land Bank shall retain the proceeds of said sale, net any transaction costs paid by the Land Bank. Furthermore, in the event the Land Bank sells the Land Bank Retained Parcel, the Land Bank shall retain the proceeds of said sale, net any transaction costs paid by the Land Bank. Land Bank shall not be obligated to remit any portion of the proceeds of any sale to the County. However, Land Bank shall deposit all net proceeds from any sale into a segregated account, and said proceeds shall be used by the Land Bank, at the consent and direction of the County, to fund other activities and projects in Summit County that the Land Bank is authorized to undertake under State law. Prior to expending any proceeds for activities and projects in Summit County, the Land Bank shall

obtain a letter of consent and direction from the Summit County Executive consenting to and directing the expenditure of funds on the activity or project.

The Land Bank shall retain the transaction fee received for the sale of the Asik Sale Parcel, pursuant to Section 3.4, above, and the fee received as consideration for the grant of the option to purchase the Asik Option Parcel, pursuant to Section 3.5, above, and is not obligated to deposit the same into the segregated account or use the same for the same purpose and under the same restrictions as the preceding paragraph.

Section 3.8. Environmental Matters. County will provide to Land Bank, Asik or any other viable third-party purchaser copies of any documents pertaining to any environmental matters to which County has knowledge on the Asik Sale Parcel, Asik Option Parcel and Land Bank Retained Parcel. Furthermore, Land Bank, Asik or any other viable third-party purchaser are permitted to obtain an EPA Phase I, EPA Phase II or asbestos abatement for any of the parcels at their sole cost, provided, however, that the Land Bank may obtain an EPA Phase 1 of all of the parcels, and pay for the same out of the sale proceeds, pursuant to Section 3.4, above.

(End of Article III)

## ARTICLE IV

### Miscellaneous

Section 4.1. Notices. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, or delivered by overnight courier service, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request or other communication given hereunder to any Cooperative Party shall also be given to the other Cooperative Parties. The Cooperative Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent. If, because of the suspension of delivery of certified or registered mail or for any other reason, notice, certificates or requests or other communications are unable to be given by the required class of mail or courier service, any notice required to be mailed or delivered by courier service by the provisions of this Agreement shall be given in such other manner as in the judgment of the Cooperative Party shall most effectively approximate mailing thereof or delivery by courier service, and the giving of that notice in that manner for all purposes of this Agreement shall be deemed to be in compliance with the requirement for delivery under this Section. Except as otherwise provided herein, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

Section 4.2. Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Cooperative Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future officer, official, employee or agent of the County or its Legislative Authority, in other than its official capacity, and neither the members of the Legislative Authority nor any official executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the covenants, obligations or agreements of the County contained in this Agreement.

Section 4.3. Binding Effect. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Cooperative Parties and their respective permitted successors and assigns. This Agreement may be enforced only by the Cooperative Parties, their assignees and others who may, by law, stand in their respective places.

Section 4.4. Amendments and Supplements. Except as otherwise expressly provided in this Agreement, no provision of this Agreement may be effectively amended, changed, modified, altered or terminated unless set forth in a writing signed by all of the Cooperative Parties.

Section 4.5. Execution Counterparts/PDF. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument. Copies of signatures sent or provided electronically in portable document format (PDF) shall be deemed to be originals for purposes of execution and proof of this Agreement.

Section 4.6. Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 4.7. Limitation of Rights. With the exception of rights conferred expressly in this Agreement, nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any Person other than the Cooperative Parties any legal or equitable right, remedy, power or claim under or with respect to this Agreement or any covenants, agreements, conditions and provisions contained herein. This Agreement and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the Cooperative Parties, as provided herein.

Section 4.8. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in a State court sitting in the County.

(End of Article IV)

IN WITNESS WHEREOF, the Cooperative Parties have caused this Agreement to be duly executed in their respective names, all as of the date first hereinbefore written.

**COUNTY OF SUMMIT, OHIO**

By: \_\_\_\_\_  
Ilene Shapiro, Executive

Approved as to form and correctness:

\_\_\_\_\_  
Deborah Matz, Director of Department  
of Law and Risk Management  
County of Summit, Ohio

**SUMMIT COUNTY LAND REUTILIZATION  
CORPORATION dba SUMMIT COUNTY  
LAND BANK**

By: \_\_\_\_\_  
Patrick Bravo, Executive Director

**ASIK PROPERTIES, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FISCAL OFFICER'S CERTIFICATE  
COUNTY OF SUMMIT, OHIO

The undersigned, Fiscal Officer of the County of Summit, Ohio, hereby certifies that the moneys required to meet the obligations of the County during the year 2019 under the Agreement have been lawfully appropriated by the Legislative Authority of the County for such purposes and are in the treasury of the County or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

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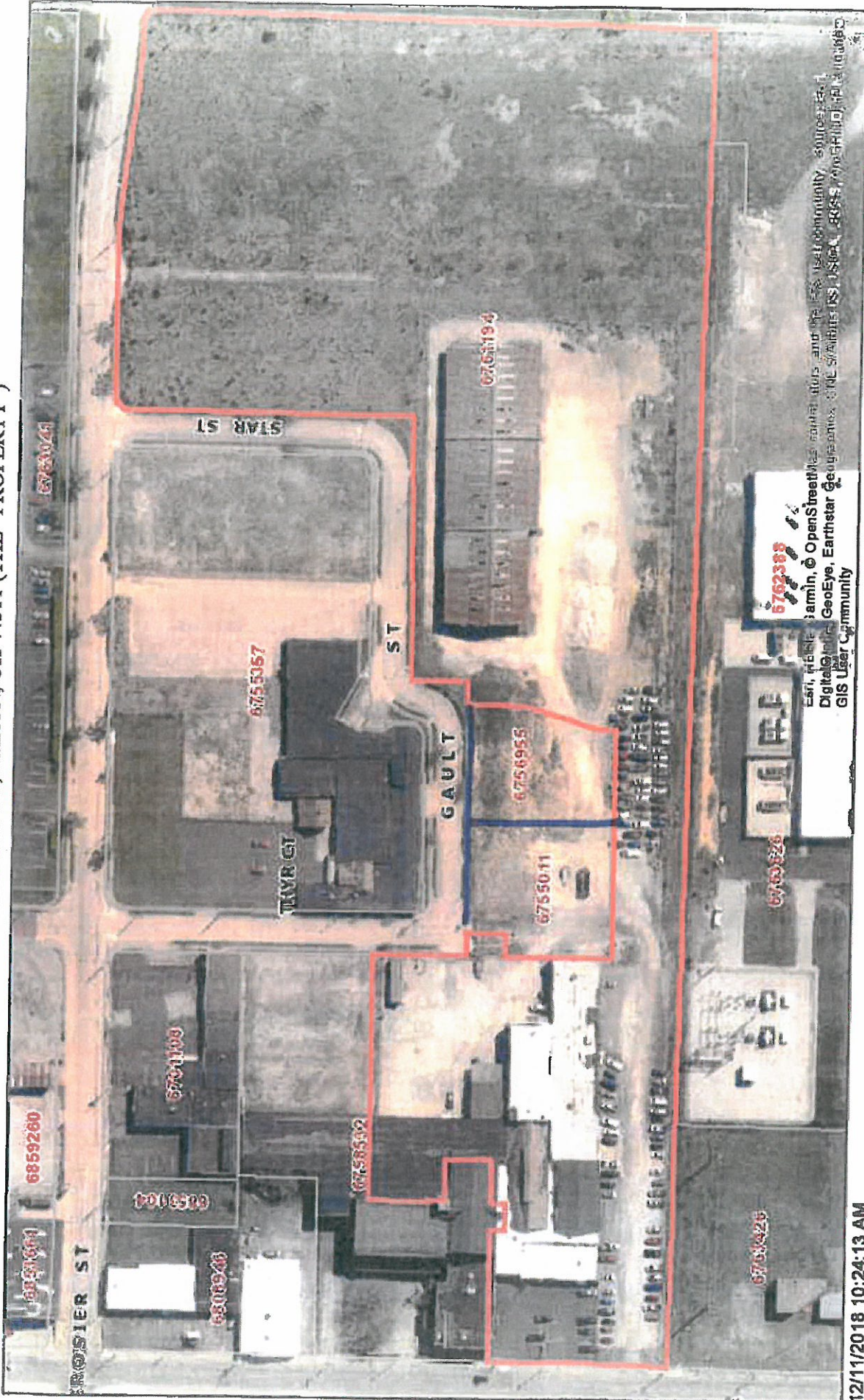
Fiscal Officer  
County of Summit, Ohio

Dated: December \_\_, 2019

**EXHIBIT A**

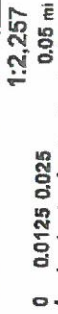
1035 SWEITZER AVE., AKRON, OH 44311 (THE "PROPERTY")

County of Summit GIS



12/11/2018 10:24:13 AM

- Summit County Municipal Outlines
- Parcels



**Disclaimer:**  
The data employed in this map are provided as a public service by Summit County and are not guaranteed to be accurate. The County is not responsible for any errors or omissions in the data. The County is not liable for any damages, including consequential damages, arising from the use of this data. The County is not responsible for any errors or omissions in the data. The County is not responsible for any damages, including consequential damages, arising from the use of this data. The County is not responsible for any errors or omissions in the data. The County is not responsible for any damages, including consequential damages, arising from the use of this data.



**EXHIBIT B**

**DIVISION OF THE PROPERTY**

