

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (the "Agreement") is made as of the Effective Date (defined below) between the **City of Ann Arbor**, a Michigan municipal corporation whose address is 301 E. Huron St., Ann Arbor, MI 48104 ("Purchaser"), and the Mary Charmaine Walsh Smith Trust Agreement dated April 16, 1992, whose address is 451 Hidden Meadow Lane, Summerville, SC 29486 ("Seller").

RECITALS

Seller is the owner of, or claims an interest in, certain real property, improvements, easements and rights described below.

Seller owns certain real property located at 730 Madison Place, Ann Arbor, Michigan, more fully described and/or depicted on **Exhibit A** as attached hereto and incorporated herein by reference, which property is referred to in this Agreement as the "Property." The Property generally consists of a vacant residential lot. The Property contains all of Seller's right, title and interest in all easements, air, water, mineral and oil and gas rights, riparian rights, and all tenements, hereditaments, appurtenances, leases and improvements now or hereafter belonging to or on such property.

Purchaser desires to purchase, and Seller is willing to sell, said Property upon the terms and conditions set out hereinafter.

NOW, THEREFORE, in consideration of the terms, covenants and conditions set forth in this Agreement, Seller and Purchaser hereby agree as follows:

1. **Fundamental Purchase Provisions.** Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings listed in the following Fundamental Purchase Provisions.

Purchase Price: Three Hundred Thousand and No/100 Dollars (\$300,000.00) in accordance with Section 3 below.

Initial Deposit: Ten Thousand and No/100 Dollars (\$10,000.00).

Effective Date: The Effective Date shall be the date on which the last person to sign this Agreement (in its final form) shall have signed the Agreement. In the event the parties fail to insert the date of execution beneath their signatures below, then the date of execution shall be the date on which Seller actually signed the Agreement. **IT IS THEREFORE VERY IMPORTANT FOR EACH PERSON SIGNING THIS DOCUMENT TO PLACE THE DATE OF SIGNING IN THE SPACE PROVIDED BELOW THEIR SIGNATURE.**

Title Company: Liberty Title
111 N Main
Ann Arbor, MI 48104

Inspection Period: Thirty (30) \days following the Effective Date, unless extended by written agreement of the parties.

Closing: The closing shall take place as soon as reasonably possible following satisfaction of the conditions of this agreement on a date selected by Purchaser and agreed to by Seller, but no later than March 31, 2022.

Offer

Expiration Date: Purchaser's Offer expires thirty (30) days from Seller's receipt of a signed copy hereof,

Property: The real property, including any improvements, easements and rights, described in Section 2 below.

2. **Agreement to Sell and Convey.** Seller hereby agrees to sell and convey to Purchaser, and Purchaser hereby agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, all of Seller's right, title and interest in and to the Property described in the attached **Exhibit A**, together with all of Seller's right, title and interest, if any, in and to:

- a. All improvements on the Property;
- b. All of the easements benefitting, and rights of access appurtenant to, the Property;
- c. All rights and appurtenances pertaining to the Property, including any adjacent streets, roads, alleys, accesses, and rights-of-way.
- d. All of the foregoing shall be hereinafter collectively referred to as the "Property."

3. **Deposit; Balance of Purchase Price.** The Purchase Price shall be payable as follows:

- a. **Deposit.** Within five (5) days of the Effective Date, Purchaser shall make an earnest money deposit of Ten Thousand and No/100 Dollars (\$10,000.00), which shall be held by the Title Company and which shall be applied toward the Purchase Price at closing if the sale is consummated. Seller shall provide a receipt for the Initial Deposit.
- b. **Balance of Purchase Price.** The balance of the Purchase Price will be paid, plus or minus closing adjustments and prorations as the case may be, by a cashier's check or wire transfer of immediately available US funds at closing in exchange for a warranty deed ("Deed") conveying fee simple, marketable title to Purchaser, free and clear of any and all liens or

encumbrances, and subject only to those easements and restrictions or record that are agreeable to Purchaser in its sole discretion. Seller will execute and deliver the documents that are required for this transaction, and any existing land contracts or mortgages will be discharged at Closing with Seller being responsible for any prepayment penalties on those contracts or mortgages.

4. **Title Commitment.**

- a. As evidence of title, Seller, at Seller's expense, agrees to furnish Purchaser within ten (10) days of the Effective Date a commitment for an enhanced owner's policy of title insurance issue by Title Company (or a similar national title insurance company acceptable to Purchaser offering a substantially similar policy of title insurance) in an amount not less than the Purchase Price and bearing a date later than the Effective Date, together with legible copies of all recorded documents with the owner's policy to be issued at closing pursuant to the commitment insuring marketable title (as defined below) to the Property in Purchaser's name.
- b. Seller agrees that the commitment for title insurance and the subsequent policy to be issued will be without standard exceptions. It will also be recertified and updated at the closing of this transaction as of the date of the Closing or the most recent date through which the county register of deeds has completed the recording and indexing of real estate instruments and documents to eliminate the "gap" period between the date of the title commitment and the closing of this transaction and to close any "gap" period between the date of closing and the date of the recording of the deed to Purchaser. Seller will also arrange to provide Purchaser with a marked-up commitment for title insurance at the closing of this transaction guaranteeing that title is in the condition required for this paragraph.
- c. Seller will execute an owner's affidavit and such other documents as the Title Company or its agent typically requires for the issuance of a policy without standard survey-related exceptions. However, Purchaser will pay for the cost of any survey required for the deletion of the standard exceptions. For the purposes of this Agreement, *marketable title* means fee simple title free and clear of any and all liens and encumbrances whatsoever, except only recorded and enforceable building and use restrictions, public utility easements of record, and zoning ordinances, which appear in the title commitment and will not constitute title defects or render the title to the Property unmarketable. However, Purchaser, at Purchaser's sole option, may elect to accept title in whatever condition it may be in, notwithstanding the condition would not meet the above definition of *marketable title* and, in such event, *marketable title* will mean the condition of title that Purchaser has elected to accept.

5. **Objections to Title.** If objection to the title is made in the commitment for title insurance or based on a written opinion of Purchaser's attorney that the title is not in the condition required for performance under this Agreement, Seller, at Seller's sole option, will have thirty (30) days from the date Seller is notified in writing of the particular defects claimed either (1) to fulfill the requirements in the commitment or to remedy the title defects set forth in Purchaser's attorney's opinion or (2) to refund the Initial Deposit in full termination of this Agreement. All matters of title must be satisfactory to Purchaser in Purchaser's sole and absolute discretion. If Seller is able using its best efforts to comply with the requirements or remedy the defects within the time specified, as evidenced by written notification, revised commitment, or endorsement to commitment, Purchaser agrees to complete the sale within fourteen (14) days of receipt of a revised commitment or endorsement to commitment, subject to any other contingency in this Agreement. If, after using best efforts, Seller is unable to furnish satisfactory title within the time specified, the Initial Deposit will be immediately refunded in full termination of this Agreement, unless Purchaser elects to proceed with the sale accepting the title as Seller is able to convey.

6. **Conditions to Purchaser's Obligations.**

- a. **Survey.** Purchaser may, at its expense, obtain one or more surveys of the Property ("Survey"), which may include ALTA/NSPS surveys in Purchaser's discretion. Purchaser shall promptly provide a copy of the Survey to Seller. Purchaser may elect to have the Survey certified to Purchaser, seller, and the title company that will insure the purchase. Purchaser may have the title commitment exceptions modified based on the results of the Survey.
- b. **Appraisal.** Purchaser shall pay the cost of any appraisal or valuation of the Property obtained by it.
- c. **Inspections.** During the Inspection Period, Purchaser shall have the right and be permitted, at its sole cost and expense, to have all aspects of the Property investigated and inspected by person(s) of Purchaser's choosing, including causing a phase I environmental site assessment to be performed on the Property and to otherwise satisfy itself with the feasibility of Purchaser's proposed use and development of the Property. Access to the Property and other information pertinent to the Property as Purchaser may request will be freely granted to Purchaser and Purchaser's agents and representatives at all reasonable times, and Seller will cooperate with Purchaser in connection with such requests. However, Purchaser's inspection activities will be approved and coordinated with Seller, and such activities will not unreasonably interfere with the tenants' rights of possession and quiet enjoyment. Except as otherwise previously approved by Seller, Purchaser shall not undertake any invasive testing on the Property without the prior written consent of Seller. As to any such investigation, Purchaser shall restore the Property to the same condition as existed prior to any such investigation, and shall not: (i) perform any invasive tests without Seller's prior consent or (ii) interfere with the possessory rights of Seller.

- d. Unrecorded Documents. Seller must provide documents or other evidence satisfactory to purchase and title company establishing seller as the record title holder and its ability to convey marketable title to purchaser.

≡Purchaser, in Purchaser's sole and absolute discretion, shall have the right, prior to the expiration of the Inspection Period, to terminate this Agreement without further liability and the Initial Deposit shall be returned to the Purchaser. Failure of the Purchaser to terminate this Agreement prior to the expiration of the Inspection Period shall be a waiver of such right. In no event shall Seller have any obligation to repair and correct any condition on the Property. Purchaser shall deliver to Seller promptly upon receipt, copies of all reports and investigations which Purchaser may perform on the Property.

7. Permitted Exceptions. Seller shall convey the Property to Purchaser subject to (i) easements and rights of public utilities as evidenced by the Title Commitment and matters which would be disclosed by an accurate survey of the Property, (ii) covenants, conditions, private easements and restrictions, (iii) real estate taxes and assessments for the then current year as are not due and payable as of the date of Closing, if any, (iv) encumbrances or exceptions to title shown on the Title Commitment and/or Survey to which Purchaser does not object or which with Purchaser's consent are waived and accepted or insured over.

8. Closing. Seller and Purchaser shall consummate the transaction contemplated by this Agreement at a closing (the "Closing") which shall take place at the office of the Title Company or other mutually acceptable location. The parties may agree to close the transaction through an escrow with the Title Company and pursuant to escrow instructions acceptable to the Title Company, Seller and Purchaser. If title can be conveyed in the condition required under this Agreement and all of Purchaser's conditions have been satisfied or waived, closing shall take place on a date and time selected by Purchaser and agreed to by Seller, but no later than March 31, 2022.

9. Closing Costs, Fees, Etc. At the Closing, Purchaser shall pay to Seller the Purchase Price, plus or minus adjustments as herein provided. Seller shall pay (a) premiums and fees related to the Title Commitment and Policy, but excluding any premiums or any charges for extended coverage endorsements, and (b) pay all transfer taxes due upon recording of the Deed, if any. Purchaser shall pay the cost of extended coverage endorsement, and each party shall pay their own broker's and attorneys' fees. The parties agree to split all other costs to close the transaction, such as escrow fees, recording fees, document preparation fees, settlement fees, disbursement fees, and other closing costs.

10. Closing Prorations and Adjustments. The following will be apportioned on the closing statements against amounts due Seller at Closing:

- a. All taxes and assessments that have become a lien on the Property as of the date of closing will be paid by Seller, except that (1) all current property taxes will be prorated and adjusted between the Seller and Purchaser as of

the date of closing on a due-date basis, without regard to lien date, as if paid in advance (e.g., taxes due July 1 will be treated as if paid for the period July 1 through the following June 30, and taxes due December 1 will be treated as if paid for the period December 1 through the following November 30); and (2) Purchaser will be responsible for the payment of all property taxes falling due after the date of closing without regard to lien date.

- b. Seller will pay at or before Closing, all outstanding water and sewer bills and bills of utility companies and service providers through the Closing Date. If there are outstanding water and sewer bills that have not been paid by Seller, the parties will prorate the bills.

11. **Seller's Obligations at the Closing.** At the Closing, Seller shall:

- a. Execute and deliver to Purchaser the Warranty Deed conveying the Property described in **Exhibit A**, including as applicable, the following language: "The grantors grant to the grantee the right to make all divisions under section 108 of the Land Division Act, act No. 288 of the Public Acts of 1967" or such other language as is acceptable to Purchaser;
- b. Execute and deliver to Purchaser documents or instruments terminating, releasing, waiving or otherwise resolving the Right of First Refusal of Paul J. Kinsey and Jill M. Kinsey, husband and wife, to be recorded at the Washtenaw County Register of Deeds;
- c. Execute and deliver to Purchaser a closing statement itemizing the Purchase Price, Initial Deposit, prorations and other adjustments, and other amounts (e.g. deposits, rents, closing costs, escrow fees, recording fees, etc);
- d. Execute and deliver to Purchaser a Non-Foreign Persons Affidavit;
- e. Execute and deliver to Purchaser such other documents or instruments as may be required under this Agreement, or as otherwise required in Purchaser's reasonable opinion to effectuate the Closing.

12. **Purchaser's Obligations at Closing.** Subject to the terms, conditions, and provisions hereof, and contemporaneously with the performance by Seller of its obligations under this Agreement, Purchaser shall:

- a. Pay Seller the Purchase Price – balance less Initial Deposit and prorations and adjustments;
- b. Execute and deliver to Seller a closing statement itemizing the Purchase Price and provide for the Purchaser's payment of all obligations provided herein including prorations and adjustments and other costs;

- c. A resolution of the Ann Arbor City Council authorizing purchase of the Property; and
- d. Execute and deliver to Seller such other documents or instruments as may be required under this Agreement or as otherwise required in Seller's reasonable opinion to effectuate the Closing.

13. **Possession**. Seller shall deliver exclusive possession of the Property to Purchaser at Closing, subject only to the Permitted Exceptions.

14. **Representations and Warranties of Seller**. Seller represents and warrants to Purchaser as follows:

- a. To the best of Seller's knowledge, there is no pending litigation affecting all or any part of the Property, or Seller's interest in it.
- b. To the best of Seller's knowledge, there are no uncorrected violations of any building codes and regulations, health codes, or zoning ordinances affecting the Property or the use or enjoyment of it.
- c. Preliminary title work indicates that the Estate of Mary Walsh Smith is the vested owner of the property and that no deed to the Mary Charmaine Walsh Smith Trust Agreement dated April 16, 1992 was recorded. To the best of Seller's knowledge, there are no other undisclosed or latent defects affecting the Property.
- d. Right of First Refusal in favor of Paul J. Kinsey and Jill M, Kinsey, husband and wife, whose address is 1722 West Liberty, Ann Arbor, MI 48103, and their successors and assigns. To the best of Seller's knowledge, there are no additional unrecorded interests of any person(s) or entity(ies) in and to the Property whatsoever (including, but not limited to, easements, profits, and licenses).
- e. To the best of Seller's knowledge, there are no easements, either above the surface, at grade, or subsurface, other than utility easements of record, that would affect or interfere with Purchaser's use and enjoyment of the Property, as determined by Purchaser.
- f. To the best of Seller's knowledge, there are no underground storage tanks or hazardous or toxic substances existing on, under, or above the Property as defined in any federal, state, or local law, regulation, rule, statute, or directive, nor is there any asbestos or urea formaldehyde foam insulation installed in or on the Property.
- g. Seller holds all possible division rights to the Property and will transfer all such division rights to Purchaser with the Deed.

- h. Seller is not a foreign person or entity under the Foreign Investment in Real Property Tax Act of 1980, as amended, and no taxes or withholding under such act shall be assessed against or imposed upon Purchaser in connection with the transaction contemplated by this Agreement.
- i. If, prior to Closing, Purchaser receives written notice from Seller or from any other source that any material representation or warranty of Seller is untrue and which cannot be remedied or Purchaser becomes aware that any representation or warranty of Seller is untrue, Purchaser shall be entitled to terminate this Agreement by written notice delivered to Seller on or before the Closing, in which event the Deposit shall be refunded to Purchaser, and except for the terms and provisions of this Agreement which specifically survive the termination of this Agreement, the parties shall have no further obligations hereunder. If Purchaser is so advised and Purchaser fails to terminate this Agreement within such period, Purchaser shall be deemed to have waived the breach of such representation or warranty and shall have no further right to terminate this Agreement as a result of the breach of such representation or warranty. Seller does not, by this Agreement, represent or warrant that there will be no changes in any of the matters referred to in Seller's representations or warranties after the date same are made through the acts and/or omissions of persons other than Seller, and shall have no liability or responsibility in the event that any representation or warranty becomes false or misleading as a result of any change in circumstances due to the acts and/or omissions of persons other than Seller after the date such representations or warranties are made.
- j. All of Seller's representations, warranties, and agreements in this Agreement will be true and correct in all material respects as of the date of this Agreement and on the Closing Date, which Seller will certify to at Closing. Seller will not have on the Closing Date failed to meet, comply with, or perform any condition or agreement on its part to be performed under the terms and conditions of this Agreement.

These representations and warranties will survive closing of this transaction and will not be deemed merged into the Deed.

15. **Covenants of Seller.**

- a. Seller will not, without Purchaser's written consent, transfer any of the Property, create any lien or encumbrance on the Property, grant any easements or rights of way, or enter into any contract which is not cancelable as of the Closing Date.
- b. From and after the Effective Date until the date of Closing, Seller shall promptly give Purchaser written notice of any change in the status of title to the Property of which it becomes aware, which either changes the nature

of any Permitted Encumbrance or represents an additional encumbrance on the Property.

16. **Further Assurances.** Seller and Purchaser agree to perform such other acts, and to execute, acknowledge, and/or deliver subsequent to the Closing such other instruments, documents and other materials as Seller or Purchaser may reasonably request to effectuate the consummation of the transactions contemplated herein and to vest title to the Property in Purchaser.

17. **Broker.** Seller has retained the following as seller's broker:

Elizabeth Martin
Howard Hanna Real Estate Services
1898 W Stadium Blvd
Ann Arbor, MI 48103

In the event any broker commission is claimed or due, Seller shall be responsible to pay any and all broker commissions.

18. **AS-IS Sale.** Except as expressly set forth in this Agreement to the contrary or in the closing documents to be executed and delivered by Seller to Purchaser at Closing, the Property will be conveyed to Purchaser in its AS-IS, WHERE-IS, WITH ALL FAULTS conditions and without any further representation or warranty by Seller or any agent, representative of Seller.

19. **Default by Seller.** In the event that Seller should fail to consummate the transactions contemplated by this Agreement for any reason, excepting Purchaser's default or the failure of any of the conditions to Seller's obligations hereunder to be satisfied or waived, Purchaser may terminate this Agreement by giving prompt written notice thereof to Seller, or specifically enforce this Agreement, provided any action to specifically enforce this agreement by Purchaser must be filed and served on Seller within thirty (30) days of Seller's default and if not timely filed and served, Purchaser shall be deemed to have waived its right to sue for specific performance.

20. **Default by Purchaser.** In the event Purchaser should fail to consummate the transaction contemplated herein for any reason, except default by Seller or the failure of any of the conditions to Purchaser's obligations hereunder to be satisfied or waived, Seller may retain the Deposit and terminate this Agreement by giving prompt written notice thereof to Purchaser, or specifically enforce this Agreement.

21. **Risk of Loss.** Seller and Purchaser agree that the Michigan Uniform Vendor and Purchaser Risk Act (MCLA § 565.701, et seq.) shall be applicable to this Agreement, except that Purchaser shall have the sole uncontrolled discretion to determine and define what constitutes "material" damage or destruction.

22. **Assignment.** Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any Party without the prior written consent of the other Party.

23. **Notices.** All notices required or permitted under this Agreement must be in writing and reference this Agreement and will be deemed given (1) when delivered personally; (2) when sent by confirmed facsimile or e-mail with delivery receipt received; (3) five (5) days aft having been sent by registered or certified mail, restricted delivery, return receipt requested, postage prepaid; or (4) one (1) day after deposit for overnight delivery with a commercial overnight carrier, with written verification of receipt. All communications will be sent to the following addresses or another address designated in writing by Seller or Purchaser:

<p>To Seller:</p> <p>Leslie Charmaine Smith Nyckel, Trustee of the Mary Charmaine Walsh Smith Trust Agreement dated April 16, 1992 451 Hidden Meadow Ln. Summerville, SC 29486</p> <p>With a copy to:</p>	<p>To Purchaser:</p> <p>City of Ann Arbor Attn: Public Services – Craig Hupy 301 E. Huron Street, 6th Floor Ann Arbor, MI 48104 chupy@a2gov.org</p> <p>With a copy to:</p> <p>City of Ann Arbor Attn: City Attorney’s Office - Timothy S. Wilhelm 301 E. Huron Street, 6th Floor Ann Arbor, MI 48104 twilhelm@a2gov.org</p>
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24. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the Seller and Purchaser and their respective heirs, successors and assigns.

25. **Headings and Grammar.** Whenever words herein are used in the masculine, they shall be read in the feminine or neuter whenever they would so apply and vice versa, words in this Agreement that are singular shall be read as plural whenever the latter would so apply and vice versa. The headings contained herein are for the convenience of the parties and are not to be used in construing the provisions of this Agreement.

26. **Entire Agreement.** This Agreement represents the entire agreement between Seller and Purchaser with respect to the subject matter hereof, and all prior agreements between Seller and Purchaser with respect to such subject matter shall have no further force or effect, including, without limitation, any proposal letters.

27. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Michigan, without giving effect to principals of conflicts of law.

28. **Modification.** This Agreement, including any dates or time periods, may only be modified or otherwise amended by a written instrument executed by duly authorized representatives of Seller and Purchaser.

29. **Time of Essence.** Time is of the essence of this Agreement. In the event this Agreement is not accepted by Seller on or before the Expiration Date of the Offer, and a copy thereof delivered to Purchaser, then this Agreement shall be null and void, and all offers set forth herein shall be deemed withdrawn.

30. **Electronic Transaction/Signatures.** The parties agree that signatures on this Agreement may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this Agreement. This Agreement may be executed and delivered by facsimile and upon such delivery, the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

31. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of Purchase, effective as of the Effective Date.

<p>SELLER Mary Charmaine Walsh Smith Trust Agreement dated April 16, 1992</p> <p>_____</p> <p>By: Leslie Charmaine Smith Nyckel, Trustee</p> <p>Date: _____</p>	<p>PURCHASER City of Ann Arbor</p> <p>By _____ Christopher Taylor, Mayor</p> <p>By _____ Jacqueline Beaudry, City Clerk</p> <p>This ___ day of _____, 20___</p> <p>Approved as to substance</p> <p>By _____ Milton Dohoney Jr., Interim City Administrator</p> <p>_____</p> <p>Craig Hupy, Public Services Area Administrator</p>
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	<p>Approved as to form and content</p> <hr/> <p>Stephen K. Postema, City Attorney</p>
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EXHIBIT A

The South 7 1/2 feet of Lot 21 EXCEPT the East 132 feet and Lot 22 EXCEPT the East 132 feet, Thompson Spoor and Thompson Addition Subdivision, according to the recorded Plat thereof, as recorded in Liber 48 of Plat(s), Page 83, Washtenaw County Records, located in the City of Ann Arbor, County of Washtenaw, State of Michigan.