

RESIDENTIAL REAL ESTATE SALE CONTRACT

THIS RESIDENTIAL REAL ESTATE SALE CONTRACT (this “**Contract**”) is made as of the Effective Date (as defined herein) by and between:

BUYER: ODL, LLC, a Kansas limited liability company, or assigns (“**Buyer**”); and

SELLER: Bradley Zimmerman (“**Seller**”).

The “**Effective Date**” of this Contract will be the date this Contract is fully executed by the last of Buyer and Seller to sign.

1. PROPERTY. BUYER agrees to purchase, and SELLER agrees to sell, the real property commonly known as:

1. 234 N Chestnut Street, Olathe, Johnson County, Kansas 66061;

Street Address

0460972604034003000;

Parcel ID

as legally described on Exhibit A, together with all improvements of any kind thereon, and all surface, subsurface, and mineral rights, and any appurtenant easements and rights of parking and access (collectively, the “**Property**”).

2. 211 E Poplar Street, Olathe, Johnson County, Kansas 66061;

Street Address

0460972604034002000;

Parcel ID

as legally described on Exhibit A, together with all improvements of any kind thereon, and all surface, subsurface, and mineral rights, and any appurtenant easements and rights of parking and access (collectively, the “**Property**”).

3. N/A (234 N Chestnut Street), Olathe, Johnson County, Kansas 66061;

Street Address

0460972604034004000;

Parcel ID

as legally described on Exhibit A, together with all improvements of any kind thereon, and all surface, subsurface, and mineral rights, and any appurtenant easements and rights of parking and access (collectively, the “**Property**”).

2. PURCHASE PRICE. The “**Purchase Price**” for the Property, which shall be net of all selling costs, is subject to the terms of the pricing schedule below., which Buyer agrees to pay as follows:

- **\$900,000 – Close on September 13th, 2021**
- **\$1,000,000 – Close on July 5th, 2021**
- **\$1,100,000 – Close on May 3rd, 2021**

If Closing occurs on July 5th, 2021 or May 3rd 2021 then proceeds above \$900,000 will be paid to Chestnut Fine Arts Center, INC. For clarity, the option to move the Closing Date, is at the sole discretion of the Buyer, but Closing must occur on one of the dates listed above. The Seller is receiving a higher Purchase Price in consideration of earlier Closing Dates.

In addition to the Purchase Price at Closing, the Seller will provide Buyer with \$3,000 for moving expenses, which shall not be applicable to the Purchase Price.

- a. **Earnest Money** in the amount of Ten Thousand Dollars (\$10,000) (the "**Deposit**"), in the form of a check payable to, and to be deposited with, with Chicago Title Insurance Company (the "**Title Company**"), 6700 College Blvd, Suite 300, Overland Park, KS 66211, within (5) days following the Effective Date. The Deposit will be refundable, except in the event of Seller default, up until the start of construction on the subject project located on the Contract Properties when it will become non-refundable. The Deposit shall be applicable to the Purchase Price at Closing.
 - b. In addition to the Earnest Money, Seller shall be paid \$3,000 ("**Non-Refundable Deposit**") within 5 business days of full execution of the Real Estate Sales Contract which shall be non-refundable and not applicable to the purchase price.
3. **CLOSING.** The "**Closing**" will occur upon the dates set forth in Section 2. Closing will take place at the Title Company's office in Overland Park, Kansas, or at such other location designated by Buyer.
4. **DUE DILIGENCE AND TERMINATION.** Seller acknowledges that the Property is part of an assemblage of multiple properties generally located between the east/west boundaries of N. Chestnut Street and N. Water Street, and the north/south boundaries as East Poplar and W Santa Fe (collectively, the "**Contract Properties**").
 - a. **Due Diligence Period.** Buyer will have a period of up until one year following the Effective Date of this Contract (the "**Due Diligence Period**"), to conduct such due diligence activities and inspections, pursue such governmental approvals, and conduct such other activities as Buyer deems appropriate.
 - b. **Due Diligence Period Extension.** Buyer will have the right to extend the Due Diligence Period for an additional six (6) month period by providing written notice to Seller at any time prior to expiration of the original Due Diligence Period.
 - c. **Termination.** At any time prior to expiration of the Due Diligence Period (as the same may be extended pursuant to the preceding sentence), Buyer may terminate this Contract for any reason or for no reason by providing written notice to Seller, in which event this Contract will automatically terminate and the \$10,000 Deposit will immediately be returned to Buyer, except in the event the Deposit has become non-refundable due to the start of construction. The Non-Refundable Deposit shall only be refundable in the event of Seller Default. The Seller does not have a right to terminate, absent material breach of this Contract by the Buyer.
5. **TITLE.** Buyer may at its option procure a commitment from the Title Company setting forth the basis upon which the Title Company is willing to insure fee simple title to the Property in Buyer as of the Closing (the "**Title Commitment**"), subject only to those exceptions stated therein (the "**Permitted Exceptions**").
6. **INSPECTIONS.** Seller hereby grants to Buyer, and its contractors, agents and assigns, a non-exclusive right and license to enter the Property, commencing on the Effective Date and continuing until Closing or the earlier termination of this Contract, for purposes of conducting review and planning activities, including, without limitation, site reviewing, engineering, surveying, environmental audits, inspections, photographing, rock borings, soil tests, and utility locating. Buyer will indemnify and hold Seller harmless from and against any damage caused to the Property by Buyer or its agents or contractors, or any loss, damage or injury to any person or property, or any injury to Buyer or any of its agents or contractors, to the extent arising from or in connection with the rights granted pursuant to this Section 6.
7. **CLOSING DOCUMENTS AND PRORATIONS.** Seller will deliver the following documents to Buyer at Closing, in a form acceptable to Buyer and the Title Company: (a) a General Warranty Deed properly executed by Seller and conveying the Property to Buyer free and clear of all liens and encumbrances except for the Permitted Exceptions; and (b) such other evidence or documents requested by Buyer or the Title Company to consummate

the Closing including, without limitation, an affidavit stating that Seller has sole and exclusive possession of the Property and stating such other matters as reasonably requested by Buyer or the Title Company. Buyer will be responsible for all Closing Costs, including : (i) the closing costs of the Title Company; (ii) charges for the Title Commitment (as defined below), title insurance and any special endorsements, if any; (iii) costs of the preparation of any conveyance documents or Buyer-requested documents pursuant to this Contract; and (iv) any documentary transfer taxes, sales taxes, stamp or similar taxes and fees, and all recording costs. All real property taxes and assessments, utilities, homeowners' association fees or similar dues, Agreements (as hereinafter defined) and other rights and obligations of the Property commonly prorated upon the sale of real property, will be prorated as of the date of Closing, on the basis of a 365-day year, with Buyer responsible for the date of the Closing. If any required prorations cannot be calculated accurately on the date of Closing, then the same will be reasonably estimated by the parties as of the date of Closing and such prorations will be final. Seller agrees to deliver possession of the Property to Buyer at Closing, vacant and free and clear of all leases, tenancies, licenses and any and all other rights (or claims of rights) of Seller or third parties to possess or use all or any portion of the Property, except for the Permitted Exceptions (as defined below). All items remaining in or upon the Property following Closing will become the property of Buyer.

8. **REPRESENTATIONS AND WARRANTIES.** Seller represents and warrants that: (a) Seller has the legal capacity and authority to execute and deliver this Contract and all instruments to consummate the Closing of the sale of the Property; (b) there are no causes of action, suits or judgments against Seller or the Property; (c) there are no leases, contracts, agreements or obligations of Seller for and with respect to the Property or any portion thereof (collectively, the **"Agreements"**) which have not been disclosed to Buyer in writing, and which are or may become a lien against the Property or an obligation of Buyer upon Closing; and (d) to the best of Seller's knowledge, Seller has received no written notices of any hazardous substances upon the Property. Further, Seller agrees and represents that Seller will cooperate with Buyer in connection with Buyer's due diligence activities, including, without limitation, authorizing the submittal and approval of, and executing if requested by Buyer, any zoning, planning, and platting applications, and applications or petitions in connection with any development incentives sought by Buyer in connection with the Property; provided, however, no such changes in zoning and other entitlements for the property shall impact Sellers existing business operations. ***The Seller makes no Representations and Warranties in regard to the condition of the buildings on the Property, including but not limited to, the structural integrity of the buildings, the absence of hazardous materials in the buildings or the condition of the fixtures attached to the buildings. The Seller is delivering the Property As-Is.***

9. ***Seller shall be allowed to sell any fixtures on or in the Subject Property prior to Closing.***

10. **BREACH AT OR PRIOR TO CLOSING.** If Seller has performed all of its obligations under this Contract, and Buyer breaches its obligations hereunder, then Seller's sole remedy hereunder will be to terminate this Contract and receive the Deposit and an amount up to \$200,000 as total liquidated damages (due to the difficult and inconvenience of measuring actual damages and the fact that the Deposit represents as fair an approximation of actual damages as the parties can now determine) in full satisfaction of Buyer's obligations hereunder. If Buyer has performed all of its obligations under this Contract, and Seller breaches its obligations hereunder, then Buyer may: (a) seek specific performance of the terms of this Contract, (b) receive from Seller reimbursement of any and all of Buyer's actual costs incurred in connection with the Property, this Contract and the transactions contemplated hereby, including attorneys' fees; (c) terminate this Contract, and in either case, the entire Deposit and Non-Refundable Deposit will be immediately returned to Buyer. In the event legal action is instituted by any of the parties to enforce the terms of this Contract or otherwise arising out of this Contract, the prevailing party will be entitled to recover, in addition to all other remedies or damages provided for hereunder, reasonable attorneys' fees and court costs incurred by the prevailing party in such action. The Seller acknowledges that in

the event of Seller breach, the Buyer may seek all remedies listed above, Buyer is not limited to any one of the remedies individually.

- 11. NOTICES.** All notices given under this Contract will be in writing, and will be deemed made when delivered in person, or when sent by certified mail, postage prepaid, return receipt requested, or by Federal Express or other nationally recognized overnight delivery service, and addressed as follows: (a) if intended for Seller, the notice will be sent to Seller's attention to Seller's Address for Notices identified on the signature page to this Contract (or if left blank, then to the Property address); (b) and if intended for Buyer, the notice will be sent to ODL, LLC, 4705 Central Street, Kansas City, MO 64112, with a copy to Polsinelli, PC, Attn: Korb Maxwell, 900 W. 48th Place, Suite 900, Kansas City, MO 64112. Any party may change its address for the purpose of receiving notices by delivering written notice to the other party in the manner set forth above.
- 12. LEGAL HOLIDAYS AND BUSINESS DAYS.** If any date set forth herein for the performance of any obligation by Seller or Buyer, or for the delivery of any instrument or notice as provided here, should be on a Saturday, Sunday or legal holiday, the compliance with such obligation or delivery will be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday.
- 13. PARTIAL INVALIDITY.** If any provision(s) of this Contract or the application thereof to any part or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Contract will not be affected thereby and each provision of this Contract will be valid and enforceable to the fullest extent permitted by law.
- 14. COMMISSIONS AND CONSULTING FEES.** Except for LANE4 Property Group, each party represents and warrants to the other that they have not dealt with any broker or other individual or entity claiming a commission in connection with this transaction, and each party will indemnify and hold the other harmless from and against any breach of such warranty.
- 15. MISCELLANEOUS.** The parties agree that time is of the essence of this Contract, and that this Contract: (i) will inure to the benefit of and bind the parties hereto and their respective successors and assigns; (ii) may be freely assigned by Buyer without Seller's consent; (iii) will be governed by the laws of the State of Kansas; (iv) supersedes any letter of intent or prior agreement or understanding between Seller and Buyer, and constitutes the entire agreement between Seller and Buyer relating to the subject matter hereof; and (v) will not be modified or amended other than by a written instrument executed by both of the parties hereto.
- 16. CONFIDENTIALITY.** Buyer and Seller agrees to keep the existence and terms of this Contract confidential and not to disclose such information to any third party without Buyer's prior written consent. Any breach by Seller of this Section 15 will be deemed to be a default of this Contract subject to Buyer's rights and remedies hereunder, and any other rights and remedies at law or in equity to which Buyer may be entitled. Buyer shall make reasonable efforts to inform Seller of any public announcements.
- 17. WAIVER OF JURY TRIAL; VENUE; JURISDICTION.** BUYER AND SELLER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, COUNTERCLAIM OR DEFENSE BASED ON THIS CONTRACT, OR ARISING OUT OF, UNDER OR IN ANY WAY CONNECTION WITH THIS CONTRACT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS CONTRACT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BUYER AND SELLER ENTERING INTO THIS CONTRACT. THE PARTIES STIPULATE AND AGREE THAT THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS,

WILL BE THE SOLE AND EXCLUSIVE VENUE FOR ANY LAWSUIT PERTAINING TO THIS CONTRACT AND CONSENT TO PERSONAL JURISDICTION IN SAID COURT IN THE EVENT OF ANY SUCH LAWSUIT.

- 18. SURVIVAL.** Except as otherwise herein expressly provided, all the promises, representations, warranties and undertakings expressed in this Contract will be deemed made on and as of the Closing, as well as the Effective Date, and will survive consummation of this Contract and delivery of the Deed to the Property for a period of six (6) months following the Closing date.
- 19. COUNTERPARTS.** This Contract may be executed in several counterparts, each of which will be deemed an original, and all of such together will constitute the same Contract. Signatures transmitted by electronic mail in portable document format (PDF) or similar format are also permitted as binding signatures to this Contract.
- 20. CONSTRUCTION:** Buyer will provide reasonable efforts to maintain Sellers access and business operations during construction.

IN WITNESS WHEREOF, Seller and Buyer have caused this Contract to be duly executed as of the Effective Date.

SELLER:

Signature: Bradley Zimmerman

Print Name: BRADLEY Zimmerman

Date: 2/11/2020

Address for Notices: 234 N. Chestnut St.
Olathe, KS. 66061

Phone: 816-560-6734

Email: _____

BUYER

ODL, LLC, a Kansas limited liability company

Signature: Michael Berenbon

Print Name: MICHAEL BERENBON

Date: MANAGER 2/11/2020

EXHIBIT A

1. OLATHE ALL LT 6 & N 82.5' LTS 7 THRU 9 BLK 34 OLC 675
2. OLATHE LTS 4 & 5 BLK 34 OLC 673
3. OLATHE S 46' LTS 7 8 & 9 BLK 34 OLC 678

