



City of Cincinnati

801 Plum Street
Cincinnati, OH 45202

Agenda - Final

Budget and Finance Committee

Chairperson, Greg Landsman
Vice Chairperson, Reggie Harris
Councilmember Jeff Cramerding
Councilmember Mark Jeffreys
Councilmember Scotty Johnson
Vice Mayor Jan-Michele Kearney
Councilmember Liz Keating
Councilmember Meeka Owens
President Pro Tem Victoria Parks

Monday, September 12, 2022

1:00 PM

Council Chambers, Room 300

PRESENTATIONS

311 Update

Chandra Yungbluth & Bill Vedra

AGENDA

REPORTS

- [202201702](#) **REPORT**, dated 9/8/2022, submitted by John P. Curp, Interim City Manager, regarding PACE Financing and Government Efficiencies. (SEE REFERENCE DOCUMENT #202200791)

Sponsors: City Manager
Attachments: [Report](#)
[Attachment](#)
- [202200791](#) **MOTION**, submitted by Councilmembers Jeffreys, Harris and Owens, **WE MOVE** that, the Administration provide a report back to Council within ninety (90) days with a feasibility analysis of Council pre-authorizing all necessary legislative items that are directly associated with PACE financing as well as a potential framework by which the Administration can evaluate future PACE deals administratively. WE FURTHER MOVE that, the Administration also report back to Council with a feasibility analysis of allowing for more than one program administrator to support PACE deals in the city as well as any metrics the City can use to evaluate future program administration. WE FURTHER MOVE that, the Administration outline: 1) Cincinnati's and Hamilton County's current fee structures as it relates to PACE, 2) how much revenue the City's fees generate annually, and 3) how Cincinnati's and Hamilton County's fee structures compares to other peer cities and counties. (STATEMENT ATTACHED).

Sponsors: Jeffreys, Harris and Owens

Attachments: [Motion 202200791](#)

DEPOSITS

3. [202201737](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 9/8/2022, **AMENDING** Ordinance No. 0341-2021 to correct the designated fund in which the Director of Finance is authorized to deposit proceeds received in connection with the sale of real property authorized by said ordinance.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)

EASEMENTS/PROPERTY SALE AGREEMENTS

4. [202201738](#) **ORDINANCE** submitted by Sheryl M. M. Long, City Manager, on 9/8/2022, **AUTHORIZING** the City Manager to execute a *Grant of Easements* in favor of OTR Holdings, Inc., pursuant to which the City of Cincinnati will grant easements for step encroachments upon portions of Green and Race Streets in Over-the-Rhine.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Attachment](#)

5. [202201739](#) **ORDINANCE** submitted by Sheryl M. M. Long, City Manager, on 9/8/2022, **AUTHORIZING** the City Manager to execute a *Grant of Easement* in favor of Robert B. Hinton, Jr., pursuant to which the City of Cincinnati will grant an easement for retaining walls and pavement that encroach upon portions of Handasyde Court and Menlo Avenue in Hyde Park.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Attachment](#)

6. [202201741](#) **ORDINANCE** submitted by Sheryl M. M. Long, City Manager, on 9/8/2022, **AUTHORIZING** the City Manager to execute a *Property Sale Agreement* with Cinfed Federal Credit Union, pursuant to which the City will sell certain real property located at 4700 Ridge Avenue in Oakley, acquire a portion of real property located at 4704 Ridge Avenue in fee simple for public right-of-way purposes, and acquire a public utility easement on, under, and across a portion of said real property located at 4704 Ridge Avenue.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Attachment](#)

7. [202201742](#) **ORDINANCE** submitted by Sheryl M. M. Long, City Manager, on 9/8/2022, **AUTHORIZING** the City Manager to execute a *Property Sale Agreement* with Marshall at Central, LLC, pursuant to which the City will vacate and convey certain real property designated as public right-of-way known as Hallmar Avenue in the CUF neighborhood of Cincinnati.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Attachment](#)

8. [202201777](#) **PRESENTATION**, submitted by Sheryl M. M. Long, City Manager, dated 9/12/2022, regarding the 311 update and the next steps.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Presentation](#)

ADJOURNMENT

September 8, 2022

TO: Mayor and Members of Council
FROM: John P. Curp, Interim City Manager
SUBJECT: PACE Financing and Government Efficiencies

202201702

Reference Document #202200791

The Council at its session on March 23, 2022, referred the following motion for report:

MOTION, submitted by Councilmember Jeffreys, Harris and Owens, **WE MOVE** that, the Administration provide a report back to Council within ninety (90) days with a feasibility analysis of Council pre-authorizing all necessary legislative items that are directly associated with PACE financing as well as a potential framework by which the Administration can evaluate future PACE deals administratively. **WE FURTHER MOVE** that, the Administration also report back to Council with a feasibility analysis of allowing for more than one program administrator to support PACE deals in the city as well as any metrics the City can use to evaluate future program administration. **WE FURTHER MOVE** that, the Administration outline: 1) Cincinnati's and Hamilton County's current fee structures as it relates to PACE, 2) how much revenue the City's fees generate annually, and 3) how Cincinnati's and Hamilton County's fee structures compares to other peer cities and counties.

The purpose of this report is to provide City Council with an update on Property Assessed Clean Energy ("PACE") Financing and government efficiencies. On April 9, 2014, City Council passed Resolution No. 28-2014, which approved the creation of the City of Cincinnati, Ohio Energy Special Improvement District ("ESID"). The creation of the ESID allowed property owners within the City of Cincinnati to utilize PACE financing. Since its creation, a total of 21 projects have used PACE to finance approximately \$21 million in energy saving improvements.

LEGISLATIVE EFFICIENCIES

PACE projects must complete a multi-step process before a special assessment is placed on the property. The Cincinnati ESID evaluates each project to ensure that it meets the statutory requirements for PACE and to confirm that all project documentation is in order. Once the ESID approves the project, it is forwarded to City Council.

City Council receives the following pieces of legislation to consider:

1. Resolution declaring the necessity of the assessment project (the "Resolution of Necessity")
2. Ordinance determining to proceed with the assessment project (the "Ordinance Determining to Proceed")
3. Ordinance levying assessments (the "Levying Ordinance")

A truncated process is used by the City for PACE assessments that allows all three pieces of legislation to be considered by City Council at the same Council meeting. This process is enabled by a waiver of due process rights signed by the property owner voluntarily asking to be assessed, which removes the waiting periods normally required for notice and hearings. The legislation must follow the City's traditional process for approving legislation, which generally entails a first reading for referral to committee, and a second reading at which the legislation is approved.

Other cities throughout Ohio have either passed legislation or are considering legislation that delegates authority for approval of PACE projects to administrative staff. The delegated individual or office is responsible for reviewing and approving a property owner's petition to join a city's ESID. Staff review takes the place of the Resolution of Necessity and the Ordinance Determining to Proceed. If the City were to adopt this model, City Council would still be required to pass the Levying Ordinance each year to levy the assessments on all PACE projects approved by the delegated authority over the previous 12-month period.

Recommendation: Delegated authority could reduce the amount of time a property owner is required to wait for project approval. However, implementing delegated authority does not appear to save substantial time for the Administration as it would still require staff to review the documentation for each PACE project. Additional discussions with the Law Department will be required to determine the legality of delegating Council's legislative responsibilities to the Administration.

PROGRAM ADMINISTRATION

The current program administrator of the Cincinnati ESID is Midwest PACE Services LLC dba Ohio PACE, a wholly owned subsidiary of Bricker & Eckler LLP. The program administrator is selected by the ESID and is responsible for assisting property owners through the process of placing a PACE assessment on their property. It works closely with the ESID to ensure that a project is eligible for PACE financing and that all documentation is complete. Ohio PACE operates an open program, meaning that it assists with PACE projects brought forward by any contractor, property owner, or capital provider. The policies and procedures used by Ohio PACE are in alignment with the best practices for program administration developed by the C-PACE Alliance.¹

The program administrator, on behalf of the ESID, is responsible for obtaining all special assessment funds collected from the City and transmitting them to PACE capital providers. Cincinnati is the only jurisdiction among its peers that requires the program administrator to transmit fees on behalf of the city.

Allowing multiple program administrators would create an undue burden on the ESID and add a layer of complexity in its interactions with the City. The ESID would be responsible for oversight of multiple administrators and would need to ensure that each administrator is properly invoicing the City for special assessment funds and transmitting them to PACE capital providers. A review of commercial PACE programs across the country did not reveal any programs with multiple administrators.

There are some basic metrics that could provide insight on the effectiveness of a program administrator, including: the number of properties interested in PACE, the source of the interested property (Ohio PACE, contractor, capital provider, City department, etc.), the number of completed PACE projects, and the reason why a property decided not to utilize PACE (fees, eligibility, etc.). However, due to the nature of PACE in Cincinnati, it is unlikely that these metrics would definitively evaluate the effectiveness of the program

¹ C-PACE Alliance, "Elements of a Well-Designed C-PACE Statute and Program to Attract Private Capital and Foster Greater Transaction Volumes." July 19, 2019, <http://www.c-pacealliance.com/wp-content/uploads/2019/07/Elements-of-a-Well-Designed-CPACE-v2.0-07-19-19-FINAL.pdf>

administrator.

Recommendation: City Council should continue to support the use of a single program administrator by the Cincinnati ESID.

FEE STRUCTURE

All PACE projects financed within the City of Cincinnati ESID are subject to fees charged by the City and the Hamilton County Auditor’s Office. These fees add significant costs to PACE financing that could discourage property owners from utilizing it.

Hamilton County Fee

Section 727.36 of the Ohio Revised Code allows a county auditor to “add to each assessment such per cent as he deems necessary to defray the expense of collecting it.” The Hamilton County Auditor has established a rate of 3 percent as the amount that will be charged as a collection fee on each assessment. The Hamilton County Auditor has not established a maximum amount that it will charge on each assessment payment. Since the creation of the Cincinnati ESID, the Hamilton County Auditor has collected \$103,497 in fees from PACE projects.

The Auditor’s collection fee is an impediment to the increased utilization of PACE financing in the City. It adds significant costs that many property owners are not willing to pay. Appendix A outlines the additional costs that a property owner can face due to the Auditor’s fee on assessment payments.

PACE Programs in other Ohio counties are not subject to high collection fees from their county auditors (see table below). The impact of those fees on overall project costs is shown in Appendix A.

Local Government	County	Auditor Collection Fee
City of Cincinnati	Hamilton	3%
City of Cleveland	Cuyahoga	1%
City of Columbus	Franklin	0%
City of Dayton	Montgomery	0-1%
City of Toledo	Lucas	1%

The removal or reduction of the assessment collection fee presents a major opportunity to make PACE financing more effective and efficient in Cincinnati. There are three options that the City could consider regarding the collection fees:

- The City could support the continued use of the current fee structure.
- The City could negotiate with the Hamilton County Auditor to determine if it would reduce its fee on PACE assessment collections to align with those in other Ohio counties.
- The City could utilize a third-party provider to bill and collect PACE assessments. Other ESIDs in Hamilton County have adopted this approach. The City currently uses a similar model for its first-time home buyer program. This option would require additional research by the Administration and Law Department to determine its feasibility.

City of Cincinnati Fees

In addition to the Hamilton County Auditor’s fee, PACE projects in Cincinnati are charged a one-time,

nonrefundable fee by the City to compensate it for the administrative costs associated with the levying and collection of the special assessment. The City’s fee is calculated as 0.50% of the aggregate amount of the special assessments, which is capped at a maximum amount of \$10,000. Since the creation of the Cincinnati ESID, the City has collected \$97,873.11 in fees across 21 projects.

Under the current structure, property owners pay the City fee in its entirety at the financial closing. This results in an additional out of pocket closing cost that property owners must pay rather than a cost that is included in the PACE financing and paid over a period of years. In addition, because the City charges its fee at the financial closing based on the number of proposed assessment payments, property owners who pay off their PACE loan early are charged the fee on assessment payments they did not make.

Only one of the City’s peers in Ohio charges a fee on PACE projects. The table below compares the fee structures currently used by the City’s peers. Appendix A shows the impact the fees can have on a project’s total cost.

Local Government	Fee Structure
City of Cincinnati	0.50% fee on each semi-annual assessment payment collected at closing
City of Cleveland	0.25% fee on each semi-annual assessment payment
City of Columbus	No fee
City of Dayton	No fee
City of Toledo	No fee

cc: Oliver Kroner, Interim Director of the Office of Environment and Sustainability
Attachment: Appendix A

Appendix A: Comparison of PACE fees across political jurisdictions

\$250,000 PACE Project

- 20-year term (40 payments)
- \$12,625 semi-annual assessment payment

	County Auditor Collection Fee		City PACE Fee		Total Fees Collected
	PACE Rate	Amount Collected	Rate	Amount Collected	
City of Cincinnati	3%	\$15,150	0.5% on each payment	\$2,525	\$17,675
City of Cleveland	1%	\$5,050	0.25% on each payment	\$1,262	\$6,312
City of Columbus	0%	\$0	No fee	\$0	\$0
City of Dayton	0-1%	\$5,050	No fee	\$0	\$5,050
City of Toledo	1%	\$5,050	No fee	\$0	\$5,050

\$633,043 PACE Project

- 20-year term (20 payments)
- \$64,929 annual assessment payment

	County Auditor Collection Fee		City PACE Fee		Total Fees Collected
	PACE Rate	Amount Collected	Rate	Amount Collected	
City of Cincinnati	3%	\$38,957	0.5% on each payment	\$6,493	\$45,450
City of Cleveland	1%	\$12,986	0.25% on each payment	\$3,246	\$16,232
City of Columbus	0%	\$0	No fee	\$0	\$0
City of Dayton	0-1%	\$12,986	No fee	\$0	\$12,986
City of Toledo	1%	\$12,986	No fee	\$0	\$12,986

\$1,250,650 PACE Project

- 25-year term (50 payments)
- \$64,432 semi-annual assessment payment

	County Auditor Collection Fee		City PACE Fee		Total Fees Collected
	PACE Rate	Amount Collected	Rate	Amount Collected	
City of Cincinnati	3%	\$96,648	0.5% on each payment	\$10,000	\$106,648
City of Cleveland	1%	\$32,216	0.25% on each payment	\$8,054	\$40,260
City of Columbus	0%	\$0	No fee	\$0	\$0
City of Dayton	0-1%	\$32,216	No fee	\$0	\$32,216
City of Toledo	1%	\$32,216	No fee	\$0	\$32,216



202200791

Mark Jeffreys
Councilmember

March 22, 2022

MOTION

PACE Financing & Government Efficiencies

WE MOVE that, the Administration provide a report back to Council within ninety (90) days with a feasibility analysis of Council pre-authorizing all necessary legislative items that are directly associated with PACE financing as well as a potential framework by which the Administration can evaluate future PACE deals administratively.

WE FURTHER MOVE that, the Administration also report back to Council with a feasibility analysis of allowing for more than one program administrator to support PACE deals in the city as well as any metrics the City can use to evaluate future program administration.

WE FURTHER MOVE that, the Administration outline: 1) Cincinnati's and Hamilton County's current fee structures as it relates to PACE, 2) how much revenue the City's fees generate annually, and 3) how Cincinnati's and Hamilton County's fee structures compares to other peer cities and counties.

STATEMENT

Property Assessed Clean Energy (PACE) financing is a tool designed to allow property owners interested in installing energy improvement projects the ability to take advantage of potentially lower interest rates and longer financing terms associated with public bonds via Energy Special Improvement Districts (ESIDs). This type of financing helps close financial gaps on commercial projects utilizing energy efficient improvements with no cost to taxpayers. Although this program is available for both residential and commercial property owners, Cincinnati only allows for commercial PACE at this time.

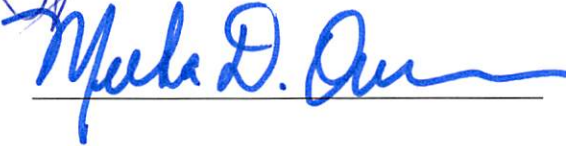
The City of Cincinnati currently mandates people looking to utilize PACE financing work through one, single program administrator—OHIO PACE. There is some thought that by allowing for more than one program administrator may make PACE more accessible by increasing competition. Additionally, as a matter of procedure, after the Administration reviews the proposed ESID, City Council must pass several legislative items to enact the ESID. This

legislative process, which historically results in approval by Council, adds unnecessary work for the Administration and adds several weeks to the development process for these projects seeking more environmentally sustainable designs.

Other cities and stakeholders in Ohio have embraced PACE in a way that Cincinnati and Hamilton County have not. For example, it is our understanding that Cincinnati's and Hamilton County's fee structure is higher than our peer cities/counties. This has contributed to a disproportionately low amount of PACE investment in Cincinnati compared to our peer cities. For example, over the past thirteen years, Cincinnati has seen \$22 million in PACE investment. This is six times less than Columbus's \$150 million during that same time period and significantly less than Dayton's \$33 million. Analyzing our regulatory structure surrounding PACE financing can have huge environmental and financial implications for our city; therefore, we need to take these small, creative steps towards making PACE an easy and indispensable part of development in Cincinnati.



Councilmember Mark Jeffreys



3/23

gr

Date: September 8, 2022

To: Mayor and Members of City Council 202201737
From: Sheryl M. M. Long, City Manager
Subject: EMERGENCY ORDINANCE – AMENDING ORDINANCE NO. 0341-2021 TO CORRECT
THE DESIGNATED FUND

Attached is an emergency ordinance captioned as follows:

AMENDING Ordinance No. 0341-2021 to correct the designated fund in which the Director of Finance is authorized to deposit proceeds received in connection with the sale of real property authorized by said ordinance.

On September 1 2021, City Council approved Ordinance No. 0341-2021 authorizing the City to sell certain real property adjacent to Interstate 75 in the Bond Hill and Carthage neighborhoods to ODOT in furtherance of ODOT's HAM 75 – 7.85 project.

Section 6 of Ordinance No. 0341-2021 authorized the proceeds from the property sale to be deposited into an incorrect fund.

The reason for the emergency is the immediate need to deposit the proceeds from the sale of real property authorized by Ordinance No. 0341-2021 into the correct fund.

The Administration recommends passage of the attached emergency ordinance.

cc: John S. Brazina, Director, Transportation and Engineering

EMERGENCY

City of Cincinnati

CHM

EESW

An Ordinance No. _____

- 2022

AMENDING Ordinance No. 0341-2021 to correct the designated fund in which the Director of Finance is authorized to deposit proceeds received in connection with the sale of real property authorized by said ordinance.

WHEREAS, on September 1, 2021, Council approved Ordinance No. 0341-2021 authorizing the City Manager to sell certain real property adjacent to Interstate 75 in the Bond Hill and Carthage neighborhoods of Cincinnati to the State of Ohio, Department of Transportation in furtherance of the State of Ohio, Department of Transportation's HAM 75 – 7.85 project; and

WHEREAS, Section 6 of Ordinance No. 0341-2021 authorized the Finance Director to deposit the proceeds from the property sale in an incorrect fund; and

WHEREAS, Council hereby amends Ordinance No. 0341-2021 to authorize the Finance Director to deposit the proceeds from the property sale in the correct fund; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Section 6 of Ordinance No. 0341-2021, approved by Council on September 1, 2021, is hereby amended as follows:

Section 6. That the proceeds from the sale of the Property, if any, shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City's Real Estate Services Division in connection with the sale, and that the City's Finance Director is hereby authorized to deposit amounts in excess thereof into ~~Miscellaneous Permanent Improvement Fund 757~~ Expressways/Gateways Permanent Improvement Fund 753.

Section 2. That existing Section 6 of Ordinance No. 0341-2021 is hereby repealed.

Section 3. That existing Section 7 of Ordinance No. 0341-2021 is hereby repealed in its entirety.

Section 4. That all terms of Ordinance No. 0341-2021 not amended in this ordinance remain in full force and effect.

Section 5. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to deposit the proceeds from the sale of real property authorized by Ordinance No. 0341-2021 into the correct fund.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

Deletions are struck through. Additions are underlined.

Date: September 8, 2022

To: Mayor and Members of City Council

202201738

From: Sheryl M. M. Long, City Manager

Subject: ORDINANCE – OTR HOLDINGS, INC. GRANT OF EASEMENT (1701-1705 RACE STREET)

Attached is an ordinance captioned as follows:

AUTHORIZING the City Manager to execute a *Grant of Easements* in favor of OTR Holdings, Inc., pursuant to which the City of Cincinnati will grant easements for step encroachments upon portions of Green and Race Streets in Over-the-Rhine.

OTR Holdings, Inc. (“Grantee”) owns the property located at 1701-1705 Race Street in the Over-the-Rhine neighborhood and has requested step encroachment easements encroaching upon portions the Green Street and Race Street public rights-of-way.

The City has determined that granting the easement to Grantee is not adverse to the City’s retained interest in the public right-of-way and will not have an adverse effect on the usability or accessibility of any existing transportation facilities.

The fair market value of the easements is approximately \$190 which Grantee has agreed to pay.

The City Planning Commission approved the easements at its meeting on May 20, 2022.

The Administration recommends passage of the attached ordinance.

Attachment I – Grant of Easements

cc: John S. Brazina, Director, Transportation and Engineering

City of Cincinnati
An Ordinance No. _____

CHM

EESW

- 2022

AUTHORIZING the City Manager to execute a *Grant of Easements* in favor of OTR Holdings, Inc., pursuant to which the City of Cincinnati will grant easements for step encroachments upon portions of Green and Race Streets in Over-the-Rhine.

WHEREAS, OTR Holdings, Inc., an Ohio nonprofit corporation (“Grantee”), holds title to certain real property located at 1701-1705 Race Street in the Over-the-Rhine neighborhood; and

WHEREAS, the City of Cincinnati (“City”) owns the adjoining Green Street and Race Street public rights-of-way (“Property”), which Property is under the management of the City’s Department of Transportation and Engineering (“DOTE”); and

WHEREAS, Grantee has requested easements from the City for step encroachments upon portions of the Green Street and Race Street public rights-of-way, as more particularly described in the *Grant of Easements* attached to this ordinance as Attachment A and incorporated herein by reference (“Easements”); and

WHEREAS, the City Manager, in consultation with DOTE, has determined (i) that granting the Easements to Grantee is not adverse to the City’s retained interest in the Property and (ii) that granting the Easements will not have an adverse effect on the usability or accessibility of any existing transportation facilities located within the public rights-of-way; and

WHEREAS, pursuant to Cincinnati Municipal Code Sec. 331-5, Council may authorize the encumbrance of City-owned property without competitive bidding in those cases in which it determines that it is in the best interest of the City; and

WHEREAS, the City’s Real Estate Services Division has determined by an appraisal that the fair market value of the Easements is approximately \$190, which Grantee has agreed to pay; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the Easements at its meeting on May 20, 2022; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute a *Grant of Easements* in favor of OTR Holdings, Inc., an Ohio nonprofit corporation (“Grantee”) and the owner of the

properties located at 1701-1705 Race Street in Over-the-Rhine, in substantially the form attached to this ordinance as Attachment A and incorporated herein by reference, pursuant to which the City of Cincinnati will grant to Grantee easements to construct and maintain step encroachments (“Easements”) upon portions of the Green Street and Race Street public rights-of-way (“Property”).

Section 2. That granting the Easements to Grantee (i) is not adverse to the City’s retained interest in the Property; and (ii) will not have an adverse effect on the usability or accessibility of any existing transportation facilities located within the public rights-of-way.

Section 3. That it is in the best interest of the City to grant the Easements without competitive bidding because, as a practical matter, no one other than Grantee, an adjoining property owner, would have any use for the Easements.

Section 4. That the fair market value of the Easements, as determined by a professional appraisal by the City’s Real Estate Services Division, is approximately \$190, which Grantee has agreed to pay.

Section 5. That the proceeds from the *Grant of Easements* shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City’s Real Estate Services Division in connection with the *Grant of Easements*, and that the City’s Finance Director is hereby authorized to deposit amounts in excess thereof, if any, into Miscellaneous Permanent Improvement Fund 757.

Section 6. That the City’s Finance Director is authorized to transfer and appropriate such excess funds from Miscellaneous Permanent Improvement Fund 757 into Capital Improvement Program Project Account No. 980x233xYY2306, “Street Improvements,” in which “YY”

represents the last two digits of the fiscal year in which the closing occurs and the proceeds are received, referencing the latter fiscal year if the events occur in different fiscal years.

Section 7. That the City Manager and other City officials are authorized to take all necessary and proper actions to carry out the provisions of this ordinance and to fulfill the terms of the *Grant of Easements*, including, without limitation, executing any and all ancillary agreements, plats, and other real estate documents.

Section 8. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____

Clerk

[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF EASEMENTS

(encroachments upon portions of Green and Race Streets)

This Grant of Easements is granted as of the Effective Date (as defined on the signature page hereof) by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in favor of **OTR HOLDINGS, INC.**, an Ohio nonprofit corporation, with a tax mailing address of 1203 Walnut Street, Fourth Floor, Cincinnati, OH 45202 ("**Grantee**").

Recitals:

A. By virtue of a *General Warranty Deed* recorded on September 6, 2019, in OR 13996, Page 2428, Hamilton County, Ohio Records, Grantee holds title to certain real property located at 1701 Race Street, Cincinnati, OH 45202, as more particularly described on Exhibit A (*Legal Description – Benefitted Properties*) hereto ("**1701 Race Street**").

B. By virtue of a *Limited Warranty Deed* recorded on April 4, 2017, in OR 13388, Page 2307, Hamilton County, Ohio Records, Grantee holds title to certain real property located at 1703 Race Street, Cincinnati, OH 45202, as more particularly described on Exhibit A hereto ("**1703 Race Street**").

C. By virtue of a *Limited Warranty Deed* recorded on April 4, 2017, in OR 13388, Page 2307, Hamilton County, Ohio Records, Grantee holds title to certain real property located at 1705 Race Street, Cincinnati, OH 45202, as more particularly described on Exhibit A hereto ("**1705 Race Street**", and collectively with 1701 Race Street and 1703 Race Street, the "**Benefitted Properties**", and each a "**Benefitted Property**", as applicable).

D. The City owns the adjoining Race Street and Green Street public rights-of-way, which are under the management of the City's Department of Transportation and Engineering ("**DOT**").

E. Grantee has requested the City to grant easements for step encroachments in and across portions of the Race Street and Green Street public rights-of-way (each, an "**Encroachment**", and collectively, the "**Encroachments**").

F. The City Manager, in consultation with DOT, has determined that (i) the easements will not have an adverse effect on the City's retained interest in the Race Street and Green Street public rights-of-way, and (ii) granting the easements will not have an adverse effect on the usability or accessibility of any existing Race Street and Green Street public right-of-way facilities.

G. The City's Real Estate Services Division has determined that the fair market value of the easements, as determined by professional appraisal, is \$190, which Grantee has agreed to pay.

H. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the easement at its meeting on May 20, 2022.

I. Cincinnati City Council approved the easement by Ordinance No. [____]-2022, passed on [____], 2022.

NOW THEREFORE, the parties do hereby agree as follows:

1. Grant of Easements. The City does hereby grant to Grantee, on the terms and conditions set forth herein, the following three easements for the Encroachments: (i) a non-exclusive encroachment easement as an appurtenance to and for the benefit of 1701 Race Street to use, maintain, repair, reconstruct, replace, and remove a step in and upon the Green Street public right-of-way, as more particularly identified and depicted as “**Easement #1**” on Exhibit B (Survey) and described on Exhibit C (Legal Descriptions) hereto; (ii) a non-exclusive encroachment easement as an appurtenance to and for the benefit of 1703 Race Street to use, maintain, repair, reconstruct, replace, and remove a step in and upon the Race Street public right-of-way, as more particularly identified and depicted as “**Easement #2**” on Exhibit B and described on Exhibit C hereto; and, (iii) a non-exclusive encroachment easement as an appurtenance to and for the benefit of 1705 Race Street to use, maintain, repair, reconstruct, replace, and remove steps and associated handrails in and upon the Race Street public right-of-way, as more particularly identified and depicted as “**Easement #3**” on Exhibit B and described on Exhibit C hereto. Easement #1, Easement #2, and Easement #3 shall each be referred to herein individually as an “**Easement**”, and collectively as the “**Easements**” or “**Easement Areas**”, as applicable. Grantee shall not make any modifications to the Encroachments within the Easement Areas without the City’s prior written consent. Grantee acknowledges and agrees that it has conducted its own due diligence to familiarize itself with the condition and characteristics of the Easement Areas. The City has not made any representations or warranties concerning the title, condition, or characteristics of the Easement Areas or the suitability or fitness of the Easement Areas for any purpose. Grantee acknowledges and agrees that it is not relying upon any such representations or warranties from the City. Without limitation of the foregoing, under no circumstances shall the City be responsible or liable for any pre-existing environmental conditions affecting the Easement Areas.

2. Termination. Notwithstanding anything herein to the contrary, the Easements shall automatically terminate (i) upon the complete or respective partial demolition, without rebuilding within 1 year of such demolition, of the Encroachments within the Easement Areas, such that the Easements would be rendered unnecessary; (ii) upon written notice from the City if the City determines that it needs the Easement Areas or any portion thereof for a municipal purpose, including, without limitation, to comply with Americans with Disabilities Act (“**ADA**”) regulations or accessibility standards; or (iii) upon written notice from the City if the City determines that the Encroachments are creating a public safety issue, such as noncompliance with ADA accessibility regulations, or contributing to adverse impacts on the usability or accessibility of any public right-of-way facilities, if Grantee does not abate or begin to take efforts to mitigate the public safety issue in a timely manner consistent with the degree of harm posed by the public safety issue.

3. Maintenance and Repairs. At no cost to the City, Grantee shall maintain the Encroachments in a continuous state of good and safe condition and repair. Grantee acknowledges that there may be existing easements, utility lines, and related facilities in the vicinity of the Easement Areas (“**Third-Party Utility Lines**”). In connection with Grantee’s maintenance, repair, and use of the Encroachment, Grantee shall not interfere with the access of utility companies to maintain and repair the Third-Party Utility Lines and shall, at Grantee’s expense, promptly repair any and all damage to Third-Party Utility Lines caused by Grantee, its agents, employees, contractors, subcontractors, tenants, licensees, or invitees. Any relocation of Third-Party Utility Lines necessitated by the construction, maintenance, repair, reconstruction, or removal

of the Encroachments under this instrument shall be handled entirely at Grantee's expense. All activities undertaken by Grantee under this instrument shall be in compliance with all applicable codes, laws, and other governmental standards, policies, guidelines and requirements.

4. Insurance; Indemnification. At all times, and in addition to whatever other insurance and bond requirements the City may from time to time require, Grantee shall maintain or cause to be maintained a policy of Commercial General Liability insurance, with an insurance company reasonably acceptable to the City and naming the City as an additional insured, in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, or in such greater amount as the City may from time to time require. Grantee shall furnish to the City a certificate of insurance evidencing such insurance upon the City's request and, in any event, prior to undertaking any construction activities within the Easement Areas. Grantee hereby waives all claims and rights of recovery against the City, and on behalf of Grantee's insurers, rights of subrogation, in connection with any damage to the Encroachments, no matter how caused. Grantee shall defend (with counsel reasonably acceptable to the City), indemnify, and hold the City harmless from and against any and all claims, actions, losses, costs (including, without limitation, reasonable attorneys' fees), liability and damages suffered or incurred by, or asserted against, the City in connection with the use, construction, maintenance, repair, and all other matters associated with the Encroachments.

5. Default. If Grantee, its successors-in-interest, or assigns fail to perform any required work under this instrument and fail to address the same to DOTE's satisfaction within thirty (30) days after receiving written notice thereof from DOTE, the City shall have right to perform such work, at Grantee's expense, payable within ten (10) days after receiving an invoice from DOTE evidencing the amount due. Grantee, its successors-in-interest, or assigns shall be liable to DOTE for the payment of such work. Any outstanding amount due under this instrument shall create a lien on the respective Benefitted Property until fully paid. At the City's option, the City may file an affidavit in the Hamilton County, Ohio Recorder's office to memorialize any outstanding amounts due under this instrument.

6. Covenants Running with the Land. The provisions hereof shall run with the land and shall inure to the benefit of and be binding upon the City, Grantee, and their respective successors-in-interest and assigns.

7. Governing Law; Severability. This instrument shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. If any provisions hereof are determined to be invalid or unenforceable by a court of law, the remainder of this instrument shall not be affected thereby, and all other provisions of this instrument shall be valid and enforceable to the fullest extent permitted by law.

8. Notices. All notices given hereunder shall be in writing and shall be sent by U.S. certified or registered mail, return receipt requested, or delivered by a recognized courier service, or by personal delivery, to the parties at their respective addresses set forth in the introductory paragraph hereof, or such other address as either party may specify from time to time by notice given in the manner prescribed herein. All notices to the City shall be addressed to the Office of the City Manager, and a copy of each such notice shall simultaneously be delivered to: Department of Transportation and Engineering, Attn: Director, Room 450. In the event of an alleged breach by the City of this instrument, a copy of each notice of breach shall simultaneously be delivered to the Office of the City Solicitor, 801 Plum Street, Room 214, Cincinnati, OH 45202.

9. Coordinated Report Conditions (CR #10-2022). The following additional conditions shall apply:

a. DOTE:

- i. 1705 Race Street: The step encroachment shall provide 5 feet continual minimum pedestrian clearance, from vertical face to utility poles and other appurtenances. Handrails shall turn down and not protrude further into the sidewalk space.
 - ii. 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. Greater Cincinnati Water Works ("GCWW"): There are active service branches (H-49019, H-16209, and H-236786) on Green and Race Streets within the Benefitted Properties near the Easement Areas. Caution must be exercised to avoid any damage during construction. GCWW records suggests the branches are outside of the Easement Areas. If during construction, Grantee finds the branch is within the limits of the Easement Areas, Grantee must maintain GCWW access to the control valve. This may require abandoning the existing branch and purchasing a new branch in a new location.
- c. Altafiber: There are existing underground telephone facilities at this location. The existing 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 Grantee's expense.

10. Counterparts and Electronic Signatures. This instrument may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original. This instrument may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

11. Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A – *Legal Description - Benefitted Properties*
Exhibit B – *Survey*
Exhibit C – *Legal Descriptions*

Executed by the parties on the respective date of acknowledgement listed below, effective as the later of such dates (the "Effective Date").

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

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 acknowledgement. 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 S. Brazina, Director
Department of Transportation and Engineering

Approved as to Form by:

Assistant City Solicitor

[Grantee Signature Page Follows]

ACCEPTED AND AGREED TO BY:

OTR HOLDINGS, INC.,
an Ohio nonprofit corporation

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by _____, the _____ of **OTR HOLDINGS, INC.**, an Ohio nonprofit corporation, on behalf of the corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

This instrument prepared by:
City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, OH 45202

EXHIBIT A
to Grant of Easements
LEGAL DESCRIPTION - BENEFITTED PROPERTIES

Property Address: 1701 Race Street
Auditor's Parcel No.: 094-0008-0164

Situated in the City of Cincinnati, County of Hamilton, and State of Ohio, and being part of Block F in Findlay & Garrard's Subdivision as recorded in Deed Book 47, page 319, of Hamilton County, Ohio Records and being more particularly described as follows:

Beginning at the Northwest corner of Green and Race Streets; running thence Westwardly along Green Street 100 feet; thence Northwardly and parallel with Race Street 25 feet; thence Eastwardly and parallel with Green Street, 100 feet to Race Street; thence Southwardly along Race Street, 25 feet to the place of beginning.

Property Address: 1703 Race Street
Auditor's Parcel No.: 094-0008-0165

SITUATE IN THE CITY OF CINCINNATI, HAMILTON COUNTY, OHIO, VIZ: LOT 2, BLOCK "F", WHICH WAS LAID OUT BY GENERAL JAMES FINDLAY AND J.D. GARARD, RECORDED IN BOOK 47, PAGE 319, OF THE HAMILTON COUNTY, OHIO RECORDS, COMMENCING AT A POINT TWENTY-FIVE (25) FEET NORTH OF GREEN STREET ON THE WEST SIDE OF RACE STREET; THENCE WESTWARDLY PARALLEL WITH GREEN STREET ONE HUNDRED (100) FEET; THENCE NORTHWARDLY PARALLEL WITH RACE STREET TWENTY-FIVE (25) FEET; THENCE EASTWARDLY PARALLEL WITH GREEN STREET ONE HUNDRED (100) FEET; THENCE SOUTHWARDLY ALONG RACE STREET TWENTY-FIVE (25) FEET TO THE PLACE OF BEGINNING.

Property Address: 1705 Race Street
Auditor's Parcel No.: 094-0008-0166

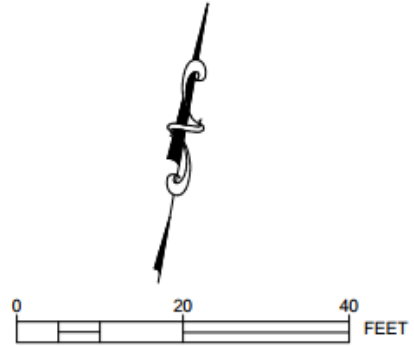
Situated in Cincinnati, Hamilton County, Ohio, and being Lot 3 of Block "F", Findlay and Garrard's Subdivision, Deed Book 47, Page 319, Recorder's Office.

Beginning at a point in the West line of Race Street which lies 50 feet North of the North line of Green Street, measured along the West line of Race Street; thence South 73° 56' West 100 feet; thence North 16° West 20 feet; thence North 73° 56' East 100 feet; thence South 16° East 20 feet to a point of beginning.

EXHIBIT B
to Grant of Easements
SURVEY

SURVEY DATA:

HORIZONTAL DATUM – DERIVED FROM THE OHIO STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD83 (2011). SAID BEARINGS ORIGINATED FROM SAID COORDINATE SYSTEM BY GPS OBSERVATIONS AND OBSERVATIONS OF SELECTED STATIONS IN THE NATIONAL GEODETIC SURVEY CONTINUOUSLY OPERATING REFERENCE STATION (NGS CORS) NETWORK.



LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	1.25	S10°04'49"E
L2	4.00	S79°55'11"W
L3	1.25	N10°04'49"W
L4	4.00	N79°55'11"E
L5	27.95	S79°55'11"W
L6	5.00	N10°00'22"W
L7	1.25	N79°59'38"E
L8	5.00	S10°00'22"E
L9	1.25	S79°59'38"W
L10	37.24	N10°00'22"W
L11	6.25	N10°00'22"W
L12	4.30	N79°59'38"E
L13	6.25	S10°00'22"E
L14	4.30	S79°59'38"W
L15	58.09	N10°00'22"W

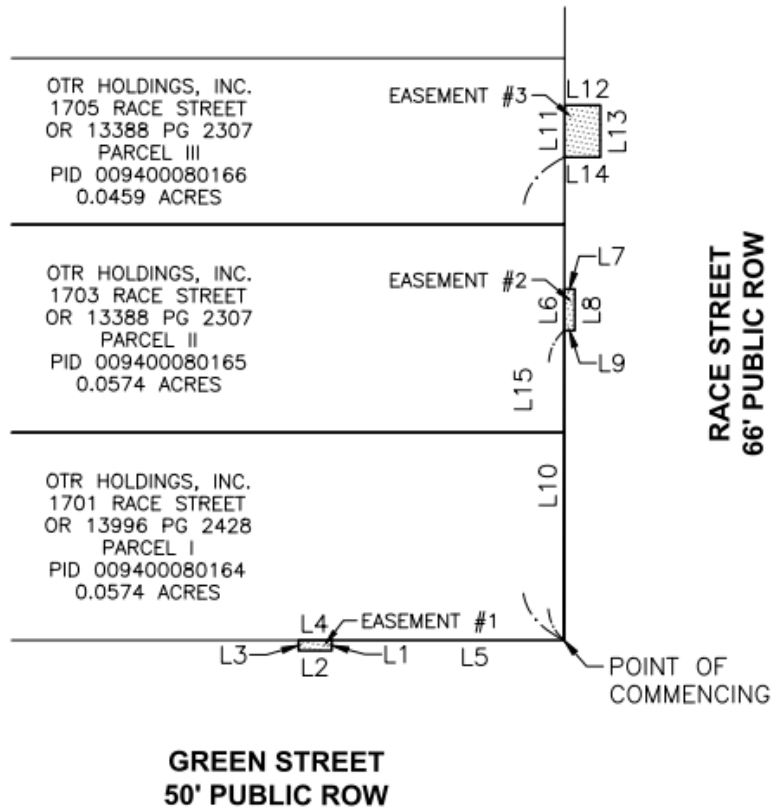


EXHIBIT C
to Grant of Easements
LEGAL DESCRIPTIONS

STEP EASEMENT #1
HAMILTON COUNTY, OHIO
APRIL 1, 2022

Situate in Section 13, Township 3 East, Range 2 North, in the City of Cincinnati, County of Hamilton, State of Ohio, and being over the right of way of Green Street, a 50' wide public right of way (all references to deeds, microfiche, plats, surveys, etc. refer to the records of the Hamilton County Recorder's Office, unless noted otherwise) and being more particularly bounded and described as follows:

Commencing for reference at the southeast corner of a 0.0574 acre tract of land (Parcel I) as conveyed to OTR Holdings, Inc. by deed recorded in Official Record Volume 13996, page 2428, said point being the intersection of the north right of way line of said Green Street (50' public right of way) and the west right of way line of Race Street (66' public right of way);

thence along the south line of said Parcel I and the north right of way line of said Green Street, South seventy-nine degrees fifty-five minutes eleven seconds West ($S79^{\circ}55'11''W$), for twenty-seven and 95/100 feet (27.95') to the TRUE POINT OF BEGINNING;

thence leaving said lines and across said Green Street, South ten degrees four minutes forty-nine seconds East ($S10^{\circ}04'49''E$), for one and 25/100 feet (1.25');

thence continuing across said Green Street, South seventy-nine degrees fifty-five minutes eleven seconds West ($S79^{\circ}55'11''W$), for four and 00/100 feet (4.00');

thence continuing across said Green Street, North ten degrees four minutes forty-nine seconds West ($N10^{\circ}04'49''W$), for one and 25/100 feet (1.25') to the south line of said Parcel I and the north right of way line of said Green Street;

thence along said lines, North seventy-nine degrees fifty-five minutes eleven seconds East ($N79^{\circ}55'11''E$), for four and 00/100 feet (4.00') to the TRUE POINT OF BEGINNING, containing 5 square feet, more or less.

Bearings are based upon the Ohio State Plane Coordinate System, South Zone, NAD83 (2011). Said bearings originated from said coordinate system by GPS observations and observations of selected stations in the National Geodetic Survey Continuously Operating Reference Station (NGS CORS) Network.

This description was prepared under the direction of Michael Jay Wilson, Ohio Registered Surveyor No. 8281, of Woolpert Inc., based upon a field survey performed during September, 2021.



Michael Jay Wilson 4/18/2022
Michael Jay Wilson Date
Ohio Registered Surveyor No. 8281

EXHIBIT C (Cont.)

**STEP EASEMENT #2
HAMILTON COUNTY, OHIO
APRIL 1, 2022**

Situate in Section 13, Township 3 East, Range 2 North, in the City of Cincinnati, County of Hamilton, State of Ohio, and being over the right of way of Race Street, a 66' wide public right of way (all references to deeds, microfiche, plats, surveys, etc. refer to the records of the Hamilton County Recorder's Office, unless noted otherwise) and being more particularly bounded and described as follows:

Commencing for reference at the southeast corner of a 0.0574 acre tract of land (Parcel I) as conveyed to OTR Holdings, Inc. by deed recorded in Official Record Volume 13996, page 2428, said point being the intersection of the north right of way line of Green Street (50' public right of way) and the west right of way line of said Race Street (66' public right of way);

thence along the east line of said Parcel I, the east line of a 0.0574 acre tract of land (Parcel II) as conveyed to OTR Holdings, Inc. by deed recorded in Official Record Volume 13388, page 2307, and the west right of way line of said Race Street, North ten degrees zero minutes twenty-two seconds West (N10°00'22"W), for thirty-seven and 24/100 feet (37.24') to the TRUE POINT OF BEGINNING;

thence continuing along said lines, North ten degrees zero minutes twenty-two seconds West (N10°00'22"W), for five and 00/100 feet (5.00');

thence leaving said lines and across said Race Street, North seventy-nine degrees fifty-nine minutes thirty-eight seconds East (N79°59'38"E), for one and 25/100 feet (1.25');

thence continuing across said Race Street, South ten degrees zero minutes twenty-two seconds East (S10°00'22"E), for five and 00/100 feet (5.00');

thence continuing across said Race Street, South seventy-nine degrees fifty-nine minutes thirty-eight seconds West (S79°59'38"W), for one and 25/100 feet (1.25') to the TRUE POINT OF BEGINNING, containing 6.25 square feet, more or less.

Bearings are based upon the Ohio State Plane Coordinate System, South Zone, NAD83 (2011). Said bearings originated from said coordinate system by GPS observations and observations of selected stations in the National Geodetic Survey Continuously Operating Reference Station (NGS CORS) Network.

This description was prepared under the direction of Michael Jay Wilson, Ohio Registered Surveyor No. 8281, of Woolpert Inc., based upon a field survey performed during September, 2021.



Michael Jay Wilson 4/1/2022
Michael Jay Wilson Date
Ohio Registered Surveyor No. 8281

EXHIBIT C (Cont.)

**STEP EASEMENT #3
HAMILTON COUNTY, OHIO
APRIL 1, 2022**

Situate in Section 13, Township 3 East, Range 2 North, in the City of Cincinnati, County of Hamilton, State of Ohio, and being over the right of way of Race Street, a 66' wide public right of way (all references to deeds, microfiche, plats, surveys, etc. refer to the records of the Hamilton County Recorder's Office, unless noted otherwise) and being more particularly bounded and described as follows:

Commencing for reference at the southeast corner of a 0.0574 acre tract of land (Parcel I) as conveyed to OTR Holdings, Inc. by deed recorded in Official Record Volume 13996, page 2428, said point being the intersection of the north right of way line of Green Street (50' public right of way) and the west right of way line of said Race Street (66' public right of way);

thence along the east line of said Parcel I, the east line of a 0.0574 acre tract of land (Parcel II) and the east line of a 0.0459 acre tract of land (Parcel III) as conveyed to OTR Holdings, Inc. by deed recorded in Official Record Volume 13388, page 2307, and the west right of way line of said Race Street, North ten degrees zero minutes twenty-two seconds West (N10°00'22"W), for fifty-eight and 9/100 feet (58.09') to the TRUE POINT OF BEGINNING;

thence continuing along said lines, North ten degrees zero minutes twenty-two seconds West (N10°00'22"W), for six and 25/100 feet (6.25');

thence leaving said lines and across said Race Street, North seventy-nine degrees fifty-nine minutes thirty-eight seconds East (N79°59'38"E), for four and 30/100 feet (4.30');

thence continuing across said Race Street, South ten degrees zero minutes twenty-two seconds East (S10°00'22"E), for six and 25/100 feet (6.25');

thence continuing across said Race Street, South seventy-nine degrees fifty-nine minutes thirty-eight seconds West (S79°59'38"W), for four and 30/100 feet (4.30') to the POINT OF BEGINNING, containing 26.875 square feet, more or less.

Bearings are based upon the Ohio State Plane Coordinate System, South Zone, NAD83 (2011). Said bearings originated from said coordinate system by GPS observations and observations of selected stations in the National Geodetic Survey Continuously Operating Reference Station (NGS CORS) Network.

This description was prepared under the direction of Michael Jay Wilson, Ohio Registered Surveyor No. 8281, of Woolpert Inc., based upon a field survey performed during September, 2021.



Michael Jay Wilson 4/1/2022
Michael Jay Wilson Date
Ohio Registered Surveyor No. 8281

Date: September 8, 2022

To: Mayor and Members of City Council 202201739
From: Sheryl M. M. Long, City Manager
Subject: ORDINANCE – ROBERT B. HINTON, JR GRANT OF EASEMENT (2503 HANDASYDE COURT)

Attached is an ordinance captioned as follows:

AUTHORIZING the City Manager to execute a *Grant of Easement* in favor of Robert B. Hinton, Jr., pursuant to which the City of Cincinnati will grant an easement for retaining walls and pavement that encroach upon portions of Handasyde Court and Menlo Avenue in Hyde Park.

Robert B. Hinton, Jr. (“Grantee”) holds title to certain real property located at 2503 Handasyde Court in the Hyde Park neighborhood and has requested an easement for certain improvements that encroach upon portions of the Handasyde Court and Menlo Avenue public rights-of-way, namely, retaining walls and pavement for a driveway.

The City has determined that granting the easement to Grantee is not adverse to the City’s retained interest in the public right-of-way and will not have an adverse effect on the usability or accessibility of any existing transportation facilities.

The fair market value of the easement is approximately \$3,150, however, in consideration of the costs incurred by Grantee in constructing a public sidewalk in the Handasyde Court and Menlo Avenue public rights-of-way at the request of the City, the City has agreed to convey the easement for \$1.00 which Grantee has agreed to pay.

The City Planning Commission approved the easements at its meeting on January 19, 2018.

The Administration recommends passage of the attached ordinance.

Attachment I – Grant of Easement

cc: John S. Brazina, Director, Transportation and Engineering

City of Cincinnati
An Ordinance No. _____

CHM

EESW

- 2022

AUTHORIZING the City Manager to execute a *Grant of Easement* in favor of Robert B. Hinton, Jr., pursuant to which the City of Cincinnati will grant an easement for retaining walls and pavement that encroach upon portions of Handasyde Court and Menlo Avenue in Hyde Park.

WHEREAS, Robert B. Hinton, Jr. (“Grantee”), holds title to certain real property located at 2503 Handasyde Court in the Hyde Park neighborhood; and

WHEREAS, the City of Cincinnati (“City”) owns the adjoining Handasyde Court and Menlo Avenue public rights-of-way (“Property”), which Property is under the management of the City’s Department of Transportation and Engineering (“DOTTE”); and

WHEREAS, Grantee has requested an easement from the City for certain improvements that encroach upon portions of the Handasyde Court and Menlo Avenue public rights-of-way, namely, retaining walls and pavement for a driveway, as more particularly described in the *Grant of Easement* attached to this ordinance as Attachment A and incorporated herein by reference (“Easement”); and

WHEREAS, the City Manager, in consultation with DOTTE, has determined (i) that granting the Easement to Grantee is not adverse to the City’s retained interest in the Property and (ii) that granting the Easement will not have an adverse effect on the usability or accessibility of any existing transportation facilities located within the public rights-of-way; and

WHEREAS, pursuant to Cincinnati Municipal Code Sec. 331-5, Council may authorize the encumbrance of City-owned property without competitive bidding in those cases in which it determines that it is in the best interest of the City; and

WHEREAS, the City’s Real Estate Services Division has determined by an appraisal that the fair market value of the Easement is approximately \$3,150, however, in consideration of the costs incurred by Grantee in constructing a public sidewalk in the Handasyde Court and Menlo Avenue public rights-of-way at the request of the City, the City has agreed to convey the Easement for \$1.00 because the City anticipates that the City and the general pedestrian public will receive a combination of economic and non-economic benefits from the public sidewalk that will equal or exceed the fair market value of the Easement; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the Easement at its meeting on January 19, 2018; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute a *Grant of Easement* in favor of Robert B. Hinton, Jr. (“Grantee”), the owner of the property located at 2503 Handasyde Court in Hyde Park, in substantially the form attached to this ordinance as Attachment A and incorporated herein by reference, pursuant to which the City of Cincinnati will grant to Grantee an easement to construct and maintain encroachments (“Easement”) upon portions of the Handasyde Court and Menlo Avenue public rights-of-way (“Property”), as more particularly described in Attachment A.

Section 2. That granting the Easement to Grantee (i) is not adverse to the City’s retained interest in the Property; and (ii) will not have an adverse effect on the usability or accessibility of any existing transportation facilities located within the public rights-of-way.

Section 3. That it is in the best interest of the City to grant the Easement without competitive bidding because, as a practical matter, no one other than Grantee, an adjoining property owner, would have any use for the Easement.

Section 4. That the fair market value of the Easement, as determined by a professional appraisal by the City’s Real Estate Services Division, is approximately \$3,150, however, in consideration of the costs incurred by Grantee in constructing a public sidewalk in the Handasyde Court and Menlo Avenue public rights-of-way at the request of the City, the City has agreed to convey the Easement for \$1.00 because the City anticipates that the City and the general pedestrian public will receive a combination of economic and non-economic benefits from the public sidewalk that will equal or exceed the fair market value of the Easement.

Section 5. That the proceeds from the *Grant of Easement* shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City’s Real Estate Services Division in connection with the *Grant of Easement*, and that the City’s Finance Director is

hereby authorized to deposit amounts in excess thereof, if any, into Miscellaneous Permanent Improvement Fund 757.

Section 6. That the City’s Finance Director is authorized to transfer and appropriate such excess funds from Miscellaneous Permanent Improvement Fund 757 into Capital Improvement Program Project Account No. 980x233xYY2306, “Street Improvements,” in which “YY” represents the last two digits of the fiscal year in which the closing occurs and the proceeds are received, referencing the latter fiscal year if the events occur in different fiscal years.

Section 7. That the City Manager and other City officials are authorized to take all necessary and proper actions to carry out the provisions of this ordinance and to fulfill the terms of the *Grant of Easement*, including, without limitation, executing any and all ancillary agreements, plats, and other real estate documents.

Section 8. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

GRANT OF EASEMENT

(2503 Handasyde Court)

This Grant of Easement (this "**Easement**") is executed on the Effective Date (as defined on the signature page hereof) by the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), in favor of **ROBERT B. HINTON, JR.**, married, whose tax mailing address is 2503 Handasyde Court, Cincinnati, Ohio 45208 ("**Grantee**").

Recitals:

A. By virtue of a Deed recorded in Official Record 13763, Page 1289, Hamilton County, Ohio Recorder's Office, Grantee owns the residential real property located at 2503 Handasyde Court, Cincinnati, Ohio, designated as Auditor's Parcel Number 046-0001-0022, as described on Exhibit A (*Legal Description-Grantee's Property*) hereto ("**Grantee's Property**").

B. The City owns the abutting public rights-of-way known as Handasyde Court and Menlo Avenue, as depicted on Exhibit B (*Site Map*), which are under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

C. Grantee has constructed certain improvements that encroach upon Handasyde Court and Menlo Avenue, namely: retaining walls and pavement for a driveway that serves Grantee's residence (the "**Improvements**"), as more particularly depicted on Exhibit B.

D. The parties now desire to memorialize Grantee's ownership and corresponding obligation to maintain and repair the Improvements.

E. The City Manager, in consultation with DOTE, has determined that (i) granting this Easement will not have an adverse effect on the City's retained interest in the Handasyde Court and Menlo Avenue public rights-of-way, and (ii) granting this Easement will not have an adverse effect on the usability or accessibility of any existing Handasyde Court and Menlo Avenue public right-of-way facilities.

F. The City's Real Estate Services Division has determined by appraisal that the fair market value of the Easement is \$3,150, however in consideration of the costs incurred by Grantee in constructing a public sidewalk in the Handasyde Court and Menlo Avenue public rights-of-way at the request of the City, the City has agreed to convey this Easement for \$1.00 because the City anticipates that the City and the general pedestrian public will receive a combination of economic and non-economic benefits from the public sidewalk that will equal or exceed the fair market value of this Easement.

G. City Planning Commission, having authority to approve the change in the use of City-owned property, approved this Easement at its meeting on January 19, 2018.

H. Execution of this instrument was authorized by Ordinance No. ____-2022, passed by Cincinnati City Council on _____, 2022.

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

1. Grant of Easement; Termination.

(A) Grant of Easement. The City hereby grants to Grantee, on the terms and conditions set forth herein, as an appurtenance to and for the benefit of Grantee's Property, a non-exclusive easement to use, maintain, repair, reconstruct, replace, and remove the Improvements over the portions of the Handasyde Court and Menlo Avenue public rights-of-way, as more particularly depicted on Exhibit B and described on Exhibit C (Legal Description – Easement Areas) hereto (the "**Easement Areas**"). For all purposes, Grantee shall be deemed to be the owner of the Improvements. The City has no responsibility or liability for the design, constructability, functionality, physical condition or any other aspect of the Improvements.

(B) Termination. Notwithstanding anything herein to the contrary, this Easement shall automatically terminate, and the City shall have the right to execute and record an instrument memorializing the termination of this Easement in the Hamilton County Recorder's Office, (i) upon any permanent alteration or elimination of the Improvements within the Easement Areas such that this Easement or any portion thereof would be rendered unnecessary; (ii) upon written notice from the City if the City determines that it needs the Easement Areas or any portion thereof for a municipal purpose, including, without limitation, to comply with Americans with Disabilities Act ("**ADA**") regulations or accessibility standards; (iii) if Grantee completely removes the Improvements and does not commence construction of replacement improvements within 90 days thereafter; or (iv) upon written notice from the City if the City determines that the Improvements are creating a public safety issue, such as noncompliance with ADA accessibility regulations, or contributing to adverse impacts on the usability or accessibility of any Handasyde Court or Menlo Avenue public right-of-way facilities. Upon the termination of this Easement, Grantee shall undertake all necessary steps to design, engineer, and obtain necessary approvals from the City to remove, relocate, and reconstruct the Improvements. Grantee shall have up to 180 days to remove and relocate the Improvements upon obtaining all necessary City approvals. Grantee shall be solely responsible for any and all costs incurred in relocating, reconstructing, or constructing replacement improvements. Upon the City's termination of this instrument, if Grantee fails to remove the Improvements as noted herein, the City and its contractors shall have the right to remove and destroy or otherwise dispose of the Improvements, without liability of any kind to Grantee.

2. Maintenance and Repairs. Grantee shall maintain the Improvements in a continuous state of good and safe condition and repair and shall promptly repair any and all resulting damage to City property caused thereby, including, without limitation, damaged vegetation. In the event Grantee fails to maintain and repair the Improvements as required hereunder or violates any of the covenants or restrictions contained herein, the City shall have the right to undertake such maintenance and repairs and to take any and all other necessary corrective actions, whereupon Grantee shall reimburse the City for its costs of doing so within thirty (30) days after receipt of an invoice from the City. Once installed, Grantee shall not make any alterations to the Improvements without the prior written consent of DOTE. Grantee shall not install any improvements or otherwise utilize any areas outside the Easement Areas.

3. Costs; Compliance with Laws. All costs associated with the maintenance and repair of the Improvements, including restoration work to any and all affected portions of City property, shall be borne solely by Grantee. All work undertaken by Grantee hereunder shall be in compliance with all applicable

codes, laws and other governmental requirements. Grantee shall obtain a public tree work permit from the Parks Department if working within 15 feet of any public tree within the public right-of-way.

4. Third-Party Utility Lines. Grantee acknowledges there may be existing easements, utility lines and related facilities in the vicinity of the Easement Areas ("**Third-Party Utility Lines**"). In connection with Grantee's maintenance and repair activities under this instrument, Grantee shall not interfere with the access of any utility company to maintain and repair the Third-Party Utility Lines, and shall, at Grantee's expense, promptly repair any and all damage to the Third-Party Utility Lines caused by Grantee or its agents, employees or contractors. Any relocation of Third-Party Utility Lines necessitated by Grantee's activities under this instrument shall be handled entirely at Grantee's expense. Grantee acknowledges that access to water service branches may be affected by the Improvements. Repairs of any future leaks of the branches on the corresponding water service branches shall be repaired entirely at Grantee's expense.

5. Insurance; Indemnification. At all times during which Grantee is undertaking work within the Easement Areas, Grantee shall maintain a policy of Commercial General Liability insurance, with an insurance company reasonably acceptable to the City and naming the City as an additional insured, in an amount not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, or in such greater amount and with such additional coverages as the City may from time to time require. Grantee shall furnish to the City a certificate of insurance evidencing such insurance upon the City's request, and in any event prior to undertaking any work within the Easement Areas. Grantee hereby waives all claims and rights of recovery against the City, and on behalf of Grantee's insurers, rights of subrogation, in connection with any damage to the Improvements, no matter how caused. Grantee shall defend (with counsel reasonably acceptable to the City), indemnify, and hold the City harmless from and against any and all claims, actions, losses, costs (including, without limitation, attorneys' fees), liability and damages suffered or incurred by, or asserted against, the City in connection with the construction, maintenance, repair or other matters associated with the Improvements.

6. Notices. All notices given hereunder shall be in writing and shall be sent by U.S. certified or registered mail, return receipt requested, or delivered by a recognized courier service, or by personal delivery, to Grantee, and its respective successors-in-interest and assigns, to 2503 Handasyde Court, Cincinnati, Ohio 45208, or such other address as either party may specify from time to time by notice given in the manner prescribed herein. All notices to the City shall be addressed to the Office of the City Manager, 801 Plum Street, Cincinnati, OH 45202, and a copy of each such notice shall simultaneously be delivered to: Department of Transportation and Engineering, 801 Plum Street, Room 450, Cincinnati, OH 45202. In the event of an alleged breach by the City of this instrument, a copy of each notice of breach shall simultaneously be delivered to the Office of the City Solicitor, 801 Plum Street, Room 214, Cincinnati, OH 45202.

7. Default. An event of default shall be deemed to have occurred if Grantee, its successors-in-interest, or assigns fail to perform any required work under this instrument, including, but not limited to, the obligations set forth in Section 1(B), and fail to address the same to DOTE's satisfaction within thirty (30) days after receiving written notice thereof from DOTE, upon which the City shall have right to perform such work, at Grantee's expense, payable within ten (10) days after receiving an invoice from DOTE evidencing the amount due. Grantee, its successors-in-interest, or assigns shall be liable to DOTE for the payment of such work. Any outstanding amount due under this instrument shall create a lien on the Grantee's Property until fully paid. At the City's option, the City may file an affidavit in the Hamilton County, Ohio Recorder's office to memorialize any outstanding amounts due under this instrument.

8. Covenants Running with the Land. The provisions hereof shall run with the land and shall inure to the benefit of and be binding upon the parties hereto and their respective successors-in-interest.

9. Governing Law; Severability. This instrument shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. If any provisions hereof are

determined to be invalid or unenforceable by a court of law, the remainder of this instrument shall not be affected thereby, and all other provisions of this instrument shall be valid and enforceable to the fullest extent permitted by law.

10. Coordinated Report Conditions (CR #99-2016). The following additional conditions shall apply:

(A) DOTE: 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) Altafiber: There are existing underground telephone facilities at or around this location. The existing 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 of this instrument will be handled entirely at Grantee's expense.

11. Counterparts and Electronic Signatures. This instrument may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original. This instrument may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

12. Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A—*Legal Description-Grantee's Property*
Exhibit B—*Survey*
Exhibit C—*Legal Description – Easement Areas*

[SIGNATURE PAGE FOLLOWS]

Executed on the date of acknowledgement indicated below (the "Effective Date").

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

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 hereby.

Notary Public
My commission expires: _____

Recommended by:

John S. Brazina, Director
Department of Transportation and Engineering

Approved as to Form:

Assistant City Solicitor

[Grantee Signature Page Follows]

ACKNOWLEDGED AND ACCEPTED BY:

GRANTEE:

Robert B. Hinton, Jr.

Date: _____, 2022

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street
Cincinnati, OH 45202

EXHIBIT A

Situate in Section 32, Town 4, Fractional Range 2, Miami Purchase, City of Cincinnati, Hamilton County, Ohio, being part of Lot 9, Barnabas Niles Estate recorded in Deed Book 94, Page 121, and being all of the lands conveyed to Robert B. Jr. and Andrea C. Hinton as recorded in Official Record 10217, Page 868 Hamilton County, Ohio Recorder's Office, more particularly described as follows:

Beginning at an existing 3/4" iron pipe in the south Right-Of-Way line of Handasyde Court (50' Right-of-Way), said point lying North 87° 30' 00" East, 285 feet from the northwest corner of said Lot 9 of Barnabas Niles Estate, said point also being the northwest corner of the lands conveyed to Warner A. Meyers and Kim Stookey-Myers by deed recorded in Official Record 12498, Page 178 Hamilton County, Ohio Recorder's Office;

Thence leaving said south Right-Of-Way line of Handasyde Court and with the west line of said Myers' land, South 02° 05' 00" East, a distance of 387.97 feet to a 5/8" iron pin set at the northeast corner of Parcel 2 of lands conveyed to Daniel H. and Judith S. McKinney, Trustees, by deed recorded in Official Record 7563, Page 951 Hamilton County, Ohio Recorder's Office and in the west line of the lands conveyed to Cincinnati Country Club by deed recorded in Official Record 8871, Page 1203 Hamilton County, Ohio Recorder's Office;

Thence with the north line of said Parcel 2, South 86° 19' 20" West, a distance of 142.55 feet to a 5/8" iron set at the northwest corner of Parcel 2 and in the east line of Parcel 1 of said McKinney lands;

Thence in part with the east line of said McKinney lands, North 02° 05' 00" West, a distance of 390.90 feet to a 5/8" iron pin set at the northeast corner of the lands conveyed to Michelle S. and Donald E. Hershey by deed recorded in Official Record 8262, Page 1376 Hamilton County, Ohio Recorder's Office, said point also being in the south Right-Of-Way line of said Handasyde Court;

Thence with the south line of said Handasyde Court, North 87° 30' 00" East, 142.50 feet to the point of beginning.

Containing 1.2739 acres of land.

Subject to all legal highways, easements and restrictions of record.

The above description is the result of a survey prepared by McGill Smith Punshon, Inc. under the direction of Melvin W. Pistor, Jr., P.S. No. 8180, dated October 7, 2015. Bearings based on Barnabas Niles Subdivision as recorded in Plat Book 94, Page 121, Hamilton County, Ohio Recorder's Office.

Auditor's Parcel No.: 046-0001-022

Property Address: 2503 Handasyde Court, Cincinnati, Ohio 45208

EXHIBIT B

LINE TABLE		
Line #	BEARING	LENGTH
L1	N75°26'17"E	15.29'
L2	S28°21'59"E	2.00'
L3	S02°05'00"E	5.06'
L4	S87°30'00"W	3.50'
L5	N02°30'00"W	1.00'
L6	N87°30'00"E	5.65'
L7	S02°30'00"E	5.50'

CURVE TABLE					
Curve #	RADIUS	LENGTH	CHD LENGTH	CHD BEARING	DELTA
C1	19.75'	23.33'	22.00'	S31°45'44"W	067°41'28"
C2	20.50'	12.18'	12.00'	N42°25'27"E	034°03'06"
C3	7.00'	7.90'	7.48'	S60°11'18"E	064°37'23"

- LEGEND**
 MONUMENTS
 (UNLESS NOTED OTHERWISE)
 ○ EX. 1/8" IRON PIN
 ⊕ EX. SPK. SET
 ⊕ EX. NOTCH
 ⊕ EX. NAIL
 ⊕ EX. STONE
 ⊕ EX. CONC. MON.
 --- EX. FENCE LINE
 ● 1/8" IRON PIN SET
 ⊕ 1" IRON PIN SET
 ⊕ SPK. SET
 ⊕ NOTCH SET
 ⊕ NAIL SET
 ⊕ CONC. MON. SET



NOTES

OCCUPATION IN GENERAL FITS SURVEY EXCEPT AS SHOWN.

MONUMENTS GENERALLY IN GOOD CONDITION UNLESS NOTED OTHERWISE. SURVEY BASED ON FIELD EVIDENCE AND DEEDS & PLATS OF RECORD NOTED HEREON.

BEARINGS BASED ON PLAT OF BARNABAS NILES SUBDIVISION AS RECORDED IN P.S. 94, PG. 121 IN HAMILTON COUNTY, OHIO RECORDER'S OFFICE.

WALL EASEMENT 2503 HANDASYDE COURT

0.0222 ACRES TOTAL
 PART OF LOT 9 OF BARNABAS NILES SUBDIVISION
 SECTION 32, TOWN 4, FRACTIONAL RANGE 2, MIAMI PURCHASE
 CITY OF CINCINNATI, HAMILTON COUNTY, OHIO



mSP **McGill Smith Punshon, Inc.**

3700 Park 42 Drive • Suite 190B
 Cincinnati, Ohio 45241-2097
 Tel 513.759.0004 • Fax 513.563.7099
 www.mcgillsmithpunshon.com

Engineers • Architects • Surveyors • Landscape Architects • Planners

Drawn By: MWF	Date: 06-17-17	Project No.: 15200.12	Sheet No.: 1/1
Project Mgr.:	MWF	Scale: 1"=20'	Plats D.B.: 10452

EXHIBIT C

DESCRIPTION FOR: Wall Easement – 0.0034 Ac.

LOCATION: 2503 Handasyde Court

Situate in Section 32, Town 4, Fractional Range 2, Miami Purchase, City of Cincinnati, Hamilton County, Ohio and being an easement located within the public right-of-way of Handasyde Court (50' right-of-way), and being more particularly described as follows:

Beginning at a point at the southwest corner of the right-of-way line of said Handasyde Court, said point being the northwest corner of the lands conveyed to Robert B. Jr. and Andrea C. Hinton as recorded in Official Record 10217, Page 868 Hamilton County, Ohio Recorder's Office, said point also being in the east line of the lands conveyed to Michelle S. and Donald E. Hershey as recorded in Official Record 8262, Page 1376 Hamilton County, Ohio Recorder's Office;

Thence with the east line of said Michelle S. and Donald E. Hershey and the west right-of-way line of Handasyde Court, the following six (6) courses and distance:

1. North 02°05'00" West, 21.87 feet to a point;
2. North 75°26'17" East, 15.29 feet to a point;
3. South 26°21'59" East, 2.00 feet to a point;
4. Along an arc deflecting to the left, having a radius of 19.75 feet, a distance of 23.33 feet, a central angle of 67°41'28", the chord of said arc bears South 31°45'44" West, 22.00 feet to a point;
5. South 02°05'00" East, 5.06 feet to a point;
6. South 87°30'00" West, 3.50 feet to the point of beginning.

Containing 0.0034 acres of land.

Subject to all legal highways, easements and restrictions of record.

The above described Wall Easement is in favor of the owners of 2503 Handasyde Court, as grantees interests lie, their heirs, successors, administrators and/or assigns and is for the maintenance and repair of a landscape and retaining wall.

The above description is the result of a survey prepared by McGill Smith Punshon, Inc. under the direction of Melvin W. Pistor, Jr., P.S. No. 8180, dated May 17, 2017. Bearings based on Barnabas Niles Subdivision as recorded in Plat Book 94, Page 121, Hamilton County, Ohio Recorder's Office.

Prepared by: McGill Smith Punshon, Inc.
Date: May 17, 2017
MSP No.: 15200.12

15200123-EAS Wall Legal 0.0034 AC.docx



McGill Smith Punshon, Inc.
3700 Park 42 Drive ■ Suite 1908 ■ Cincinnati, Ohio ■ 45241-2097
513.759.0004 ■ Fax 513.563.7099 ■ www.mcgillsmithpunshon.com

Exhibit C, continued

DESCRIPTION FOR: Wall Easement – 0.0188 Ac.

LOCATION: 2503 Handasyde Court

Situate in Section 32, Town 4, Fractional Range 2, Miami Purchase, City of Cincinnati, Hamilton County, Ohio and being an easement located within the public right-of-way of Handasyde Court (50' right-of-way), and being more particularly described as follows:

Beginning at a point in the south right-of-way line of said Handasyde Court, said point being the northeast corner of the lands conveyed to Robert B. Jr. and Andrea C. Hinton as recorded in Official Record 10217, Page 868 Hamilton County, Ohio Recorder's Office, said point also being the northwest corner of the lands conveyed to Warner A. Meyers as recorded in Official Record 12498, Page 178 Hamilton County, Ohio Recorder's Office;

Thence with the north line of said Robert B. Jr. and Andrea C. Hinton and the south right-of-way line of Handasyde Court, South 87°30'00" West, 119.50 feet to a point;

Thence leaving said north line of Robert B. Jr. and Andrea C. Hinton the following seven (7) courses and distances:

1. Along an arc deflecting to the right, having a radius of 20.50 feet, a distance of 12.18 feet, a central angle of 34°03'06", the chord of said arc bears North 42°25'27" East, 12.00 feet to a point;
2. North 87°30'00" East, 40.97 feet to a point;
3. North 02°30'00" West, 1.00 feet to a point;
4. North 87°30'00" East, 5.65 feet to a point;
5. Along an arc deflecting to the right, having a radius of 7.00 feet, a distance of 7.90 feet, a central angle of 64°37'23", the chord of said arc bears South 60°11'18" East, 7.48 feet to a point;
6. North 87°30'00" East, 58.08 feet to a point;
7. South 02°30'00" East, 5.50 feet to the point of beginning.

Containing 0.0188 acres of land.

Subject to all legal highways, easements and restrictions of record.

The above described Wall Easement is in favor of the owners of 2503 Handasyde Court, as grantees interests lie, their heirs, successors, administrators and/or assigns and is for the maintenance and repair of a landscape and retaining wall.

The above description is the result of a survey prepared by McGill Smith Punshon, Inc. under the direction of Melvin W. Pistor, Jr., P.S. No. 8180, dated May 17, 2017. Bearings based on Barnabas Niles Subdivision as recorded in Plat Book 94, Page 121, Hamilton County, Ohio Recorder's Office.

McGill Smith Punshon, Inc.
3700 Park 42 Drive ■ Suite 1908 ■ Cincinnati, Ohio ■ 45241-2097
513.759.0004 ■ Fax 513.563.7099 ■ www.mcgillsmithpunshon.com



Date: September 8, 2022

202201741

To: Mayor and Members of City Council

From: Sheryl M. M. Long, City Manager

Subject: ORDINANCE – CINFED FEDERAL CREDIT UNION PROPERTY SALE AGREEMENT

Attached is an ordinance captioned as follows:

AUTHORIZING the City Manager to execute a *Property Sale Agreement* with Cinfed Federal Credit Union, pursuant to which the City will sell certain real property located at 4700 Ridge Avenue in Oakley, acquire a portion of real property located at 4704 Ridge Avenue in fee simple for public right-of-way purposes, and acquire a public utility easement on, under, and across a portion of said real property located at 4704 Ridge Avenue.

The City of Cincinnati holds title to an unimproved parcel of real property in the Oakley neighborhood located at 4700 Ridge Avenue (the “Sale Property”), which is under the management and control of the City’s Department of Transportation and Engineering (“DOTE”).

Cinfed Federal Credit Union (“Petitioner”) holds title to an unimproved parcel of real property adjacent to the Sale Property at 4704 Ridge Avenue (the “Petitioner’s Property”). Petitioner desires to purchase the Sale Property from the City subject to the reservation and creation of a permanent utility easement. Petitioner has also agreed to the following: (i) to convey to the City a 200-square-foot portion of Petitioner’s Property (the “ROW Property”) for public right-of-way purposes and (ii) to grant the City a public utility easement on, under, and across a 500-square-foot portion of Petitioner’s Property.

The City Manager, upon consultation with DOTE, has determined that the Property is not needed for transportation or any other municipal purpose subject to the reservation and creation of a permanent utility easement.

The approximate fair market value of the Sale Property is \$74,750, the approximate fair market value of the ROW Property is \$1,850, and the approximate fair market value of the utility easement on Petitioner’s Property is \$2,310. The collective difference is \$70,590 which Petitioner has agreed to pay.

The City Planning Commission approved the sale of the Property at its meeting on June 3, 2022.

The Administration recommends passage of the attached ordinance.

Attachment I – Property Sale Agreement

cc: John S. Brazina, Director, Transportation and Engineering

City of Cincinnati
An Ordinance No. _____

CHM

EESW

- 2022

AUTHORIZING the City Manager to execute a *Property Sale Agreement* with Cinfed Federal Credit Union, pursuant to which the City will sell certain real property located at 4700 Ridge Avenue in Oakley, acquire a portion of real property located at 4704 Ridge Avenue in fee simple for public right-of-way purposes, and acquire a public utility easement on, under, and across a portion of said real property located at 4704 Ridge Avenue.

WHEREAS, the City holds title to an unimproved parcel of real property in the Oakley neighborhood located at 4700 Ridge Avenue and identified as Hamilton County, Ohio Auditor’s Parcel ID No. 051-0003-0046-00, and more particularly described in the *Property Sale Agreement* attached to this ordinance as Attachment A and incorporated herein by reference (the “Sale Property”), which Sale Property is under the management of the City’s Department of Transportation and Engineering (“DOTE”); and

WHEREAS, Cinfed Federal Credit Union, a corporation organized and existing under the laws of the United States of America (“Petitioner”), holds title to an unimproved parcel of real property adjacent to the Sale Property at 4704 Ridge Avenue, identified as Hamilton County, Ohio Auditor’s Parcel ID No. 051-0003-0045-00, and more particularly described on Attachment A (“Petitioner’s Property”); and

WHEREAS, Petitioner has petitioned the City to sell the Sale Property (subject to the reservation and creation of a permanent utility easement on, under, and across the Sale Property for an existing watermain and associated appurtenances and equipment, as more particularly described on Attachment A (“4700 Watermain Easement”)), and as a material inducement for the City’s sale of the Sale Property, Petitioner has agreed to the following: (i) to convey to the City a 200-square-foot portion of Petitioner’s Property for public right-of-way purposes, as more particularly described in Attachment A (the “ROW Property”) and (ii) to grant the City a public utility easement on, under, and across a 500-square-foot portion of Petitioner’s Property for an existing watermain and associated appurtenances and equipment, as more particularly described on Attachment A (the “4704 Watermain Easement”); and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-1, the City may sell real property that is not needed for municipal purposes; and

WHEREAS, the City Manager, being the officer having custody and control of the Sale Property, and upon consultation with DOTE, has determined that the City does not need the Sale Property for transportation or any other municipal purpose, subject to the reservation and creation of the 4700 Watermain Easement, as more particularly described on Attachment A; and

WHEREAS, the City's Real Estate Services Division has determined, by a professional appraisal, that: (i) the fair market value of the Sale Property (subject to the 4700 Watermain Easement) is approximately \$74,750.00, (ii) the fair market value of the ROW Property is approximately \$1,850.00, and (iii) the fair market value of the 4704 Watermain Easement is approximately \$2,310.00, a collective difference of \$70,590.00, which Petitioner has agreed to pay; and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-5, Council may authorize the sale of City-owned real property without competitive bidding in those cases in which it determines that it is in the best interest of the City and eliminating competitive bidding in connection with the City's sale of the Sale Property is appropriate because Petitioner is the only party realistically suited to redevelop the Sale Property because Petitioner holds title to all non-City-controlled real property encircling the Sale Property, and, as a material consideration for the City's sale of the Sale Property, Petitioner has agreed to encumber its real property with the 4704 Watermain Easement and to convey property to the City for incorporation as portions of the Ridge Avenue public right-of-way; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Sale Property at its regularly scheduled meeting on June 3, 2022; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute a *Property Sale Agreement* with Cinfed Federal Credit Union, a corporation organized and existing under the laws of the United States of America ("Petitioner"), in substantially the form attached to this ordinance as Attachment A and incorporated herein by reference (the "Agreement"), pursuant to which the City of Cincinnati will (i) sell to Petitioner an unimproved parcel of real property in the Oakley neighborhood located at 4700 Ridge Avenue, identified as Hamilton County, Ohio Auditor's Parcel ID No. 051-0003-0046-00, as more particularly described in the Agreement (the "Sale Property"), subject to the reservation and creation of a permanent utility easement on, under, and across the Sale Property for an existing watermain and associated appurtenances and equipment, as more particularly described on Attachment A ("4700 Watermain Easement"); (ii) acquire in fee simple for public right-of-way purposes a 200-square-foot portion of real property located at 4704 Ridge Avenue, as more particularly described in the Agreement (the "ROW

Property”); and (iii) acquire a public utility easement on, under, and across a 500-square-foot portion of certain real property located at 4704 Ridge Avenue for an existing watermain and associated appurtenances and equipment, as more particularly described in the Agreement (the “4704 Watermain Easement”).

Section 2. That the Sale Property is not needed for transportation or other municipal purposes, subject to the reservation and creation of the 4700 Watermain Easement, as more particularly described in the Agreement.

Section 3. That the City’s Real Estate Services Division has determined, by a professional appraisal, that: (i) the fair market value of the Sale Property (subject to the 4700 Watermain Easement) is approximately \$74,750.00, (ii) the fair market value of the ROW Property is approximately \$1,850.00, and (iii) the fair market value of the 4704 Watermain Easement is approximately \$2,310.00, a collective difference of \$70,590.00, which Petitioner has agreed to pay.

Section 4. That eliminating competitive bidding in connection with the City’s sale of the Sale Property is in the best interest of the City because Petitioner is the only party realistically suited to redevelop the Sale Property because Petitioner owns or controls all non-City-controlled real property that encircles the Sale Property, and, as a material consideration for the City’s sale of the Sale Property, Petitioner has agreed to encumber its real property with the 4704 Watermain Easement and to convey property for incorporation as portions of the Ridge Avenue public right-of-way.

Section 5. That the proceeds from the sale of the Sale Property, if any, shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City’s Real Estate Services Division in connection with the sale, and that the City’s Finance Director is

hereby authorized to deposit amounts in excess thereof into Miscellaneous Permanent Improvement Fund 757.

Section 6. That the City’s Finance Director is authorized to transfer and appropriate such excess funds from Miscellaneous Permanent Improvement Fund 757 into Capital Improvement Program Project Account No. 980x233xYY2306, “Street Improvements,” in which “YY” represents the last two digits of the fiscal year in which the closing occurs and the proceeds are received, referencing the latter fiscal year if the events occur in different fiscal years.

Section 7. That the City Manager and other City officials are hereby authorized to take all necessary and proper actions to carry out the provisions of this ordinance and the Agreement, including, without limitation, executing any and all ancillary agreements, deeds, plats, or other documents described in or contemplated by the Agreement, to create new encumbrances or release existing encumbrances associated with the title of the Sale Property, and to accept and to confirm the acceptance of the ROW Property and the 4704 Watermain Easement by the City, as deemed necessary or appropriate by the City Manager.

Section 8. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

Contract No. _____

Property: 4700 Ridge Avenue

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 **CINFED FEDERAL CREDIT UNION**, a corporation organized and existing under the laws of the United States of America, whose tax mailing address is 4801 Kennedy Avenue, Cincinnati, OH 45209 ("**Purchaser**").

Recitals:

A. The City owns a vacant tract of land in the neighborhood of Oakley commonly known as 4700 Ridge Avenue, Cincinnati, OH, 45209 and identified as Hamilton County Auditor's Parcel No. 051-0003-0046-00, as more particularly described on Exhibit A (Quitclaim Deed - Sale Property) hereto (the "**Sale Property**"). As part of the sale of the Sale Property, the City will reserve and create a 10' wide permanent watermain easement on, under and across the Property, as more particularly described on Exhibit A. The Sale Property consists of a remnant parcel that was created due to the City's Kennedy Connector Project and is under the management of the City's Department of Transportation and Engineering ("**DOT**").

B. Purchaser owns an abutting property located to the north of the Sale Property, identified as Hamilton County Auditor's Parcel No. 051-0003-0045-00, as depicted on Exhibit B (Survey Plat) hereto ("**Purchaser's Property**"), and desires to purchase from the City the Sale Property for any and all permitted uses.

C. The City Manager, in consultation with DOTE, has determined that the Sale Property is not needed for transportation purposes or any other municipal purpose.

D. As partial consideration for the City's sale of the Sale Property, Purchaser has agreed to convey to the City a 200-square-foot portion of Purchaser's Property (4' x 50') to be used for public right of way, as more particularly described on Exhibit D (General Warranty Deed - Acquisition Property) (the "**Acquisition Property**"). Additionally, Purchaser has agreed to grant the City a public utility easement across a 500-square-foot portion of Purchaser's Property (10' x 50'), as more particularly depicted on Exhibit C (Form of Watermain Easement) (the "**Watermain Easement**"), for the use and benefit of Greater Cincinnati Water Works ("**GCWW**") for an existing 48" watermain and associated appurtenances and equipment.

E. The City's Real Estate Services Division has determined, by a professional appraisal, that (i) the fair market value of the Sale Property is \$74,750.00, (ii) the fair market value of the Acquisition

Property is \$1,850, and (iii) the fair market value of the Watermain Easement is \$2,310, a collective difference of \$70,590, which Purchaser has agreed to pay.

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

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. 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 and the acquisition of the Acquisition Property at its meeting on June 3, 2022.

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

NOW, THEREFORE, the parties agree as follows:

1. Agreement to Sell Property Interests; Purchase Price; Title to Acquisition Property; Condition and Environmental Representations of Acquisition Property; Condition of Sale Property.

(A) Agreement to Sell Property Interests. Subject to the terms and conditions set forth herein, the City and Purchaser hereby agree to the following: (i) the City agrees to sell the Sale Property to Purchaser with a reserved 10' permanent watermain easement as described in Exhibit A, and Purchaser agrees to Purchase the Sale Property from the City, with said reserved easement; (ii) Purchaser agrees to sell the Acquisition Property to the City, and the City agrees to purchase the Acquisition Property from Purchaser; and (iii) Purchaser agrees to grant to the City the Watermain Easement on, under and across the portion of Purchaser's Property on terms set forth in Exhibit C.

(B) Purchase Price. The purchase price for the Sale Property is \$74,750, the purchase price for the Acquisition Property is \$1,850, and the purchase price for the Watermain Easement is \$2,310. At the Closing (defined below), Purchaser shall pay the City an amount equal to the purchase price of the Sale Property minus the purchase price of the Acquisition Property and the purchase price of the Watermain Easement, which equals \$70,590. Purchaser acknowledges that it is familiar with the condition of the Sale Property.

(C) Title to Acquisition Property. Purchaser represents and warrants to the City that (a) it is the sole owner of the fee simple interest in the Acquisition Property; (b) there are no tenants or other third

parties who are entitled to the use or possession of any part of the Acquisition Property (except as otherwise disclosed to the City in writing); and (c) the Acquisition Property is free and clear of all liens and encumbrances whatsoever, except: (i) mortgage liens of record; (ii) easements, restrictions, conditions and covenants of record; (iii) all legal highways; (iv) zoning and building laws, ordinances, rules and regulations; and (v) any and all taxes and assessments not yet due and payable. Purchaser shall assist, in whatever manner reasonably possible under the circumstances as requested by the City, to procure and deliver to the City any releases, assignments or cancellations of any and all other rights, titles and interests in the Acquisition Property, whether attaching to the Acquisition Property prior to or during Purchaser's ownership of the Acquisition Property. Such interests may include, but are not limited to, those belonging to tenants, lessees, mortgagees or others now in possession or otherwise occupying the Acquisition Property, and all tax and assessment claims against the Acquisition Property. Any mortgage or other monetary liens on the Acquisition Property shall be discharged and paid by Purchaser at or before Closing. If the City or Purchaser becomes aware of any title problems affecting the Acquisition Property, Purchaser, at Purchaser's expense, shall promptly take such action as is necessary to clear the title. Between the date of Purchaser's execution of this Agreement and the Closing, Purchaser shall not take any action that affects the title to the Acquisition Property, including, but not limited to conveying any leasehold interests or other interests in the Acquisition Property to any third party or granting any easements, without the City's prior written consent.

(D) Condition and Environmental Representations of Acquisition Property. Purchaser shall convey the Acquisition Property to the City in "as is" condition. Purchaser makes no representations or warranties to the City with respect to the condition of the Acquisition Property. Purchaser is not aware of the existence of any environmental contamination, environmental hazards or other adverse environmental conditions previously or currently affecting the Acquisition Property.

(E) Condition of Sale Property. 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 conditions 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 and Purchaser's sale of the Acquisition Property and the Watermain Easement to the City (the "**Closing**") shall not occur unless and until the following conditions have been satisfied (the "**Conditions**"); *provided however*, that if the City, in its sole discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City's Quitclaim Deed to Purchaser or handle such Conditions post-Closing. Purchaser shall perform all work and investigations and shall obtain and prepare all necessary documents pertaining to the satisfaction of the Conditions, at no cost to the City.

- (i) Title & Survey: Purchaser's approval of title to the Sale Property and, if obtained by Purchaser, an ALTA property survey of the Sale Property;

(ii) Inspections, Utilities & Zoning/Building Code Requirements: Purchaser's approval of inspections of the Sale Property, including without limitation environmental assessments and soil assessments, all matters pertaining to utility service for the Sale Property, and all zoning and building code requirements that are applicable to the Sale Property;

(iii) Coordinated Report Conditions (CR #59-2021):

(a) DOTE:

i. Purchaser must revisit the Coordinated Site Review process for re-review and approval of any future development plans. Under such re-review:

1. DOTE will only allow a right in/right out drive which lets out on Ridge Avenue.
2. DOTE will require final approval of the site plan.
3. 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, to be reviewed and approved by DOTE, must be attached to the permit application.

ii. The purchase of the Acquisition Property by the City.

(b) GCWW:

i. GCWW has an existing 48" transmission main located towards the western property line of the Sale Property and Purchaser's Property. To protect the transmission main from future construction, GCWW requires a 10' easement along the western property line of the Sale Property and along the western property line of Purchaser's Property with the following easement restrictions:

1. The full width of the easement area must be accessible at all times for future repair, maintenance and operation purposes.
2. No building, structure or improvements of any kind shall be permitted to be placed or constructed over or upon the easement area.
3. The City of Cincinnati shall not be responsible to any present or future owners of the Sale Property or Purchaser's Property for any damage done within the easement area to sod, shrubbery, landscaping, trees, pavement, roadway improvements or other improvements either natural or artificial whether said improvements are now existing or added in the future, by reason of entering for the purpose of exercising the City's rights under this easement.

4. The City shall not be responsible to any present or future owners of the Sale Property or Purchaser's Property or future owners of property with rights of ingress and egress over the easement area for damages that may result from disruption or denial of rights of ingress and egress or other rights of access by reason of entering for the purpose of constructing, maintaining or replacing the watermain.
 5. Grade changes of plus or minus one foot over the full width profile of this easement are not permitted at any time so as not to impact any present or future water works operations.
 6. Any building, structure or improvement to be constructed on the Sale Property or Purchaser's Property in which this easement exists, shall be kept not less than three feet from the easement line nearest the site of the proposed building structure or improvement.
- ii. If the existing water service branch (H-118347) on the Sale Property or Purchaser's Property is not to be used for future development, it must be properly disconnected at the owner's expense. Purchaser would be required to complete an online FOD form authorizing removal of the existing water service branch before any new water service can be sold. Purchaser is responsible for contacting OUPS at 1-800-362-2764 at least two full working days prior to the start of work. Purchaser is responsible to make sure of the location and protection of all existing utilities on the site prior to excavation and earthwork, as well as notifying owners of underground utilities not registered with OUPS prior to work. Any damage to existing public water system because of the construction must be repaired at Purchaser's expense and at no cost to GCWW.

(B) Right to Terminate. If either party determines, after exercising reasonable good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period of time, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all of the Conditions have not been satisfied to the satisfaction of both parties or waived in writing and for that reason the Closing has not occurred within **90 days** after the Effective Date, this Agreement and all rights and obligations of the parties hereunder shall automatically terminate.

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

(D) Closing Costs and Closing Documents. At the Closing, (i) the City shall confirm that Purchaser has paid the Purchase Price in full; (ii) the City shall convey all of its right, title, and interest in and to the Sale Property to Purchaser, with a reserved 10' permanent watermain easement, by *Quitclaim Deed* in the form of Exhibit A; (iii) Purchaser shall convey all of its right, title and interest in and to the Acquisition Property to the City by *General Warranty Deed* in the form of Exhibit D; and (iv) Purchaser shall

convey the Watermain Easement to the City 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 Sale Property. The City shall pay any and all closing costs associated with the Acquisition Property and the Watermain Easement, except that Purchaser shall pay outside of the Closing its own attorney or other professional service fees incurred in connection with this Agreement, if any. There shall be no proration of real estate taxes and assessments at the Closing, and from and after the Closing, Purchaser shall pay all real estate taxes and assessments thereafter becoming due. At the Closing, the parties shall execute a settlement statement and any and all other customary closing documents that are necessary for the Closing, in such forms as are approved by the City and Purchaser. 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 Sale Property "as is." Pursuant to Section 301-20, Cincinnati Municipal Code, at the Closing, Purchaser shall pay to the City any and all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed by Purchaser to the City. The provisions of this Agreement shall survive the City's execution and delivery of the *Quitclaim Deed* and Purchaser's execution and delivery of the *General Warranty 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 a corporation duly organized and validly existing under the laws of the United States of America, 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, as 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 to 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.

(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.

(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 or the sale of the Acquisition 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 and property purchase shall have any personal financial interest, direct or indirect, in the property sale and property purchase 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 – *Quitclaim Deed - Sale Property*

Exhibit B – *Survey Plat*

Exhibit C – *Form of Watermain Easement*

Exhibit D – *General Warranty Deed - Acquisition Property*

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

CINFED FEDERAL CREDIT UNION,
a corporation organized and existing under the laws of the United States of America

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

[City signatures on the following page]

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

Recommended by:

John Brazina, Director
Department of Transportation and
Engineering

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

EXHIBIT A
to Property Sale Agreement
Quitclaim Deed- Sale Property

[SPACE ABOVE RESERVED FOR RECORDER]

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the “**City**”), for valuable consideration paid, hereby grants and conveys to **CINFED FEDERAL CREDIT UNION**, a corporation organized and existing under the laws of the United States of America, whose tax mailing address is 4801 Kennedy Avenue, Cincinnati, Ohio 45209, (“**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:	4700 Ridge Avenue
Auditor’s Parcel ID No.:	051-0003-0046-00
Prior instrument reference:	Official Record 12806, Page 1058, Hamilton County, Ohio Records.

(A) Creation of a Greater Cincinnati Water Works Watermain Easement (“GCWW”). The City hereby reserves and creates a 10’ wide permanent watermain easement on, under and across the Property, as more particularly described on Exhibit B (*Legal Description - Watermain Easement*) hereto, for the purpose of constructing, installing, reconstructing, operating, maintaining, repairing, replacing, modifying and removing watermains, fixtures, equipment and appurtenances (the “**Water Facilities**”), including the right to enter and re-enter upon the Property to access the easement area and the Water Facilities.

No building structure or improvement of any kind shall be made on the watermain easement which will interfere with access to or operation of the watermain, and the City shall not be responsible to any present or future owners of the Property or present or future owners of property with rights of ingress and egress over the Property for any damage done within said easement area to sod, shrubbery, trees, pavement, roadway improvements or other improvements either natural or artificial whether said improvement is now existing or added in the future by reason of entering on the Property for the purpose of constructing, maintaining, operating, repairing, modifying, replacing or removing the Water Facilities. The City shall not be responsible to any present or future owners of the Property or future owners of property with rights of

ingress and egress over the Property for any damages which result from disruption or denial of said rights of ingress and egress or other rights of access by reason of entering upon the Property for the purpose of constructing, maintaining, operating, repairing, modifying, replacing or removing the Water Facilities. Grade changes of plus or minus one (1) foot over the full width profile of the easement area are not permitted at any time. Any building, structure or improvement to be constructed on the Property, shall be kept not less than three (3) feet from the easement area line nearest the site of the proposed building structure or improvement. The full width easement area must be accessible at all times for future repair, maintenance and operation purposes.

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

This conveyance was authorized by Ordinance No. [____]-2022, passed by Cincinnati City Council on [____], 2022.

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

EXHIBIT A
to Quitclaim Deed
Legal Description-the Property

Situated in the State of Ohio, County of Hamilton, City of Cincinnati, Section 22, Township 4, Fractional Range 2, Between the Miamis, being a remaining 0.1856 acre tract of land located in that tract of land as described in a deed to The City of Cincinnati, of record in Official Record 11711, Page 824 and being a portion of Lot 5 as shown and delineated upon the plat "B.D. Barton's Subdivision", of record in Plat Book 3, Page 183, all references herein being to the records located in the Recorder's Office, Hamilton County, Ohio and being more particularly described as follows;

Beginning for **REFERENCE** in a chiseled "x" found in a stone in the southeasterly corner of Lot 1 of said B.D. Barton's Subdivision; thence In the easterly line of said Lot 1 and then in the easterly lines of Lot 2 and Lot 3 of said subdivision, said line also being westerly line of said Lot 4 of the "Everson Estate" as recorded in Court of Common Pleas Book 204, Page 50, North 05° 19' 16" East, 253.15 feet to an Iron Pin Set in the proposed northerly right of way line of Ibsen Avenue, said iron pin being the **TRUE PLACE OF BEGINNING** of the tract herein described, thence the following 5 courses:

1. In said proposed northerly right of way line of Ibsen Avenue, North 84° 03' 25" West, 161.55 feet to an Iron Pin Set; thence
2. Continuing in said proposed northerly right of way line of Ibsen, North 39° 53' 10" West, 32.33 feet to a point, said point being in the existing easterly right of way line of Ridge Avenue; thence
3. In said existing easterly right of way line of Ridge Avenue, North 05° 05' 23" East, 22.15 feet to an Iron Pin Set, said iron pin being in the line common to a parcel conveyed to George E. Nace, Jr. by deed recorded in Official Record 8314, Page 58; thence
4. Leaving said existing easterly right of way line of Ridge Avenue and in said line common to Nace, South 84° 23' 34" East, 184.58 feet to an Iron Pin Set, said iron pin being in the easterly line of said Lot 5; thence
5. Leaving said line common to Nace and in said easterly line of Lot 5, South 05° 19' 16" West, 45.75 feet to the **TRUE PLACE OF BEGINNING**.

Containing **8,084 square feet** or **0.1856 acres**

Bearings herein are based on ties to the City of Cincinnati control monuments 2509 and 2510 as set forth in a plat of survey of record in Plat Book 350, Page 45.

Iron pins set, per recorded plat, consist of a 5/8" x 30" rebar with a plastic cap inscribed "M-E COMP S-6872."

This description was prepared by M•E Companies, Civil Engineering Group, Cincinnati, Ohio by Patrick Finn, P.S. No. 7181, per recorded plat, and is based on a field survey performed under the direction of Robert Wynd, P.S. No. 6872, in April, 2008.

EXHIBIT B
to Quitclaim Deed
Legal Description – Watermain Easement

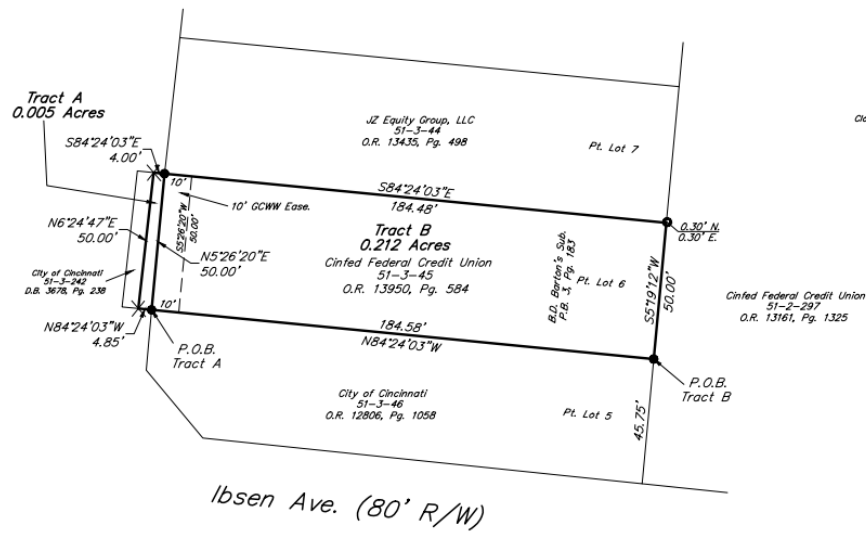
Situate in Section 22, Town 4, Fractional Range 2, Columbia Township, City of Cincinnati, Hamilton County, Ohio and being part of Lot 5 of the B.D. Barton's Subdivision as recorded in Plat Book 3, Page 183 and being part of a tract conveyed to the City of Cincinnati in O.R. 12806, Pg. 1058 and being more particularly described as follows:

Commencing at the intersection of the east line of said Lot 5 and the north line Ibsen Avenue, 80' R/W; thence with the north line of said Ibsen Avenue the following two courses; North 84°03'54" West, 161.55 feet to a point; thence North 39°53'39" West, 18.46 feet to the Place of Beginning; thence continuing with the north line of said Ibsen Avenue, North 39°53'39" West, 13.87 feet to the east line of Ridge Avenue, R/W varies as now improved; thence with the east line of said Ridge Avenue, North 05°04'54" East, 22.15 feet to a point; thence with the north line of said Lot 5, South 84°24'03" East, 10.00 feet to a point; thence South 05°26'20" West, 31.87 feet to the Place of Beginning. Containing 268 square feet of land more or less. Bearings are based on State Plane Coordinates NAD 83 (2011) Subject to all legal highways, easements and restrictions of record. Based on a survey performed under the direction of Douglas C. Spreen II, Ohio Registration Number 8238

EXHIBIT B
to Property Sale Agreement
Survey Plat



Ridge Ave. (R/W varies)



Closure Tract A	
North: 428633.3054	East: 1423935.6365
Course: N 84-24-03 W	Distance: 4.85
North: 428633.7786	East: 1423930.8097
Course: N 05-24-47 E	Distance: 50.00
North: 428683.4701	East: 1423936.3948
Course: S 84-24-03 E	Distance: 4.00
North: 428683.0799	East: 1423940.3758
Course: S 05-26-20 W	Distance: 50.00
North: 428633.3054	East: 1423935.6365
Area: 221 s.f.±	0.005 acres
Closure Tract B	
North: 428615.2966	East: 1424119.3359
Course: N 84-24-03 W	Distance: 184.58
North: 428633.3054	East: 1423935.6365
Course: N 05-26-20 E	Distance: 50.00
North: 428683.0799	East: 1423940.3759
Course: S 84-24-03 E	Distance: 184.48
North: 428683.0799	East: 1424123.9716
Course: S 05-19-12 W	Distance: 50.00
North: 428615.2966	East: 1424119.3359
Area: 9226 s.f.±	0.212 acres

EXHIBIT C
to Property Sale Agreement
Form of Watermain Easement

[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF EASEMENT

(Watermain Easement)

This Grant of Easement is granted as of the Effective Date (as defined on the signature page hereof) by **CINFED FEDERAL CREDIT UNION**, a corporation organized and existing under the laws of the United States of America, whose tax mailing address is 4801 Kennedy Avenue, Cincinnati, OH 45209, ("**Grantor**"), in favor of the **CITY OF CINCINNATI**, an Ohio municipal corporation, with a tax mailing address of 801 Plum Street, Cincinnati, OH 45202 (the "**City**").

Recitals:

A. By virtue of an instrument recorded in OR 13950, Page 584, Hamilton County, Ohio Records, Grantor holds title to certain real property located at 4704 Ridge Avenue, Cincinnati, OH 45209 and identified as Hamilton County Auditor's Parcel No. 051-0003-0045-00 as more particularly described on Exhibit A (*Legal Description – Grantor's Property*) and depicted on Exhibit B (*Survey Plat*) hereto (the "**Grantor's Property**").

B. The City owns an adjoining vacant tract of land in Oakley located at 4700 Ridge Avenue, identified as Hamilton County Auditor's Parcel No. 051-0003-0046-00, as more particularly depicted on Exhibit B hereto, which property the City has agreed to sell to Grantor by Ordinance No. [____]-2022, passed by Cincinnati City Council on [____], 2022 (the "**City Sale Property**").

C. The City has installed a 48" watermain, including fixtures, equipment, and appurtenances (the "**Water Facilities**") within the Ridge Avenue public right-of-way adjacent to Grantor's Property and, as partial consideration for the sale of the City Sale Property to Grantor, the City has requested Grantor grant a public utility easement on, under and across Grantor's Property for the purpose of constructing, installing,

reconstructing, operating, maintaining, repairing, replacing, modifying and removing the Water Facilities within the adjacent public right-of-way (the “**Watermain Easement**”).

D. The City’s Real Estate Services Division has determined, by a professional appraisal, that the fair market value of the Watermain Easement is \$1,850, which the City has agreed to deduct from the sale price of the City Sale Property.

E. Cincinnati City Council authorized the acceptance of the Watermain Easement by Ordinance No. [__]-2022, passed on [___], 2022.

NOW THEREFORE, the parties do hereby agree as follows:

1. Grant of Easement. Grantor, for valuable consideration paid, hereby grants and conveys to the City, on the terms and conditions set forth herein, for the use and benefit of Greater Cincinnati Water Works, a perpetual utility easement on, under and across the portion of Grantor’s Property, as more particularly depicted on Exhibit B and described on Exhibit C (Legal Description - Watermain Easement) hereto for the purpose of constructing, installing, reconstructing, operating, maintaining, repairing, replacing, modifying and removing the Water Facilities, including the right to enter and re-enter upon the Watermain Easement to access the Water Facilities.

2. Title. Grantor represents and warrants to the City that to the best of Grantor’s knowledge (i) Grantor is the sole owner of the fee simple interest in the Grantor’s Property; and (ii) there are no tenants or other third parties who are entitled to the use or possession of the Grantor’s Property.

3. Restrictions. No building structure or improvement of any kind shall be made on the Watermain Easement which will interfere with access to or operation of the Water Facilities, and the City shall not be responsible to any present or future owners of the Grantor’s Property or present or future owners of property with rights of ingress and egress over the Watermain Easement for any damage done within the Watermain Easement to sod, shrubbery, trees, pavement, roadway improvements or other improvements either natural or artificial whether said improvement is now existing or added in the future by reason of entering on the Watermain Easement for the purpose of constructing, maintaining, operating, repairing, modifying, replacing or removing the Water Facilities. The City shall not be responsible to any present or future owners of the Grantor’s Property or future owners of property with rights of ingress and egress over the Watermain Easement for any damages which result from disruption or denial of said rights of ingress and egress or other rights of access by reason of entering upon the Watermain Easement for the purpose of constructing, maintaining, operating, repairing, modifying, replacing or removing the Water Facilities. Grade changes of plus or minus one (1) foot over the full width profile of the Watermain Easement are not permitted at any time. Any building, structure, or improvement to be constructed on the Grantor’s Property, shall be kept not less than three (3) feet from the Watermain Easement line nearest the site of

the proposed building structure or improvement. The full-width easement area must be accessible at all times for future repair, maintenance and operation purposes.

4. Covenants Running with the Land. The provisions hereof shall run with the land and shall inure to the benefit of and be binding upon the City, Grantor, and their respective successors-in-interest and assigns.

5. Governing Law; Severability. This instrument shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. If any provisions hereof are determined to be invalid or unenforceable by a court of law, the remainder of this instrument shall not be affected thereby, and all other provisions of this instrument shall be valid and enforceable to the fullest extent permitted by law.

6. Notices. All notices given hereunder shall be in writing and shall be sent by U.S. certified or registered mail, return receipt requested, or delivered by a recognized courier service, or by personal delivery, to the parties at their respective addresses set forth in the introductory paragraph hereof, or such other address as either party may specify from time to time by notice given in the manner prescribed herein. All notices to the City shall be addressed to the Office of the City Manager, and a copy of each such notice shall simultaneously be delivered to: Greater Cincinnati Water Works, Attn: Director, 4747 Spring Grove Avenue, Cincinnati, Ohio 45232. In the event of an alleged breach by the City of this instrument, a copy of each notice of breach shall simultaneously be delivered to the Office of the City Solicitor, 801 Plum Street, Room 214, Cincinnati, OH 45202.

7. Counterparts and Electronic Signatures. This instrument may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original. This instrument may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

8. Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A – *Legal Description - Grantor's Property*
Exhibit B – *Survey Plat*
Exhibit C – *Legal Description - Watermain Easement*

Executed by the parties on the respective date of acknowledgement listed below, effective as the later of such dates (the "**Effective Date**").

CINFED FEDERAL CREDIT UNION,
a corporation organized and existing under
the laws of the United States of America

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 **CINFED FEDERAL CREDIT UNION**, a corporation organized and existing under the laws of the United States of America, on behalf of the corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

[*City Signature Page Follows*]

Exhibit A
to Grant of Easement
Legal Description – Grantor’s Property

Situate in Section 22, Town 4, Fractional Range 2, Columbia Township, City of Cincinnati, Hamilton County, Ohio and being part of Lot 6 of the B.D. Barton’s Subdivision as recorded in Plat Book 3, Page 183 and being part of a tract conveyed to the Cinfed Federal Credit Union in O.R. 13950, Pg. 584 and being more particularly described as follows:

Beginning at a set 5/8” iron pin at the southeast corner of said Lot 6; thence with the south line of said Lot 6, North 84°24’03” West, 184.58 feet to a set 5/8” iron pin; thence with a new division line, North 05°26’20” East, 50.00 feet to a set 5/8” iron pin; thence with the north line of said Lot 6, South 84°24’03” East, 184.48 feet to a point being 0.30 feet south and 0.30 feet west of an existing iron pin; thence South 05°19’12” West, 50.00 feet to the Place of Beginning. Containing 0.212 Acres of land more or less. Bearings are based on State Plane Coordinates NAD 83 (2011) Subject to all legal highways, easements and restrictions of record. Based on a survey performed under the direction of Douglas C. Spreen II, Ohio Registration Number 8238

EXHIBIT C
to Grant of Easement
Legal Description—Watermain Easement

Situate in Section 22, Town 4, Fractional Range 2, Columbia Township, City of Cincinnati, Hamilton County, Ohio and being part of Lot 6 of the B.D. Barton's Subdivision as recorded in Plat Book 3, Page 183 and being part of a tract conveyed to the Cinfed Federal Credit Union in O.R. 13950, Pg. 584 and being more particularly described as follows:

Commencing at the southeast corner of said Lot 6; thence with the south line of said Lot 6, North 84°24'03" West, 174.58 feet to the Place of Beginning; thence continuing with the south line of said Lot 6, North 84°24'03" West, 10.00 feet to a point; thence North 05°26'20" East, 50.00 feet to a point; thence with the north line of said Lot 6, South 84°24'03" East, 10.00 feet to a point; thence South 05°26'20" West, 50.00 feet to the Place of Beginning. Containing 500 square feet of land more or less. Bearings are based on State Plane Coordinates NAD 83 (2011) Subject to all legal highways, easements and restrictions of record. Based on a survey performed under the direction of Douglas C. Spreen II, Ohio Registration Number 8238

EXHIBIT D
to Property Sale Agreement

General Warranty Deed- Acquisition Property

GENERAL WARRANTY DEED

CINFED FEDERAL CREDIT UNION, a corporation organized and existing under the laws of the United States of America ("Grantor"), for valuable consideration paid, grants, with general warranty covenants, to the **CITY OF CINCINNATI**, an Ohio municipal corporation (the "City"), the tax-mailing address of which is 801 Plum Street, Cincinnati, OH 45202, that certain real property located in Hamilton County, Ohio that is more particularly described in Exhibit A attached to this deed and incorporated in it (the "Property"):

Property Address:	Part of 4704 Ridge Avenue
Auditor's Parcel ID No.:	Part of 051-0003-0045-00
Prior instrument reference:	O.R. 13950, Page 584, Hamilton County, Ohio Records.

Excepted from the foregoing general warranty covenants are: (i) easements, covenants and restrictions of records; (ii) taxes and assessments not yet due and payable; (iii) legal highways and rights of way; and (iv) matters of zoning.

The City's acquisition of the Property was authorized by Ordinance No. [____], passed by Cincinnati City Council on [_____], 2022.

[SIGNATURES TO FOLLOW]

[SIGNATURE PAGE]

Executed on _____, 2022.

**CINFED FEDERAL CREDIT UNION,
a corporation organized and existing
under the laws of the United States of**

America

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021,
by _____, the _____ of CINFED FEDERAL CREDIT
UNION, a corporation organized and existing under the laws of the United States of America, on
behalf of the corporation. This certificate relates to an acknowledgment in connection with
which, no oath or affirmation was administered to the document signer.

SEAL:

Signed: _____
Printed or Typed Name: _____
My Commission expires: _____
My county of residence: _____
Commission number: _____

[CITY'S SIGNATURE PAGE FOLLOWS]

Accepted by:

**CITY OF CINCINNATI,
an Ohio Municipal corporation**

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, the _____ of the CITY OF CINCINNATI, an Ohio municipal corporation, on behalf of the corporation. This certificate relates to an acknowledgment in connection with which, no oath or affirmation was administered to the document signer.

SEAL:

Signed: _____
Printed or Typed Name: _____
My Commission expires: _____
My county of residence: _____
Commission number: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:
Luke Blocher, Esq.
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202

EXHIBIT A
LEGAL DESCRIPTION

Situate in Section 22, Town 4, Fractional Range 2, Columbia Township, City of Cincinnati, Hamilton County, Ohio and being part of Lot 6 of the B.D. Barton's Subdivision as recorded in Plat Book 3, Page 183 and being part of a tract conveyed to the Cinfed Federal Credit Union in O.R. 13950, Pg. 584 and being more particularly described as follows:

Commencing at the southeast corner of said Lot 6; thence with the south line of said Lot 6, North 84°24'03" West, 184.58 feet to a set 5/8" iron pin being the Place of Beginning; thence continuing with the south line of said Lot 6, North 84°24'03" West, 4.85 feet to a set cross notch; thence with the east line of a tract conveyed to the City of Cincinnati in D.B. 3678, Pg. 238, North 06°24'47" East, 50.00 feet to a set cross notch; thence with the north line of said Lot 6, South 84°24'03" East, 4.00 feet to a set 5/8" iron pin; thence with a new division line South 05°26'20" West, 50.00 feet to the Place of Beginning. Containing 0.005 Acres of land more or less. Bearings are based on State Plane Coordinates NAD (2011). Subject to all legal highways, easements and restrictions of record. Based on a survey performed under the direction of Douglas C. Spreen II, Ohio Registration Number 8238.

{00366481-5}

Date: September 8, 2022

To: Mayor and Members of City Council 202201742
From: Sheryl M. M. Long, City Manager
Subject: ORDINANCE – MARSHALL AT CENTRAL, LLC PROPERTY SALE AGREEMENT

Attached is an ordinance captioned as follows:

AUTHORIZING the City Manager to execute a *Property Sale Agreement* with Marshall at Central, LLC, pursuant to which the City will vacate and convey certain real property designated as public right-of-way known as Hallmar Avenue in the CUF neighborhood of Cincinnati.

The City of Cincinnati owns certain real property designated as public right-of-way, namely Hallmar Avenue in the CUF neighborhood (the “Property”), which is under the management and control of the City’s Department of Transportation and Engineering (“DOTE”).

Marshall at Central, LLC (“Petitioner”) desires to purchase the Property from the City to facilitate the construction of a four-story multi-family structure on Petitioner’s adjoining real property.

The City Manager, upon consultation with DOTE, has determined that the Property is not needed for transportation or any other municipal purpose, that there is good cause to sell the Property, and that such sale will not be detrimental to the general interest.

The approximate fair market value of the Property is \$96,000, which Petitioner has agreed to pay.

The City Planning Commission approved the sale of the Property at its meeting on February 4, 2022.

The Administration recommends passage of the attached ordinance.

Attachment I – Property Sale Agreement

cc: John S. Brazina, Director, Transportation and Engineering

City of Cincinnati
An Ordinance No. _____

CHM

EESW

- 2022

AUTHORIZING the City Manager to execute a *Property Sale Agreement* with Marshall at Central, LLC, pursuant to which the City will vacate and convey certain real property designated as public right-of-way known as Hallmar Avenue in the CUF neighborhood of Cincinnati.

WHEREAS, the City owns certain real property designated as public right-of-way, namely, an approximately 0.387-acre tract of Hallmar Avenue in the CUF neighborhood, as more particularly depicted and described in the *Property Sale Agreement* attached to this ordinance as Attachment A and incorporated herein by reference (“Property”), which Property is under the management of the City’s Department of Transportation and Engineering (“DOTE”); and

WHEREAS, Marshall at Central, LLC, an Ohio limited liability company (“Petitioner”), owns the real property abutting the Property and has petitioned the City to vacate and sell the Property to facilitate the construction of a four-story multi-family structure totaling approximately 105,000 gross square feet, a private clubhouse, and a surface parking lot on Petitioner’s property (the “Project”); and

WHEREAS, Richard C. Spoor, Esq., a reputable attorney practicing in Hamilton County, Ohio, has certified that Petitioner owns all real property abutting the Property; and

WHEREAS, pursuant to Ohio Revised Code Sec. 723.04, the City may, upon petition, vacate a street or alley if it has determined that there is good cause for the vacation and that the vacation will not be detrimental to the general interest; and

WHEREAS, pursuant to Section 331-1, Cincinnati Municipal Code, the City may sell real property that is not needed for municipal purposes; and

WHEREAS, the City Manager, in consultation with DOTE, has determined that: (i) the Property is not needed for transportation purposes or any other municipal purpose; (ii) there is good cause to vacate the Property; and (iii) the vacation of the Property will not be detrimental to the general interest; and

WHEREAS, the City’s Real Estate Services Division has determined, by a professional appraisal, that the fair market value of the Property is approximately \$96,000, which Petitioner has agreed to pay; and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-5, Council may authorize the sale of City-owned real property without competitive bidding in those cases in which it determines that it is in the best interest of the City, and eliminating competitive bidding in connection with the City’s sale of the Property is appropriate because Petitioner owns all real

property abutting the Property, and as a practical matter, no one other than an abutting property owner would have any use for it; and

WHEREAS, 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 acquire, construct, enlarge, improve, or equip and to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution, and research; and

WHEREAS, 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; and

WHEREAS, in furtherance of the foregoing public purposes, the City believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and is in accordance with applicable state and local laws; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the vacation and sale of the Property at its regularly scheduled meeting on February 4, 2022; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute a *Property Sale Agreement* with Marshall at Central, LLC, an Ohio limited liability company (“Petitioner”), in substantially the form attached to this ordinance as Attachment A and incorporated herein by reference, pursuant to which the City of Cincinnati (“City”) will vacate and convey to Petitioner an approximately 0.387-acre tract of Hallmar Avenue in the CUF neighborhood, as more particularly depicted and described in the *Property Sale Agreement* (the “Property”), which Property is more particularly described as follows:

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.

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."

Section 2. That the Property is not needed for transportation or other municipal purposes, that there is good cause to vacate and sell the Property, and that such vacation and sale will not be detrimental to the general interest.

Section 3. That the City's Real Estate Services Division has determined, by professional appraisal, the fair market value of the Property is approximately \$96,000, which Petitioner has agreed to pay.

Section 4. That eliminating competitive bidding in connection with the City's sale of the Property is in the best interest of the City because Petitioner owns all real property that abuts the Property; and, as a practical matter, no one other than an abutting property owner would have any use for the Property.

Section 5. That the proceeds from the sale of the Property, if any, shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City's Real Estate Services Division in connection with the sale, and that the City's Finance Director is hereby authorized to deposit amounts in excess amount thereof into Miscellaneous Permanent Improvement Fund 757.

Section 6. That the City's Finance Director is hereby authorized to transfer and appropriate such excess funds from Miscellaneous Permanent Improvement Fund 757 into Capital Improvement Program Project Account No. 980x233xYY2306, "Street Improvements,"

in which “YY” represents the last two digits of the fiscal year in which the closing occurs and the proceeds are received, referencing the latter fiscal year if the events occur in different fiscal years.

Section 7. That, pursuant to Ohio Revised Code Sec. 723.041, any affected public utility shall be deemed to have a permanent easement in the Property for the purpose of maintaining, operating, renewing, reconstructing, and removing its utility facilities and for purposes of access to said facilities.

Section 8. That the City Manager and other City officials are hereby authorized to take all necessary and proper actions to carry out the provisions of this ordinance and the *Property Sale Agreement*; including, without limitation, executing any and all ancillary agreements, deeds, plats, or other documents described in or contemplated by the *Property Sale Agreement* to facilitate the vacation and sale of the Property to Petitioner.

Section 9. That the City Solicitor shall cause an authenticated copy of this ordinance to be duly recorded in the Hamilton County, Ohio Recorder’s Office.

Section 10. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

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]

{00363826-4}

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*

{00363826-4}

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]

{00363826-4}

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

{00363826-4}

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.

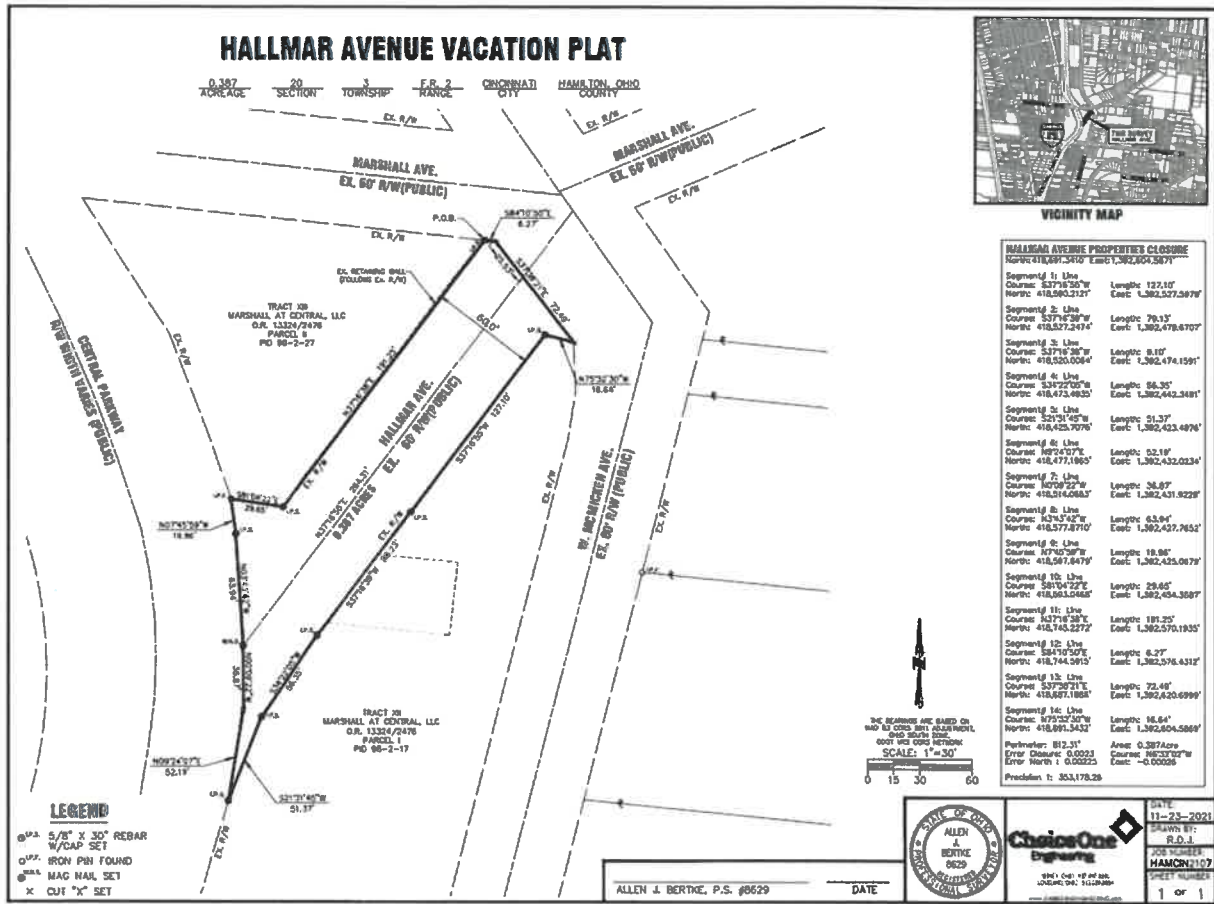
Containing 0.387 acres more or less with all being subject to any legal highway and easements of record.

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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."

{00363826-4}

EXHIBIT B
to Property Sale Agreement
Vacation Plat



{00363826-4}

EXHIBIT C
to Property Sale Agreement
Form of Quitclaim Deed

[SEE ATTACHED]

{00363826-4}

11798396.1

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.

{00363826-4}

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:

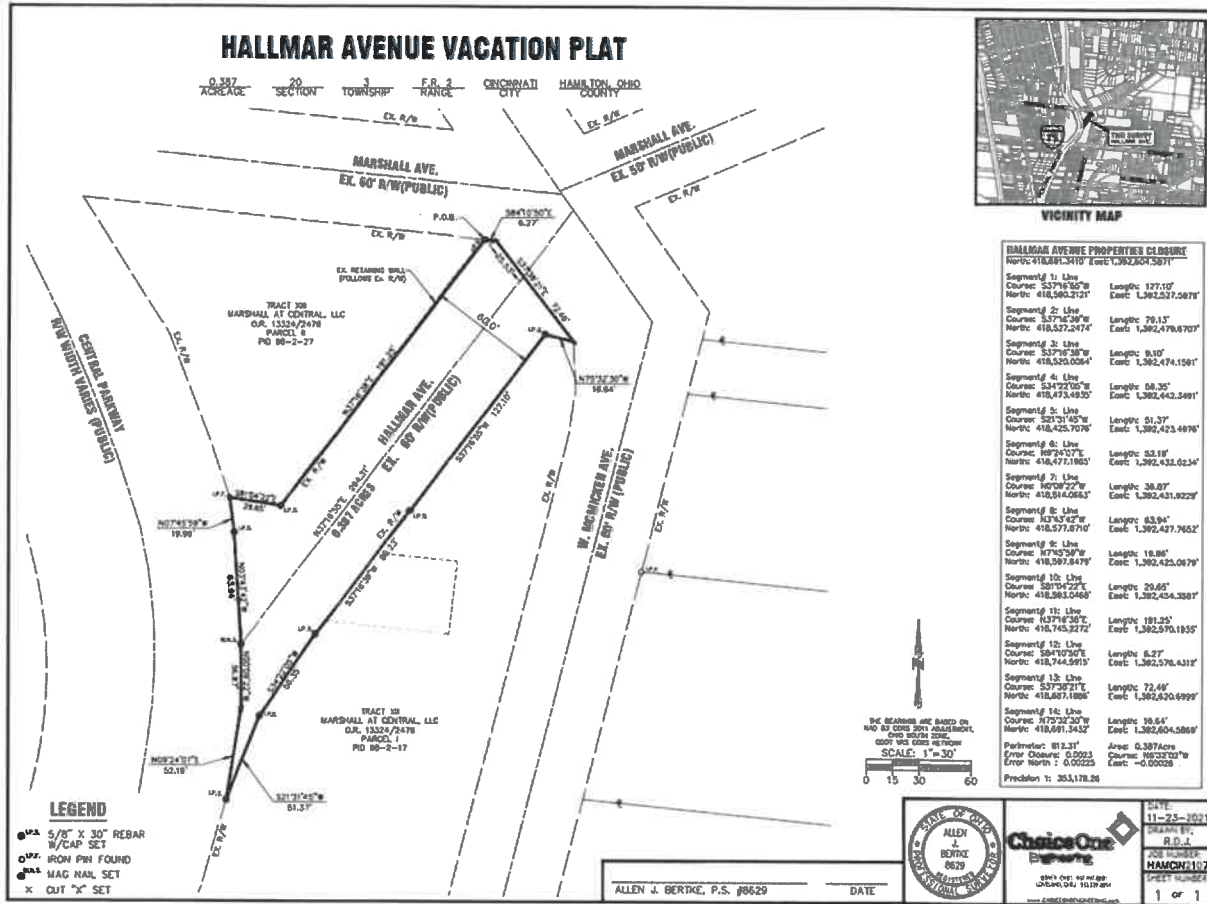
Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department,
801 Plum Street, Suite 214,
Cincinnati, Ohio 45202

{00363826-4}

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

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:

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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;

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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. 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}

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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11798396.1

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

{00363826-4}

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 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.

{00363826-4}

(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*

{00363826-4}

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]

{00363826-4}

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

{00363826-4}

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.

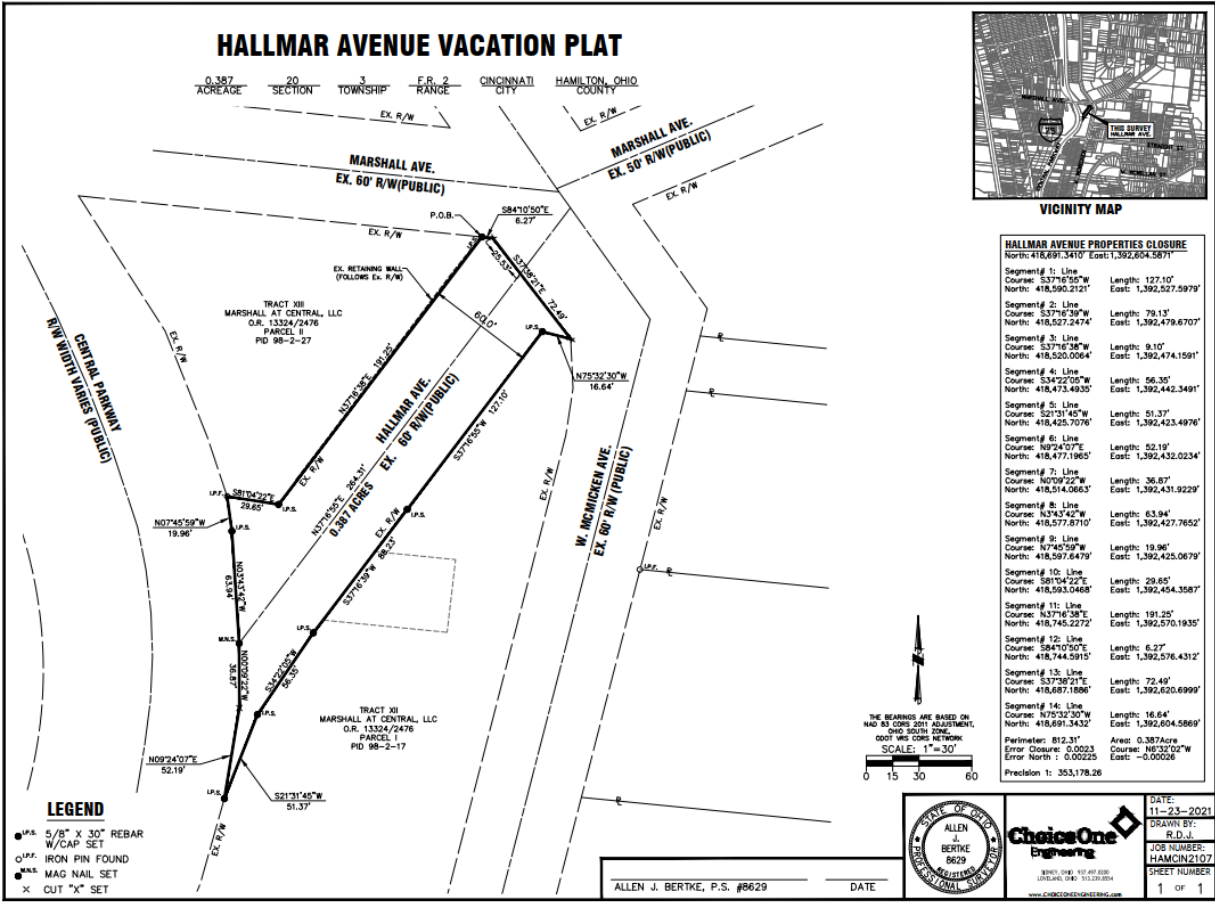
Containing 0.387 acres more or less with all being subject to any legal highway and easements of record.

{00363826-4}

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."

{00363826-4}

EXHIBIT B
to Property Sale Agreement
Vacation Plat



{00363826-4}

EXHIBIT C
to Property Sale Agreement
Form of Quitclaim Deed

[SEE ATTACHED]

{00363826-4}

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.

{00363826-4}

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:

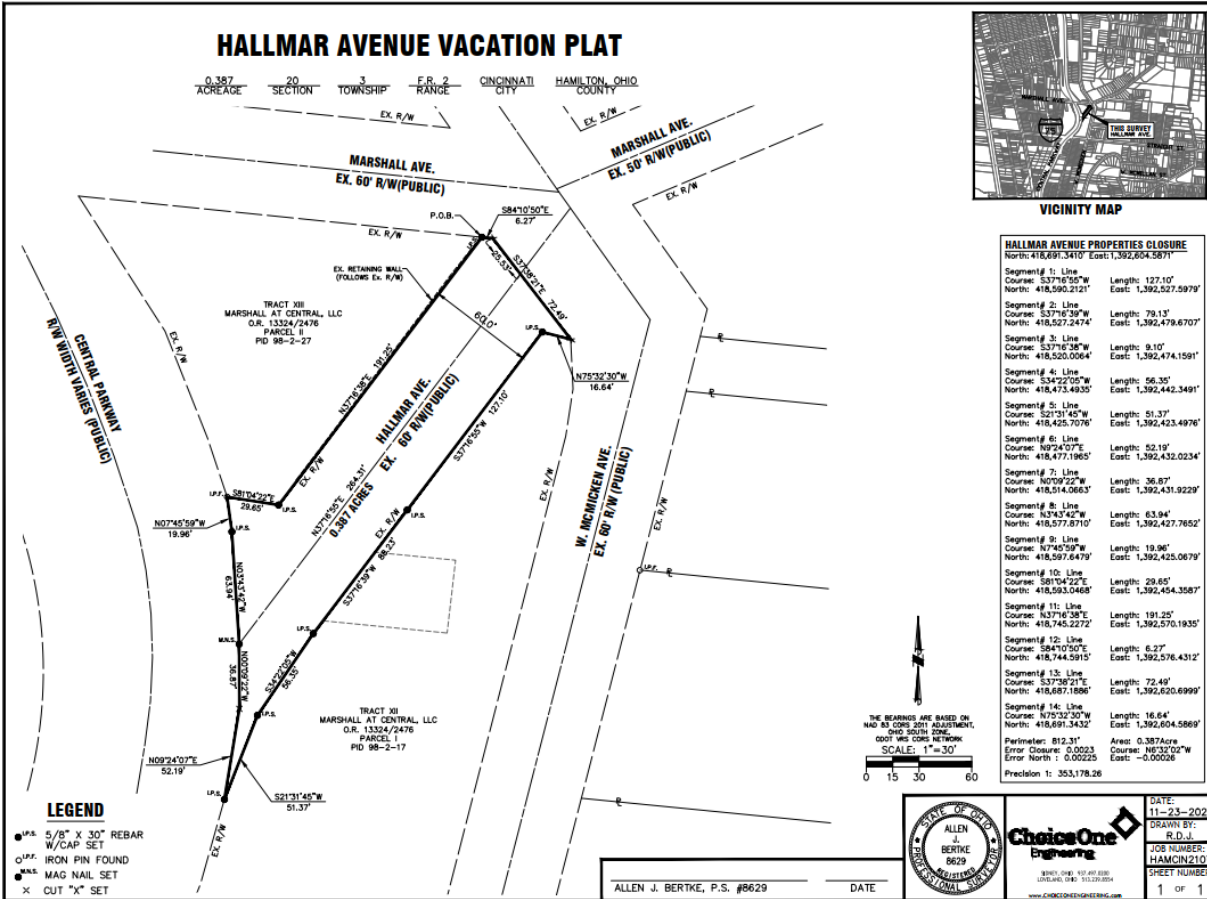
Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department,
801 Plum Street, Suite 214,
Cincinnati, Ohio 45202

{00363826-4}

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

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:

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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;

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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}

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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September 12, 2022

To: Members of the Budget and Finance Committee

From: Sheryl M. M. Long, City Manager

202201777

Subject: Presentation – 311 Update and Next Steps

Attached is a presentation regarding the 311 update and the next steps.

Budget & Finance

311 update & next steps

Customer Service Tools

The public has many options to remedy everyday issues

- Call Center
- Website
- Mobile App

Introducing!



From many numbers to one...



Police, Fire, EMS, Parking

911 and 513-765-1212

**911 and
311**



Water

513-591-7700

311



Sewer

513-352-4900

311



Health

513-357-7320

311



All Other City Services

513-591-6000

311



Customer Service Enhancements

Before 3/11/22

- **Call Center:** Many phone numbers
- **Call Center:** Business hours
- **Website:** 5916000.com
- **Website:** Hard to find services
- **Website:** Missing some services
- **Mobile App:**

Starting 3/11/22 (live testing phase)

- **Call Center:** Just 311 or 911
- **Call Center:** 24hr/7days
- **Website:** 311cincy.com & city page
- **Website:** Start with service search
- **Website:** More services added
- **Mobile App:**



Testing Phase (Summer 2022)

- Slow volume of traffic through channels- gradually increasing
- Continued training/hiring
- Test and revise tools and systems

Next phase (Fall 2022):

- DPS and ECC call center merger
- Full compliment of trained and qualified staff
- Public awareness campaign

Long Term Goals:

- 311 to support public engagement
- Data and public driven enhancement to service delivery

Want a Vaccine? | Schedule an Appointment >

city of
CINCINNATI

Looking to open a business? Visit Open for help!

RESULTS
CINCY
➔

PAY
WATER
BILL
➔

PAY
PARKING
TICKET

QUICK
LINKS
➔

WATCH
CINCY

Fix it Cincy!

New & Improved
Service App

Download



Customer Service Request

File A Customer Service Request

Smart 911

Create Free, Secure Safety Profile

Frequent Requests

Birth & Death Certificates

Building Permits

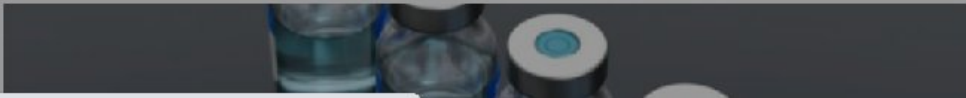
Economic Inclusion & Purchasing

Income Tax

Jobs With The City

BUSINESSES | RESIDENTS | VISITORS | SERVICES | GOVERNMENT | HELP/311 | 🔍

FEATURED NEWS





Four ways to request services

- Call 311
- FixIt Cincy App
- Select a Service
- Follow us @311cincy

Begin Request

Hint: Type in keywords like trash, weeds, building, rights, etc

The information you submit may be subject to Ohio Public Records laws.

Search Existing Requests

Frequently Used Service Requests

Select from one of the links below

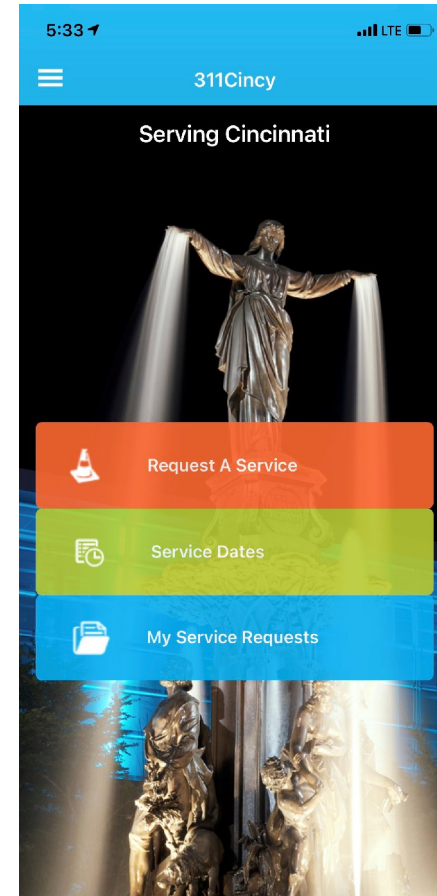
- Fix a Pothole >
- Pick up Bulky Items >
- Remove Graffiti >
- Report Tall Grass/Weeds >
- Request Trash - Missed Pickup >
- Report Unsanitary Living Conditions >
- Report Improper Trash Setout >
- Repair a Street Light >

Explore Services by Category

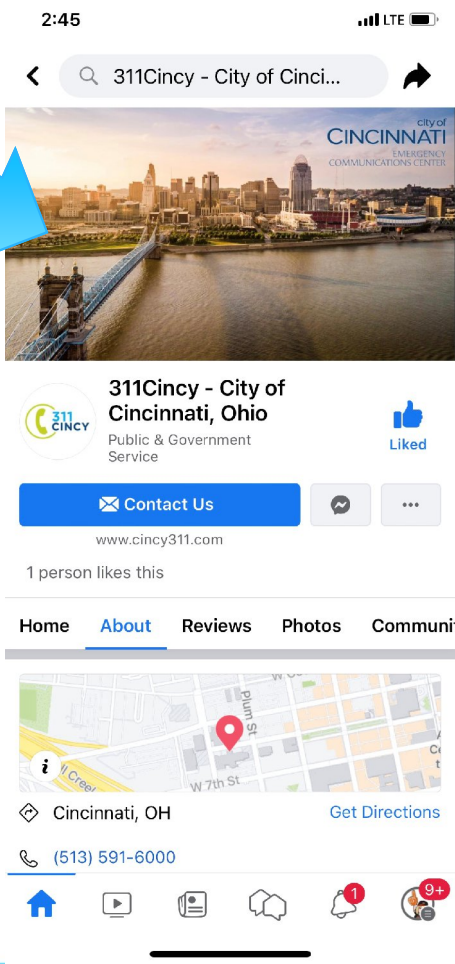
The information you submit may be subject to Ohio Public Records laws.

Hint: Click to expand categories to see available Service Requests. Then click on the Service Request type to initiate.

- Accessibility
- Bugs, Pests and Animals
- Citizen/warden Inquiries



Facebook



Twitter



More Enhancements Coming



- **Mobile App:** September 1, FixItCincy = 311Cincy
- **Call Center:** text confirmation/SR numbers
- **Call Center:** no hold or wait times to answer calls
- **Website:** chatbot/virtual assistant with live chat feature
- **Website:** continuous improvement on intake and navigation
- **General:** updated Customer service training and performance measures
- **General:** updated communication regarding status of requests and follow up actions
- **General:** regular review of open items to increase timely resolution

311 Feedback Form

311 Feedback Form

Thank you for your feedback. We are constantly working to improve our service delivery and to provide department staff and customers with the most accurate information. If you have noticed something the 311 call center needs to correct for your department, or if you have some positive feedback to share, please use this form.

Your feedback will be shared with the call center staff to continuously improve services to the various departments served by the call center.

Hi, Chandra. When you submit this form, the owner will see your name and email address.

* Required

1. **First Name ***

Enter your answer

2. **Last Name ***

Enter your answer

3. **City phone # ***

Enter your answer

4. **Email Address ***

Enter your answer

5. **Date of Event ***

Please input date (M/d/yyyy)

6. **Time of Event ***

7. **This feedback is related to: ***

Select your answer

8. **This feedback is related to the following originating from the 311-call center ***

Select your answer

9. **What Happened? ***

Enter your answer

10. **How should the matter have been handled? We use this for training purposes so staff can handle this properly moving forward.**

Enter your answer

11. **Additional Comments**

Enter your answer

12. **Attachments ***

Yes

No

Submit

my message
to: Spoiler

to their
employee

or

iter.

- ▶ Economic Inclusion
- ▶ Employee Safety
- ▶ Enterprise E-mail
- ▶ ETS Billing Reports
- ▶ ETS Services Catalog
- ▶ Fraud, Waste and Abuse Hotline
- ▶ Healthy Lifestyles Program
- ▶ HR- Talent Development Campus
- ▶ HR Training Calendar
- ▶ Information Security
- ▶ Labor Relations
- ▶ Medical/Flex
- ▶ Mura System - Internet
- ▶ Mura System - Citymatters
- ▶ Mura Training
- ▶ Records Retention
- ▶ Text Message Retention Configuration
- ▶ 311 Feedback Form

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Next Steps:

- 311Cincy mobile app launch September 1
- Limited 311 promotion online (next few weeks)
- City Communicator briefing (Complete)
- 100% Calls to ECC (likely October)
- CSR Reviews (rotating/ongoing)
- Department 311 user group established (begin approx. October)
- Set performance metrics and goals (30-60 days)
- Evaluation of programs and tools & user testing (ongoing)
- Chatbot implementation (Fall 2022)

CSR Reviews:

- Make the CAGIS interface more user friendly to the public for entering CSRs.
- Increase transparency and communication throughout the CSR process from entry to completion.
- Assist departments with better data collection to improve efficiencies.
- Clean up old open CSRs for accurate data collection & performance metric reporting.

Constituent Affairs Knowledgebase

KNOWLEDGE
Chandra Yungbluth

Contribute Knowledge
Filter by Category
Filter by Tag

Search: housing
Show 10 entries

Topic	Explanation	Files	Links	Category	Tag(s)	Updated
Compliance Assistance Repairs for the Elderly (CARE) Program	The CARE Program serves the people of Cincinnati through the efforts of the Cincinnati-Hamilton County Community Action Agency (CAA) by providing grants to low income, elderly or disabled homeowner-occupants to correct City of Cincinnati code violations issued pursuant to the Neighborhood Enhancement Program's (NEP) "house to house" exterior property condition inspection. Services may include repairs to a leakin			Emergency Assistance		02/02/22
Emergency Shelter Help	<ul style="list-style-type: none"> CAP Line (Families and Single Women) – 513-381-SAFE (7233) - https://www.strategiestoendhomelessness.org/get-help/ <ul style="list-style-type: none"> Kevin Finn – director of Strategies to End Homelessness, kfinn@end-homelessness.org Shelterhouse (Single Men) – 411 Gest Street, 513-721-0643... 		CAP Line United Way resource help line	Housing Information	Homelessness Emergency Shelter Housing	04/29/22
Fair Housing or Discrimination in Housing	Discrimination on race, ethnicity, income, disability status, etc: Housing Opportunities Made Equal (HOME – Fair Housing) – https://homecincy.org/services/ <ul style="list-style-type: none"> LaTonya Springs, Assistant Director, latonya.springs@homecincy.org 		HOME Cincy	Housing Information		04/29/22
Foreclosure Prevention	The Homeowner Preservation Initiative The City of Cincinnati has contracted with Working In Neighborhoods (WIN) to provide help to residents in danger of losing their homes. WIN has agreements with Smart Money, the Home Ownership Center of Cincinnati, and the Better Housing League to also provide these services....			Emergency Assistance		02/02/22
Help paying utilities	<ul style="list-style-type: none"> PIPP Plan (apply at CAA) -- https://www.cincy-caa.org/what-we-do/supportive-services/utility-assistance-programs/pipp-plus.html <ul style="list-style-type: none"> Sharon Watkins – staff person to help troubleshoot application issues – swatkins@cincy-caa.org 		Community Action Agency PIPP	Housing Information	Tenant Assistance Housing	04/29/22
Help with Social Services or Resources	United Way can assist with locating resources or navigating different social services from furniture to clothing and beyond.		United Way	Housing Information		04/29/22

Questions/Feedback?