

## 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 **OE MAY SQUARE, LLC**, a Delaware limited liability company, with a tax mailing address of 460 Virginia Avenue, Indianapolis, IN 46203 (“**Developer**”).

### Recitals:

A. The State of Ohio, through its Department of Transportation (“**ODOT**”), formerly owned vacant land located at 646 Crown Street in the Walnut Hills neighborhood of Cincinnati (Auditor’s Parcel 091-0004-0182), together with all the rights and appurtenances pertaining thereto, which property is more particularly described on Exhibit A (*Legal Description*) (the “**ODOT Property**”).

B. Developer is under contract to purchase vacant land located adjacent to the ODOT Property in accordance with that certain Agreement of Purchase and Sale dated May 24, 2022, by and between Investing For Good, LLC, an Ohio limited liability company, and Developer, as amended, with the intent to subdivide said property to create building sites for the development of approximately 39 single-family homes (the “**Project**”). Developer desires to purchase the ODOT Property for inclusion in the Project.

C. The City’s Real Estate Services Division has determined, by a professional appraisal, that the estimated fair market value of the ODOT Property is \$8,000, and ODOT was agreeable to sell the ODOT Property to the City for said value.

D. Following ODOT’s sale of the ODOT Property to the City, the City is agreeable to sell the ODOT Property to Developer at the estimated fair market value of the ODOT Property, namely, \$8,000, which value Developer has agreed to pay.

E. The City has determined that the ODOT Property is not needed for municipal purposes.

F. The City has determined that it is in the best interest of the City to eliminate competitive bidding in connection with the City’s sale of the ODOT Property because Developer will own all adjacent property and the City desires to sell it to Developer for inclusion in the Project, which will further the public purpose by creating additional housing, for the benefit of the City.

G. 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.

H. 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.

I. The City believes that the sale of the ODOT Property to Developer is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements.

J. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the ODOT Property at its meeting on February 16, 2024.

K. Execution of this Agreement was authorized by Cincinnati City Council by Ordinance No. [\_\_\_\_]-2024, passed on [\_\_\_\_], 2024.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Purchase Price.** Subject to the terms and conditions set forth herein, following the City's acquisition of the ODOT Property from ODOT, the City hereby agrees to sell the ODOT Property to Developer, and Developer hereby agrees to purchase the ODOT Property from the City for \$8,000 (the "**Purchase Price**").

2. **Condition of the ODOT Property.** Developer acknowledges that it is familiar with the condition of the ODOT Property, and, at Closing (as defined below), the City shall convey the ODOT Property to Developer in "as is," "where is" condition with all faults and defects, known or unknown. The City makes no representations or warranties to Developer concerning the condition of the ODOT Property, and, from and after the Closing, the City shall have no liability of any kind to Developer for any defects, adverse environmental condition, or any other matters affecting the ODOT Property. Developer assumes all environmental liability and responsibility concerning the ODOT Property. Developer agrees to defend, indemnify, and hold the City, its employees, officers, and officials harmless from and against any and all claims, causes of action, losses, costs, judgments, penalties, orders, fines, expenses (including, but not limited to, attorneys' fees), demands, liability, and damages related to or arising from the discovery, presence, disposal, release, or cleanup of contaminants, hazardous materials, wastes or other pollutants affecting the ODOT Property, or the soil, water, or vegetation located thereon, whether known or unknown, as well as personal injury or property damage related to such contaminants, hazardous materials, wastes, or other pollutants.

3. **Closing.**

(A) **Conditions.** The closing on the City's sale of the ODOT Property to Developer (the "**Closing**") shall not occur unless and until the following conditions have been satisfied or waived (the "**Conditions**"); *provided, however*, that if the City, at its sole discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, then the City may, if appropriate, include such Conditions in the City's Quitclaim Deed to Developer or handle such Conditions post-Closing. Developer shall perform all work and investigations and obtain and prepare all necessary documents to satisfy the Conditions at no cost to the City. Notwithstanding anything in this Agreement to the contrary, the City shall have the right to terminate this Agreement, by giving written notice to Developer at any time prior to Closing, if the City is unable to acquire the ODOT Property from the State of Ohio, whereupon neither party shall have any rights or obligations under this Agreement.

- (i) **Title & Survey:** Developer's approval of title to the ODOT Property and, if obtained by Developer, an ALTA property survey of the ODOT Property;
- (ii) **Inspections, Utilities & Zoning/Building Code Requirements:** Developer's approval of inspections of the ODOT Property, including, without limitation, environmental assessments and soil assessments, all matters concerning utility service for the ODOT Property, and all zoning and building code requirements that apply to the ODOT Property;
- (iii) **Plats and Legal Descriptions:** Developer shall have provided the City with all plats and legal descriptions as required by the Hamilton County Auditor, Engineer, and Recorder in connection with the transfer and recording of the City's *Quitclaim Deed* in substantially the form attached as Exhibit B – (Form of Quitclaim Deed); and
- (iv) **ODOT Property Closing Fees.** Developer shall reimburse the City at Closing for any and all Hamilton County, Ohio recording fees, transfer tax, and any and all other customary

closing costs associated with the City closing on the acquisition of the ODOT Property from the State of Ohio.

(B) Right to Terminate. If either 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 **12 months** of 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) the City shall confirm that Developer has paid the Purchase Price and any and all recording fees, transfer tax, and any and all other customary closing costs associated with the City's acquisition of the ODOT Property from the State of Ohio in full (as provided in Section 3(A)(iv)), and (ii) the City shall convey all its right, title, and interest in and to the ODOT Property to Developer by *Quitclaim Deed* in the form of Exhibit B. 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, Developer 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 necessary for the Closing in such forms as approved by the City and Developer. The City shall not, however, be required to execute a title affidavit at Closing or other similar documents pertaining to title; Developer acknowledges that the City is selling the Property "as is." Pursuant to Section 301-20, Cincinnati Municipal Code, at Closing, Developer 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 Developer 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.

**5. 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 Developer sends a notice to the City alleging that the City is in default under this Agreement, Developer 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. Any notice by the City to Developer shall include a simultaneous copy of such notice by U.S. certified mail to: Dinsmore & Shohl LLP, One Indiana Square, Suite 1800, Indianapolis, IN 46204, Attention: Samantha R. Hargitt.

**6. Representations, Warranties, and Covenants of Developer**.

(A) Developer makes the following representations, warranties, and covenants to induce the City to enter into this Agreement, which are true and correct as of the Effective Date and which shall be true and correct at the Closing:

(i) Developer is a Delaware limited liability company duly organized and validly existing under the laws of the State of Delaware, 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 has full power and authority to execute and deliver this Agreement and carry out the transactions provided herein. Developer has duly taken all proper actions to authorize,

execute, and deliver this Agreement. Developer has taken all actions necessary to constitute valid and binding obligations of Developer upon execution and delivery of this Agreement by Developer.

(iii) Developer's execution, delivery, and performance of this Agreement and the transaction contemplated hereby will not violate any applicable laws, 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.

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

(v) 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 its purchase of the ODOT Property.

(vi) The statements made in the documentation provided by Developer to the City have been reviewed by Developer and do not knowingly or intentionally 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 Developer nor its affiliates owe the City any outstanding fines, penalties, judgments, water or other utility charges, or other amounts.

## **7. General Provisions.**

(A) Entire Agreement. This Agreement (including the exhibits hereto) contains the entire agreement between the parties concerning 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 Developer agrees that venue in such court is proper. Developer 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. 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.

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

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

Exhibit A – *Legal Description*

Exhibit B – *Form of Quitclaim Deed*

[Remainder of Page Intentionally Blank; Signature Pages Follow]

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

**ONYX AND EAST PROPERTIES, LLC,**  
an Indiana limited liability company

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

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

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

Date: \_\_\_\_\_, 2024

[City signatures on the following page]

**CITY OF CINCINNATI**

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

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

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

Date: \_\_\_\_\_, 2024

Recommended by:

\_\_\_\_\_  
Markiea L. Carter, Director  
Department of Community and Economic Development

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*

**Auditor's Parcel No.:** 091-0004-0182

**Property Address:** 646 Crown Street, Cincinnati, OH 45206

Situate in Section 8, Town 3, Fractional Range 2, Millcreek Township, Hamilton County, Ohio and a being part of Lots 10, 11 and 12 of Arndt Kattenhorn's Subdivision as recorded in Plat Book 3, Page 313, Hamilton County Records and being more particularly described as follows: Beginning at the intersection of the Westerly line of said Lot 12 and the Northerly Line of Crown Street (a 60 foot street); Thence North 17°23'47" East, a distance of 32.38 feet; Thence South 83°57'56" East, a distance of 43.62 feet; Thence South 6°02'04" West, a distance of 18.58 feet; Thence Southeastwardly along a curve, tangent to the last described course, deflecting to the left with a radius of 15 feet for a distance of 16.08 feet (the chord of said curve bears South 24°40' East for 15.32 feet) to the Northerly line of Crown Street; Thence North 83°57'56" West, along the Northerly line of Crown Street, a distance of 57.82 feet to the Westerly line of said Lot 12 and the Place of Beginning and containing 1,516 square feet, more or less.



**EXHIBIT B**  
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 **OE MAY SQUARE, LLC**, a Delaware limited liability company, with a tax mailing address of 460 Virginia Avenue, Indianapolis, IN, 46203 (“**Grantee**”), all of the City’s right, title, and interest in and to the real property described on Exhibit A (*Legal Description*) hereto (the “**Property**”).

Property Address: 646 Crown Street, Cincinnati, OH 45206  
Auditor’s Parcel ID No.: 091-0004-0182  
Prior instrument references: Official Record 15083 Page 243, Hamilton County, Ohio Records

This conveyance shall not create an additional building site. Grantee shall not hereafter convey the Property separately from Grantee’s adjoining property, nor any structure erected thereon without the prior approval of the Cincinnati City Planning Commission.

The following exhibits are attached hereto and made a part hereof:  
*Exhibit A – Legal Description*

This conveyance was authorized by Ordinance No. [\_\_\_\_]-2024, passed by Cincinnati City Council on [\_\_\_\_], 2024.

Executed on the date of acknowledgement.

**CITY OF CINCINNATI**

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

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

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

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF HAMILTON         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024, 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

**EXHIBIT A**  
to Quitclaim Deed  
*Legal Description*

**Auditor's Parcel No.:** 091-0004-0182  
**Property Address:** 646 Crown Street, Cincinnati, OH 45206

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