

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 **MARSHALL AT CENTRAL, LLC**, an Ohio limited liability company, whose tax mailing address is 1008 Marshall Avenue, Cincinnati, OH 45225 (“**Purchaser**”).

Recitals:

A. The City owns certain real property designated as public right-of-way known as Hallmar Avenue in the CUF neighborhood of Cincinnati, Ohio, as more particularly described on Exhibit A (*Legal Description- the Sale Property*) hereto (the “**Sale Property**”), which Sale Property is under the management of the City’s Department of Transportation and Engineering (“**DOT**”).

B. Purchaser owns certain real property adjoining the Sale Property, as depicted on Exhibit B (*Vacation Plat*) hereto (“**Purchaser’s Property**”), and desires to purchase from the City the Sale Property to consolidate said Sale Property with Purchaser’s Property to facilitate the construction of a four-story multi-family structure, totaling approximately 105,000 gross square feet, clubhouse with private commercial and recreational uses, and surface parking lot.

C. Pursuant to Chapter 723 of the Ohio Revised Code, the legislative authority of a municipal corporation may convey the fee simple estate or other interest in land used for streets and alleys if it has determined that the property is not needed for municipal purposes.

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

E. Richard C. Spoor, Esq., a reputable attorney practicing in Hamilton County, Ohio, has certified that Purchaser owns all the real property abutting the Sale Property.

F. The City’s Real Estate Services Division has determined, by a professional appraisal, that the fair market value of the Sale Property is \$96,000, which Purchaser has agreed to pay.

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

H. 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.

I. 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.

J. 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 February 4, 2022.

K. Execution of this Agreement was authorized by Cincinnati City Council by Ordinance No. {00363826-4}

[]-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 \$96,000.00 (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.

2. **Closing.**

(A) **Conditions.** The closing on the City's sale of the Sale Property to Purchaser (the "**Closing**") shall not occur unless and until the following conditions have been satisfied or waived (the "**Conditions**"); *provided however*, that if the City, in its sole discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City's Quitclaim Deed to Purchaser or handle such Conditions post-Closing. 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 Department of City Planning and Engagement, and the Hamilton County Auditor and Recorder in connection with the City's sale of the Sale Property, including, but not limited to: [x] an acceptable deed of record evidencing Purchaser as the vested legal owner as to Purchaser's Property; [y] an acceptable survey plat and legal description with closure of the Sale Property to accompany the transfer and recording of the Quitclaim Deed in substantially the form attached as Exhibit C – (*Form of Quitclaim Deed – Sale Property*); and [z] an acceptable survey plat and legal description with closure to consolidate the Sale Property with Purchaser's Property immediately after recording of the *Quitclaim Deed – Sale Property* in substantially the form attached as Exhibit D (*Consolidation Plat – Sale Property and Purchaser's Property*);

(iv) **Coordinated Report Conditions (CR #72-2021):**

(a) **DOTE:**

- 1. [intentionally omitted]
- 2. The existing utilities must be granted easements or relocated at Purchaser's expense.
- 3. [Intentionally omitted]

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4. No Auditor's parcels shall be landlocked by this vacation/sale. If possible, potential landlocked parcels should be consolidated with parcels having legal street frontage.
5. The Purchaser is required, at their expense, to provide the City with an acceptable legal description for the sale area that meets the recordable standards of the Hamilton County Recorder's Office.
6. Central Parkway and McMicken Avenue must be finished at Hallmar Avenue intersections, with a curb, sidewalk, and/or drive approach in accordance with City standards, or an approved plan.
7. A DOTE street opening permit, obtained by a DOTE licensed street contractor, is required for all private improvements in the public right-of-way. All improvements in the public right-of-way must be built to City standards, policies and guidelines. Application for permits may be made at Room 425, City Hall, 801 Plum Street. Please note that plan drawings (2 sets), to be reviewed by DOTE, must be attached to the permit application.

(b) Metropolitan Sewer District of Greater Cincinnati ("MSD"):

1. The MSD Request for Availability of Sewer Service (RASS) will be required for a future development or redevelopment project. The MSD RASS will determine the availability of a sewer and outline any additional MSD project requirements that could impact a project schedule if not considered early in project conceptual planning. Such considerations may include the need to obtain any MSD tap permits, easements, Ohio EPA Permit to Install, utilization of licensed and bonded sewer tappers with MSD, sewer inspection scheduling, project on-site separation of flow requirements, MSD Excavation/Fill permitting and bonding, MSD storm water detention requirements, need for a grease interception system, and/or a reminder for the project to coordinate with City of Cincinnati Stormwater Management Utility (SMU) for their specific storm water, erosion control, and storm water detention requirements. To date, at least three MSD Conditional Availability of Sewers Letters have been issued by MSD addressing three RASSs: CMD2100145 and CMD2100143 dated July 30, 2021 and CMD2100144 dated August 31, 2021. Sewer availability for at least one parcel (0098-0002-0027) within the project area (approximately in the Area of Bldg 3) has not been received. Based on information provided in CR 72, information and estimates provided for CMD2100143-145 addressing the previously submitted RASSs should be resubmitted if the project is presently being rescoped and if any additional parcels are being included or removed from the current project scope as currently understood by MSD.
2. The RASS(s) may require a MSD Excavation/Fill permit as well as bond necessary for any construction, construction traffic, earthwork, or any other construction activity over existing sewers, including site preparation activities such as geotechnical investigations and demolition of buildings in which existing sewers are located. Additional requirements will be established by the MSD E/F permit (such as verification and usage of existing or abandoned building services or connections to existing sewers through dye testing, pre- and post-demolition, or construction CCTVing, etc). No additional loading may be exerted on existing MSD sewers as the result of proposed structures and geotechnical/structural design calculations will be required for MSD review. Information concerning MSD E/F permits may be found in Section

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406 of the MSD Rules and Regulations at the following link provided at msdgc.org: http://msdgc.org/downloads/about_msd/msd-rules-regulations/rules_and_regulations.pdf.

3. A 30' wide minimum permanent sewer easement will be necessary centered on existing sewers that traverse the project site. The permanent sewer easement will be necessary for access, operations, and maintenance of the existing public sewers and manholes that are to remain in operation. Note, an additional 3' on either side of the permanent easement will be required, along with other MSD easement restrictions, as outlined per MSD 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 MSD Rules and Regulations Section 206. Information concerning Sections 206 and 207 may be found at the following link provided at msdgc.org: http://msdgc.org/downloads/about_msd/msd-rules-regulations/rules_and_regulations.pdf.
4. Project coordination and acceptance by City of Cincinnati Public Works, DOTE, and/or SMU that the removal of their earlier project from the MSD's combined sewer system does not impact their department's respective functional and design project requirements and is acceptable for removal.

(c) SMU: There is stormwater infrastructure at the south end of Hallmar near Central Pkwy that will need to be filled, sealed, and abandoned.

(d) Duke Energy: Duke Energy requires an easement for existing facilities located on, above, or under the Sale Property.

(e) Altafiber: Altafiber requires an easement for existing facilities located on the Sale Property. Such facilities must remain in place, in service and able to be accessed. Any damage done to the facilities, or any work done to relocate the facilities as a result as of this request will be handled entirely at the property owner's expense.

(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 **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) the City shall confirm that Purchaser has paid the Purchase Price in full, and (ii) the City shall convey all its right, title, and interest in and to the Sale Property to Purchaser by *Quitclaim Deed* in the form of Exhibit 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 all other customary closing documents that are necessary for the Closing, in such forms as are approved by the City. The City shall not however be required to execute a title affidavit at Closing or other similar documents pertaining to title, it being acknowledged by Purchaser that the City is selling the Property "as is." Pursuant to Section 301-20, Cincinnati Municipal Code, at Closing, Purchaser shall pay to the City all {00363826-4}

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

MARSHALL AT CENTRAL, LLC,
an Ohio limited liability company

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

[City signatures on the following page]

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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

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EXHIBIT A
to Property Sale Agreement

Legal Description - the Sale Property

Auditor's Parcel No.: None
Property Address: None; Hallmar Avenue, Cincinnati, Ohio 45225

Situate in Section 20, Town 3, Fractional Range 2, City of Cincinnati, Hamilton County, Ohio, and being part of Lots 1, 2, and 3 of A.J. Riddle's Subdivision of Lot 53 as recorded in Plat book 2, Page 41, and being more fully described as follows:

Beginning at an iron pin set and being at a wall corner at the intersection of the south right-of-way line of Marshall Avenue, and the northwesterly right-of-way line of Hallmar Avenue, and being the northeast corner of Tract XIII owned by Marshall at Central, L.L.C. as described in Official Record 13324, Page 2476;

thence, South 84°10'50" East, 6.27 feet, to a cut cross set;

thence, South 37°38'21" East, 72.49 feet, to a cut cross set on the west right-of-way line of West McMicken Avenue and being the northeast corner of Tract XIII owned by Marshall at Central, L.L.C. as described in Official Record 13324, Page 2476;

thence, North 75°32'30" West, 16.64, along the north line of said Tract XII owned by Marshall at Central, L.L.C. to an iron pin set and being the northwest corner of said Tract XII;

thence, South 37°16'55" West, 127.10 feet, along the west line of said Tract XII owned by Marshall at Central, L.L.C. to an iron pin set;

thence, South 37°16'39" West, 88.23 feet, along the west line of said Tract XII owned by Marshall at Central, L.L.C. to an iron pin set;

thence, South 34°22'05" West, 56.35 feet, along the west line of said Tract XII owned by Marshall at Central, L.L.C. to an iron pin set;

thence, South 21°31'45" West, 51.37 feet, along the west line of said Tract XII owned by Marshall at Central, L.L.C. to an iron pin set;

thence, North 09°24'07" East, 52.19 feet, to a cut cross set;

thence, North 00°09'22" West, 36.87 feet, to a Mag nail set;

thence, North 03°43'42" West, 63.94 feet, to an iron pin set;

thence, North 07°45'59" West, 19.96 feet, to an iron pin found on the east right-of-way of Central Parkway and being the southwest corner of said Tract XIII owned by Marshall at Central, L.L.C. to an iron pin set;

thence, South 81°04'22" East, 29.65 feet, along the south line of said Tract XIII owned by Marshall at Central, L.L.C. to an iron pin set;

thence, North 37°16'38" East, 191.25 feet, along the east line of said Tract XIII owned by Marshall at Central, L.L.C. to an iron pin set and being the point of beginning.

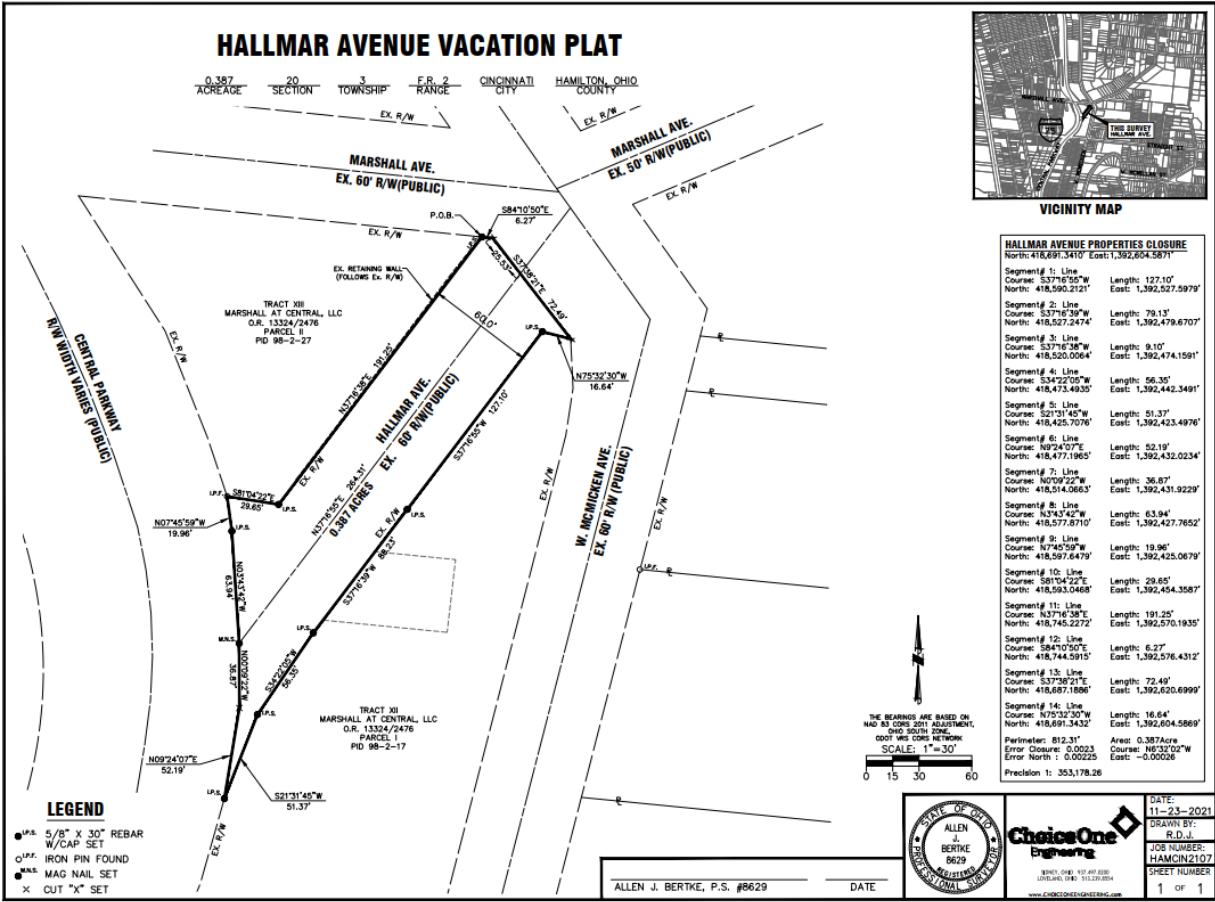
Containing 0.387 acres more or less with all being subject to any legal highway and easements of record.

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The bearings are based on NAD 83 CORS 2011 adjustment, Ohio South Zone, ODOT VRS CORS Network. The above description was prepared by Allen J. Bertke, Ohio Professional Surveyor Number 8629, based on a field survey performed under his direct supervision and dated November 23, 2021, all iron pins set are 5/8" x 30" rebar with caps reading "CHOICE ONE ENGR-AJB PS 8629."

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EXHIBIT B
to Property Sale Agreement
Vacation Plat



{00363826-4}

EXHIBIT C
to Property Sale Agreement
Form of Quitclaim Deed

[SEE ATTACHED]

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QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the “**City**”), for valuable consideration paid, hereby grants and conveys to **MARSHALL AT CENTRAL, LLC**, an Ohio limited liability company, whose tax mailing address is 1008 Marshall Avenue, Cincinnati, OH 45225 (“**Grantee**”), all of the City’s right, title, and interest in and to the real property depicted on Exhibit A (Survey Plat) and described on Exhibit B (Legal Description) hereto (the “**Property**”).

Property Address: None; former public right-of-way known as Hallmar Avenue
Auditor’s Parcel ID No.: None; (former public right-of-way)
Prior instrument reference: None

Pursuant to Ohio Revised Code Chapter 723 and Ordinance No. __-2022, passed by Cincinnati City Council on _____, 2022, the Property is hereby vacated as public right-of-way by the City.

This conveyance is subject to the exceptions, reservations, easements, covenants, and restrictions set forth below. Grantee, its successors, and assigns shall forever hold, develop, encumber, lease, occupy, improve, build upon, use, and convey the Property subject to such exceptions, reservations, easements, covenants, and restrictions, which shall “run with the land” and be binding upon Grantee and its successors-in-interest with respect to the Property.

(A) Creation of Utility Easements: This conveyance is subject to R.C. Section 723.041 so that any affected public utility shall be deemed to have a permanent easement in such vacated portions of the Property to maintain, operate, renew, reconstruct, and remove said utility facilities and to access said facilities.

(B) Consolidation. This conveyance shall not create an additional building site. Following transfer, Grantee shall consolidate the Property with Grantee’s adjoining property. Grantee may not convey the Property separately from Grantee’s adjoining parcel without the prior approval of the authority having jurisdiction of plats.

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

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

Exhibit A – *Survey Plat*

Exhibit B – *Legal Description*

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:

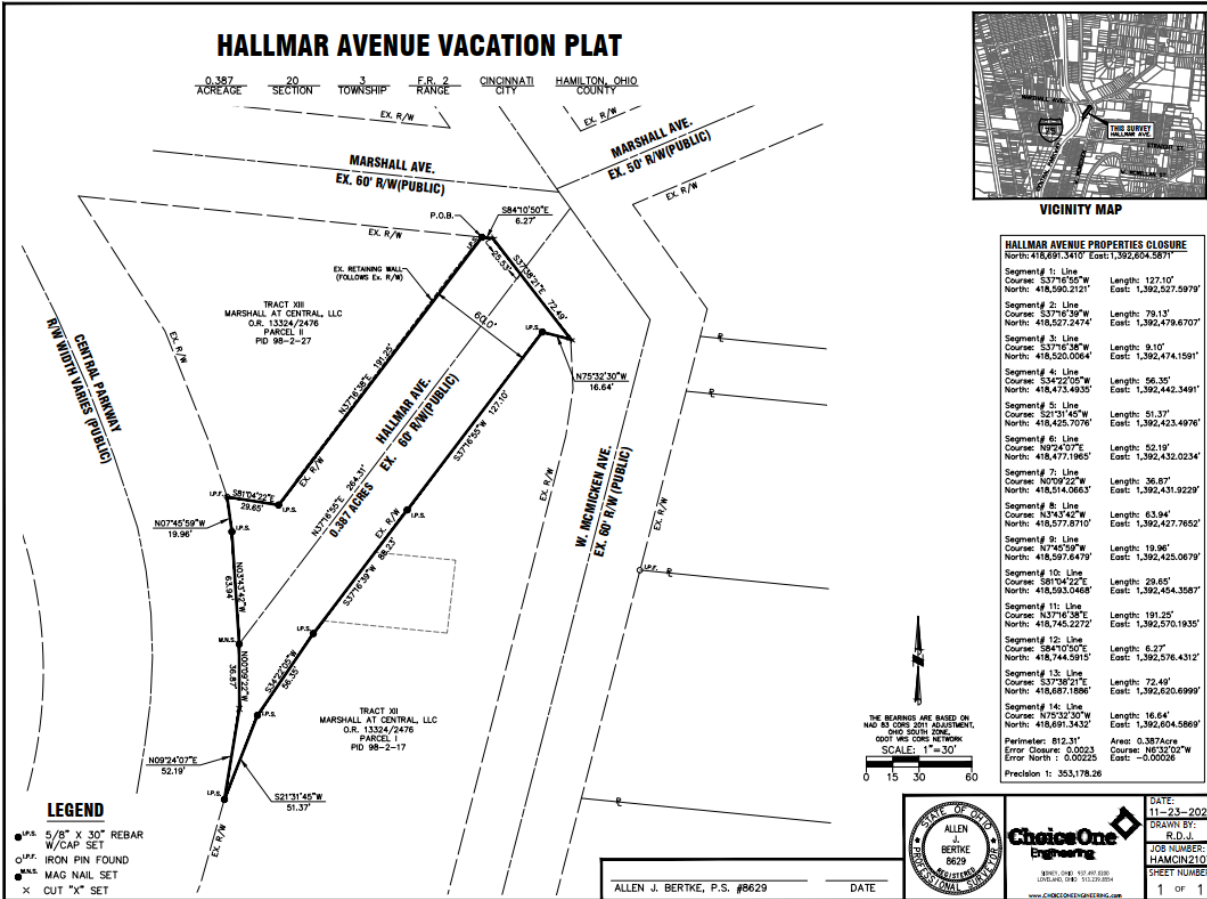
Assistant City Solicitor

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



{00363826-4}

EXHIBIT B
to Quitclaim Deed
Legal Description

Auditor's Parcel No.: None
Property Address: None; Hallmar Avenue, Cincinnati, Ohio 45225

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Containing 0.387 acres more or less with all being subject to any legal highway and easements of record. The bearings are based on NAD 83 CORS 2011 adjustment, Ohio South Zone, ODOT VRS CORS Network. The above description was prepared by Allen J. Bertke, Ohio Professional Surveyor Number {00363826-4}

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