

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 **CINCINNATI BALLET HOLDINGS, INC.**, an Ohio nonprofit corporation, with a tax mailing address of 1801 Gilbert Avenue, Cincinnati, OH 45202 (“**Purchaser**”).

Recitals:

A. By virtue of deeds recorded in Official Record 13824, Page 2086, and Official Record 13786, Page 1609, Hamilton County, Ohio Records, the City owns certain real property generally located north of Elsinore Place, east of Interstate 71, and west of Gilbert Avenue more particularly identified as Hamilton County, Ohio Auditor’s Parcel ID No. 071-0001-0121 (the “**Park Property**”). The Park Property is under the management and control of the Cincinnati Park Board.

B. By virtue of a deed recorded in Official Record 14092, Page 340, Hamilton County, Ohio Records, Purchaser owns certain real property adjacent to the Park Property, more particularly depicted on Exhibit A (Site Map) hereto (“**Purchaser’s Property**”) on which Purchaser has completed construction of a new facility for the Cincinnati Ballet (the “**Ballet Facility**”).

C. The City permitted Purchaser to make certain improvements to a portion of the Park Property that is more particularly depicted in Exhibit A and described in Exhibit B (Legal Description—Sale Property) hereto (the “**Sale Property**”) during the construction and development of the Ballet Facility for the benefit of the Ballet Facility, namely, an access drive, driveway apron, curbs, lighting, and related improvements to provide a means of pedestrian and vehicular ingress and egress to the Gilbert Avenue public right-of-way (the “**Improvements**”). Purchaser now desires to purchase the Sale Property in fee simple, and the City is agreeable to sell the Sale Property to Purchaser on the terms and conditions set forth herein.

D. The City has determined that the Sale Property is not needed for park or other municipal purposes.

E. The City’s Real Estate Services Division has determined, by a professional appraisal, that the estimated fair market value of the Sale Property is approximately \$124,000; however, the City is agreeable to convey the Sale Property for less than the estimated fair market value, namely, for \$27,280 because the City anticipates that it will receive economic and non-economic benefits from the transaction that equal or exceed the fair market value of the Sale Property because the new Ballet Facility is likely to expand exposure to cultural and educational programs, activities, and opportunities in areas directly concerned with the arts and will foster and encourage the development of the arts within the City for the economic benefit of the City.

F. The City has determined that eliminating competitive bidding in connection with the City’s sale of the Sale Property is in the best interests of the City because Purchaser owns the property abutting the Sale Property, Purchaser has invested significant financial resources to improve and develop the Sale Property with the Improvements, and as a practical matter, no one other than an abutting property owner would have any use for the Sale Property as improved.

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

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

I. The Cincinnati Board of Park Commissioners approved the sale of the Sale Property to Purchaser at its meeting on March 17, 2022.

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 at its meeting on June 2, 2023.

K. Execution of this Agreement was authorized by Cincinnati City Council by Ordinance No. [____]-2023, passed on [____], 2023.

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

1. **Purchase Price.** Subject to the terms and conditions set forth herein, the City hereby agrees to sell the Sale Property to Purchaser, and Purchaser hereby agrees to purchase the Sale Property from the City for \$27,280 (the “**Purchase Price**”).

2. **Condition of the Sale Property.** 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,” “where is” condition with all faults and defects, known or unknown. The City makes no representations or warranties to Purchaser concerning 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.

3. **Termination of Temporary Easement.** Pursuant to a *Grant of Temporary Access Easement* executed on February 14, 2017, and recorded in Official Record 13824, Page 2092, Hamilton County, Ohio Records (the “**Temporary Easement**”), the City granted temporary easement rights to Purchaser’s predecessor-in-interest over the Park Property, including portions of the Sale Property, as more particularly detailed in the Temporary Easement. Purchaser acknowledges and agrees that construction of the Improvements on the Sale Property has rendered the use of the Temporary Easement impractical and unnecessary with respect to the portions of the Park Property to be retained by the City following the Closing. As a material inducement to the City to enter into this Agreement, Purchaser agrees to cause the Temporary Easement to be terminated by causing all beneficiaries thereto to execute an agreement to release and terminate the Temporary Easement in a form acceptable to the City Solicitor.

4. **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, at its sole discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, then the City may, if appropriate, include such Conditions in the City’s Quitclaim Deed to Purchaser or handle such Conditions post-Closing. Purchaser shall perform all work and investigations and obtain and prepare all necessary documents to satisfy 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;

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- (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 concerning utility service for the Sale Property, and all zoning and building code requirements that apply to the Sale Property;
- (iii) Zone Change Application for Sale Property: Purchaser shall have initiated a zoning change for the Sale Property by having filed an application and any and all other associated documents as required by the Department of City Planning and Engagement to amend the official zoning map of the City of Cincinnati to rezone the Sale Property from the PR, "Park and Recreation" zoning district to the OG, "Office General" zoning district;
- (iv) Plats and Legal Descriptions: Purchaser shall have provided the City with all plats and legal descriptions as required by the Department of City Planning and Engagement, and the Hamilton County Auditor, Engineer, and Recorder in connection with the City's sale of the Sale Property, including, but not limited to 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*);
- (v) Termination of Temporary Easement: Purchaser shall have provided the City with a *Termination of Temporary Easement Agreement* executed by the beneficiaries of the Temporary Easement burdening the Park Property;

(B) Right to Terminate. If either party determines, after exercising good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all the Conditions have not been satisfied to the satisfaction of both parties or waived in writing and for that reason the Closing has not occurred within **12 months** of the Effective Date, this Agreement and all rights and obligations of the parties hereunder shall automatically terminate.

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

(D) Closing Costs and Closing Documents. At the Closing, (i) the City shall confirm that 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 necessary for the Closing in such forms as 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; Purchaser acknowledges 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 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.

5. Notices. All notices given by the parties hereunder shall be deemed given if personally delivered, delivered by Federal Express, UPS, or other recognized overnight courier, or mailed by U.S. regular or certified mail, addressed to the parties at their respective addresses set forth in the introductory paragraph of this Agreement. If 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.

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6. 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 nonprofit corporation 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 carry out the transactions provided herein. Purchaser has duly taken all proper actions to authorize, execute, and deliver this Agreement. Purchaser has taken all actions necessary to constitute valid and binding obligations of Purchaser upon execution and delivery of this Agreement by Purchaser.

(iii) Purchaser's execution, delivery, and performance of this Agreement and the transaction contemplated hereby will not violate any applicable laws, any writ or decree of any court or governmental instrumentality, or any mortgage, contract, agreement, or other undertaking to which 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) No actions, suits, proceedings, or governmental investigations are 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 its affiliates owe the City any outstanding fines, penalties, judgments, water or other utility charges, or other amounts.

7. General Provisions.

(A) Entire Agreement. This Agreement (including the exhibits hereto) contains the entire agreement between the parties concerning the subject matter hereof and supersedes any and all prior discussions, negotiations, representations, or agreements, written or oral, between them respecting the subject matter hereof.

(B) Amendments. This Agreement may be amended only by a written amendment signed by both parties.

(C) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and 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

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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. The parties hereto agree that this Agreement may be executed and delivered by electronic signature, which shall have the same force and effect as an original signature. Electronic signatures may be delivered via email or other electronic means agreed upon by the parties. The parties hereto may execute this Agreement in two or more counterparts, and each executed counterpart shall be considered an original.

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

Exhibit A – *Site Map*

Exhibit B – *Legal Description-Sale Property*

Exhibit C – *Form of Quitclaim Deed*

[Remainder of Page Intentionally Blank; Signature Pages Follow]

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

CINCINNATI BALLET HOLDINGS, INC.,
an Ohio nonprofit corporation

By: _____

Printed Name: _____

Title: _____

Date: _____, 2023

[City signatures on the following page]

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

Date: _____, 2023

Recommended by:

Jason Barron, Director
Cincinnati Park Board

Approved as to Form:

Assistant City Solicitor

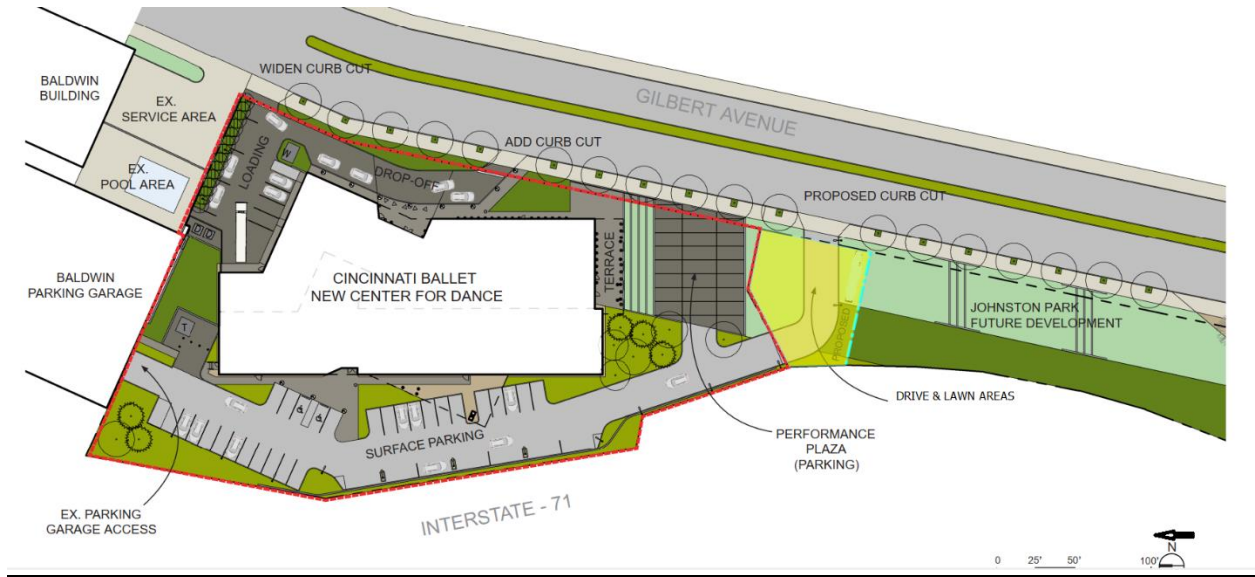
Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

EXHIBIT A
to Property Sale Agreement
Site Map



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EXHIBIT B
to Property Sale Agreement

Legal Description - Sale Property

Auditor's Parcel No.: Cut-up of 071-0001-0121

Property Address: None; a portion of Johnston Park along the 1800 block of Gilbert Avenue

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EXHIBIT C
to Property Sale Agreement
Form of Quitclaim Deed

[SEE ATTACHED]

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QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), for valuable consideration paid, hereby grants and conveys to **CINCINNATI BALLET HOLDINGS, INC.**, an Ohio nonprofit corporation, with a tax mailing address of 1801 Gilbert Avenue, Cincinnati, OH 45202 ("**Grantee**"), all of the City's right, title, and interest in and to the real property depicted on Exhibit A (Survey) and described on Exhibit B (Legal Description) hereto (the "**Property**").

Property Address: None; a portion of Johnston Park along the 1800 block of Gilbert Avenue
Auditor's Parcel ID No.: Cut-up of 071-0001-0121
Prior instrument references: Official Record 13824, Page 2086, Hamilton County, Ohio Records; and
Official Record 13786, Page 1609, Hamilton County, Ohio Records

Conveyance Between Adjoining Lot Owners. This conveyance is a transfer between adjoining lot owners made in compliance with Ohio Revised Code Section 711.001(B)(1)(b). This conveyance does not create an additional building site nor violate any zoning regulation or other public regulation in the property hereby conveyed or the balance of the property retained by the City. The property hereby conveyed may not hereafter be conveyed separately from Grantee's adjoining property, nor any structure erected thereon without the prior approval of the authority having jurisdiction of plats.

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

Exhibit A – *Survey*
Exhibit B – *Legal Description*

This conveyance was authorized by Ordinance No. [____]-2023, passed by Cincinnati City Council on [____], 2023.

Executed on the date of acknowledgement.

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023. by _____, the _____ of the **CITY OF CINCINNATI**, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public:
My commission expires: _____

Approved as to Form:

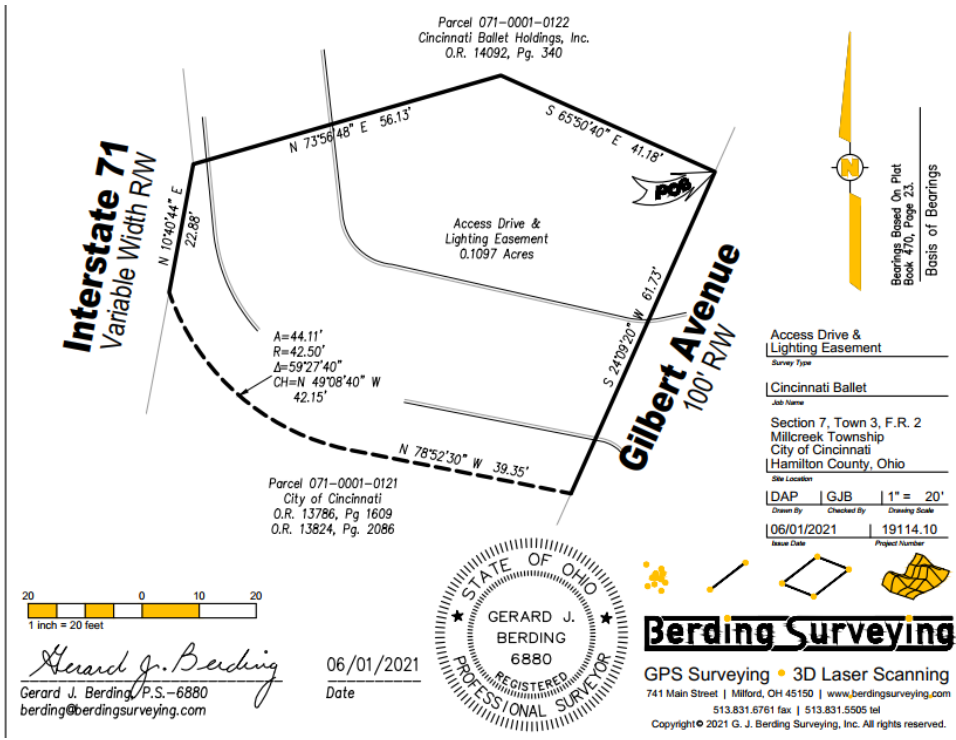
Assistant City Solicitor

This instrument prepared by:

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

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EXHIBIT A
to Quitclaim Deed
Survey



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EXHIBIT B
to Quitclaim Deed
Legal Description

Auditor's Parcel No.: Cut-up of 071-0001-0121
Property Address: None; a portion of Johnston Park along the 1800 block of Gilbert Avenue

[TO BE INSERTED]

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