

Contract No. \_\_\_\_\_

Property: Frank Street & Artist Alley

## 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 **MARK A. ROSENZWEIG & SHIRLEY F. ROSENZWEIG**, husband and wife, whose tax mailing address is 548 E. 13<sup>th</sup> Street, Cincinnati, OH 45202 (collectively, "**Purchaser**").

### Recitals:

A. The City owns certain real property located at the southwest corner of the intersection of the public ways designated as Frank Street and Artist Alley in the Pendleton neighborhood of Cincinnati, Ohio, as described on Exhibit A (Legal Description- the Property) hereto (the "**Property**"), which Property is under the management of the City's Department of Transportation and Engineering ("**DOT**").

B. Purchaser owns certain real property adjoining the Property, as more particularly depicted on Exhibit B (Site Survey) hereto ("**Purchaser's Property**"), and desires to purchase from the City a portion of the Property, as more particularly depicted and described on Exhibit C (Form of Quitclaim Deed) hereto (the "**Sale Property**") to consolidate said Sale Property with Purchaser's Property.

C. The City has determined that the Sale Property is not needed for transportation or any other municipal purpose.

D. The City's Real Estate Services Division has determined, by a professional appraisal, that the fair market value of the Sale Property is \$210.00, which has been deposited with the City Treasurer.

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

F. 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 June 4, 2021.

G. Execution of this Agreement was authorized by Cincinnati City Council by Ordinance No. [\_\_\_\_]-2021, passed on [\_\_\_\_], 2021.

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 \$210.00 (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 (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 and Legal Descriptions: Purchaser shall have provided the City with all plats and legal descriptions as required by DOTE, the City Planning Department, and the Hamilton County Auditor and Recorder in connection with the City's sale of the Sale Property;
- (iv) Coordinated Report Conditions (CR #71-2020):

(a) DOTE:

1. The existing utilities must be granted easements or relocated at Purchaser's expense.
2. 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.
3. Frank Street and Artist Alley must be articulated with a curb, sidewalk, and/or curb cut, to be approved by DOTE. The City shall also retain nine inches from back of curb for future maintenance work, and sell to Purchaser the balance of right-of-way not in the roadway.
4. 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) 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) City shall confirm that Purchaser has paid the Purchase Price in full, and (ii) the City shall convey all of 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 any 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 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 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 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.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

(vi) Purchaser does not 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.

(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 Property*  
Exhibit B – *Site Survey*  
Exhibit C – *Form of Quit Claim Deed*

[signature pages follow]

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

\_\_\_\_\_  
Mark A. Rosenzweig

Date: \_\_\_\_\_, 2021

\_\_\_\_\_  
Shirley F. Rosenzweig

Date: \_\_\_\_\_, 2021

[City signatures on the following page]

**CITY OF CINCINNATI**

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

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

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

Date: \_\_\_\_\_, 2021

Recommended by:

\_\_\_\_\_  
John S. 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

*Legal Description -the Property*

Situate in Section 18, Town 4, Fractional Range 1, Cincinnati Township, Hamilton County, Ohio, and more particularly described as follows:

Beginning at the intersection of the southerly line of Noah Alley and the westerly line of Frank Street; thence southwardly, along the westerly line of Frank Street, 16.0 feet, more or less; thence northwestwardly, 30.0 feet more or less, to the southerly line of Noah Alley; thence eastwardly, along the southerly line of Noah Alley, 25.0 feet, more or less, to the place of beginning.

Being part of the same premises conveyed to the grantor herein by deed recorded in Deed Book 2300, page 472, Hamilton County, Ohio, deed records.





**Exhibit C**  
to Property Sale Agreement  
*Form of Quitclaim Deed*

[ SEE ATTACHED ]



Executed on \_\_\_\_\_, 2021.

**CITY OF CINCINNATI**

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

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

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

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF HAMILTON        )

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 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 S. 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 B**  
to Quitclaim Deed  
*Legal Description*

Situated in the State of Ohio, Hamilton County, City of Cincinnati, in Section 18, Town 4, Fractional Range 1, Miami Purchase and being more particularly described as follows:

Commencing at a cross-notch set on top of a stonewall at the intersection of the west line of Frank Street (40 foot R/W) with the north line of East Thirteenth Street (60 foot R/W), a 5/8" iron pin set as a witness to said cross-notch, bearing S. 00° 03' 54" W., 5.00 feet, and being the southeast corner of the land of Mark A. Rosenzweig and Shirley F. Rosenzweig (O.R. 14085, Pg. 183);

Thence, with the west line of Frank Street, N. 00° 03' 54" E., 76.50 feet to a cross-notch set in a concrete sidewalk, being the southeast corner of a parcel conveyed to the City of Cincinnati in Deed Book 3606, Page 834 in the Hamilton County Recorders Office and being the POINT OF BEGINNING;

Thence, with the southwesterly line of the parcel of said City of Cincinnati, N. 57° 25' 30" W., 26.93 feet to a mag nail set in a brick driveway, said nail being S. 57° 25' 30" E., 2.71 feet from the northwest corner of said land conveyed to the City of Cincinnati;

Thence, leaving said southwesterly line, following nine inches behind an existing curb, and being new division lines for the next three courses: along a curve to the right with a radius of 16.00 feet, an arc length of 6.26 feet to a mag nail set in a brick driveway, the chord of said arc bears S. 73° 36' 17" E., a distance of 6.22 feet;

Thence, S. 62° 23' 16" E., 12.30 feet to a 5/8" iron pin set;

Thence, along a curve to the right with a radius of 23.25 feet, an arc length of 7.29 feet to a cross-notch set in a concrete sidewalk and in the west line of said Frank Street, the chord of said arc bears S. 53° 24' 42" E., a distance of 7.26 feet;

Thence, with the west line of Frank Street, S. 00° 03' 54" W., 2.72 feet to the point of beginning.

Contains an area of 0.0013 acre or 55.67 square feet of land, more or less.

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

The bearings in the above description are based on the Dedication Plat of New Liberty Street, which is based on Drawing No. E-316-98 in the City of Cincinnati Engineer's Office, the S. 00° 03' 54" W. bearing along Frank Street being held. This Dedication Plat involves parcel numbers 075-0002-0194 thru 0198, and is also in the Hamilton County Engineers file of surveys.

Being a part of the land conveyed to the City of Cincinnati in Deed Book 3606, Page 834 in the Hamilton County Recorders Office and identified as parcel number 075-0002-0223 on the Tax Maps of said County.

The above description is taken from and in accordance with a field survey and plat made under the direction of Jerry Rosenfeldt, Ohio Licensed Surveyor No. 7598, with Q.C.M. Inc., dated February 25, 2021.