

**CLEVELAND PUBLIC LIBRARY**

**Finance Committee**

March 14, 2023

**RESOLUTION AUTHORIZING ACQUISITION OF PROPERTY UNDER LOUIS STOKES  
WING BUILDING**

- WHEREAS, On November 17, 2016, the Board of Library Trustees authorized the Library to enter into agreements with the various owners of a narrow strip of land underneath the Louis Stokes Wing, which the Library had been renting since 1957 (the "Property"), to acquire ownership of their real property interests through donation and to buy out the remainder of their respective interests in the lease; and
- WHEREAS, The process of acquiring the Property has taken longer than initially expected as some of the property's owners have passed away, resulting in their interests being divided among trust beneficiaries and heirs; and
- WHEREAS, To date, the Library has acquired ownership of a thirty-nine fortieths (39/40) fractional interest in the Property through the generous donations of the property's many owners and is in discussions with the owners of the final one fortieth (1/40) interest; and
- WHEREAS, The final one fortieth (1/40) interest is owned by seven separate individuals and must go through the probate process before it can be donated to the Library; and
- WHEREAS, As a gesture of good faith in light of the legal fees incurred to donate their one fortieth (1/40) interest in the Property to the Library, the Library has offered to reimburse up to \$7,500 of their legal fees upon the closing of the transfer as described in the Release of Lease Obligations and Property Donation Agreement, which is attached to this Resolution as Exhibit "A"; and
- WHEREAS, Ohio Revised Code Section 3375.35 requires that the purchase of any real property be authorized by a two-thirds vote of the full membership of the library board making such purchase; now therefore be it
- RESOLVED, That the Board of Trustees of the Cleveland Public Library, by a two-thirds vote of the full membership, authorizes the Executive Director, CEO, or his designee to enter into an agreement in substantially the form attached to this Resolution as Exhibit "A" with the owners of the remaining one fortieth (1/40) interest to accept donation of their fractional interest in the Property and to reimburse up to \$7,500 of their legal fees incurred in transferring the Property to the Library and to incur such other expenses and execute such other instruments or agreements as may be necessary in order to facilitate the transfer of the Property to the Library, which expenditures shall be charged to the General Fund Account 11020057-57500 (Refunds/Reimbursements), and which agreements and instruments shall be subject to the approval of the Director of Legal Affairs.

## **RELEASE OF LEASE OBLIGATIONS AND PROPERTY DONATION AGREEMENT**

This Release of Lease Obligation and Property Donation Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, (the “Effective Date”) by and between Daryl Dunn (“Donor”), and the Board of Trustees of the Cleveland Public Library, a body politic and corporate whose principal place of business is located at 325 Superior Avenue, Cleveland, Ohio 44114 (“Donee”) (collectively, the “Parties”).

### **RECITALS**

**WHEREAS**, Donor is authorized to act on behalf of the fractional owners in fee simple, which owners are identified by name and fractional interest on Exhibit “A” attached hereto and incorporated by reference herein (the “Owners”), of a 1/40 interest in a twenty foot wide strip of land with permanent parcel number 101-05-006 (the “Property”), which is more fully described in the Quit-Claim Deed (the “Deed”) which is attached hereto and incorporated by reference herein as Exhibit “B”;

**WHEREAS**, the Owners own their respective fractional interests in the Property as heirs and/or devisees of Louise B. Boyd;

**WHEREAS**, one of the Owners, Rowan Boyd, has not yet achieved the age of majority as of the Effective Date and therefore lacks legal capacity to convey his 1/16<sup>th</sup> of 1/40<sup>th</sup> fractional interest in the Property (“Rowan’s Interest”) to Donee;

**WHEREAS**, the Owners also collectively own a 1/40 interest in a ninety-nine (99) year lease of the Property which expired in 2018 (the “Lease”) and which is attached hereto and incorporated by reference herein as Exhibit “C”;

**WHEREAS**, Donee is currently a tenant at sufferance following the expiration of the Lease in 2018;

**WHEREAS**, Donee has been a tenant under the Lease since the Lease was assigned to Donee’s predecessor in interest, the Cleveland City School District Public Library, in 1957. Under the assignment, Donee pays a total of Six Thousand Four Hundred Dollars (\$6,400.00) in rent per annum to lease the Property. Of the total rent, Donee pays \$160.00 to Donor annually. A copy of the Lease Assignment is attached hereto and incorporated by reference herein as Exhibit “D”;

**WHEREAS**, the Property lies directly underneath a portion of Donee’s main downtown branch known as the Louis Stokes Wing;

**WHEREAS**, on behalf of the Owners, Donor desires to release Donee from any and all obligations under the Lease in exchange for One Dollar (\$1.00) from Donee; and

**WHEREAS**, the Owners, acting through Donor, desire to donate to Donee, and Donee desires to accept as a donation the Owners' interest in the Property pursuant to the terms and conditions set forth in this Agreement.

**NOW THEREFORE**, for and in consideration of the mutual promises contained in this Agreement, and acknowledging the foregoing RECITALS to be true, Donor and Donee agree as follows:

**Section 1. Release of Obligations Under Lease.**

- 1.1. **Release by Donor.** In consideration for the payment of One Dollar (\$1.00) by Donee, which payment shall be paid on the Closing Date as defined in Section 5.1 through the Escrow Agent as defined in Section 4.1, and having been expressly authorized by the Owners, Donor shall forever release and discharge Donee from any and all obligations under the Lease, and from any and all claims, demands, or causes of action against Donee, its successors and assigns, arising under the Lease. Donor acknowledges and agrees that Donor's release shall be binding on the Owners and Donor's assigns, successors, heirs, legatees, and personal representatives.
- 1.2. **Release by Donee.** Upon receipt by Donor of the consideration described in Section 1.1 above, Donee shall forever release and discharge Donor and the Owners from any and all claims, demands, or causes of action against Donor and/or the Owners, and their respective successors and assigns, heirs, legatees, and personal representatives, arising under the Lease. Donee acknowledges and agrees that Donee's release shall be binding on Donee's assigns and successors.

**Section 2. Donation of the Property.**

- 2.1. **Donation and Acceptance.** Donor shall donate, convey, and transfer, and Donor shall cause to be donated, conveyed and transferred to Donee, and Donee shall receive and accept from Donor and the Owners, all of Donor's and the Owners' right, title, and interest in the Property.
- 2.2. **Donative Intent.** Donor acknowledges that Donor and the Owners intend the transfer of Donor's and the Owners' interests in the Property to Donee to be a charitable gift for the benefit of Donee.
- 2.3. **Consideration for Donation.** Notwithstanding Section 2.2 above, the above-described transfer shall be supported by consideration in the amount One Dollar (\$1.00) and the mutual releases and promises set forth in this Agreement.

Section 3. **Title Commitment.** Donee, at Donee's sole cost and expense, shall cause the Title Company as defined in Section 4.1 below to issue and deliver to Donee a title insurance policy, insuring in Donee the Owners' previous 1/40<sup>th</sup> interest in the Property (excepting therefrom Rowan's Interest) and in an amount reasonably required by Donee (the "Title Policy"). Donee shall notify Donor and Escrow Agent as defined in Section 4.1 below of any exceptions to title that are disclosed in the title commitment and that are objectionable to Donee ("Unpermitted Exceptions"), provided that Donee agrees to accept the following exceptions to title ("Permitted Exceptions"):

- 3.1. Public highways, roads, and streets;
- 3.2. Zoning and building laws, ordinances, and regulations, including building set-back lines; and
- 3.3. Such other matters of title which are acceptable to Donee in its sole discretion and approved in writing by Donee prior to Closing.

In the event that Donee notifies Donor of any Unpermitted Exceptions, Donor shall have a period of thirty (30) days thereafter to cure or remove the Unpermitted Exceptions. Upon the expiration of such thirty (30) day period, Escrow Agent shall notify Donor and Donee as to whether or not the Title Company is then in a position to issue the Title Policy without showing the Unpermitted Exceptions as exceptions to title. If Escrow Agent notifies the Parties that the Title Company will not issue the Title Policy without Unpermitted Exceptions, then Donee, by notice delivered to Donor and Escrow Agent within fifteen (15) days after Donee's receipt of notice from Escrow Agent of the Title Company's refusal to issue the Title Policy, may in its sole discretion: (A) waive the Unpermitted Exceptions thus deeming them to constitute Permitted Exceptions; or (B) terminate this Agreement, as contemplated by Section 11.2 below.

Section 4. **Escrow.**

4.1. **Escrow Agent.** The Parties acknowledge and agree that that Ohio Real Title Agency, LLC (the "Title Company") will serve as escrow agent (the "Escrow Agent") according to the instructions contained in Section 4.3 below.

4.2. **Deposits to Escrow.**

4.2.1. **Deposits by Donor.** On or before the Closing Date as defined in Section 5.1 below, Donor shall deposit with Escrow Agent Donor's fully-executed Deed conveying to Donee the Owners' prior fractional interests in the

Property (excepting Rowan's Interest). Donor agrees to cause Rowan Boyd to convey Rowan's Interest to Donee by Quit-Claim Deed promptly after Rowan Boyd attains the legal capacity to do so.

4.2.2. **Deposits by Donee.** On or before the Closing Date as defined in Section 5.1 below, Donee shall deposit with Escrow Agent:

4.2.2.1. One Dollar (\$1.00) in consideration for Donor's release of claims against Donee arising under the Lease;

4.2.2.2. One Dollar (\$1.00) in consideration for Donor's donation of the Property;

4.2.2.3. A completed Statement of Reason for Exemption from Real Property Conveyance Fee form which is attached hereto and incorporated by reference herein as Exhibit "E" (the "Exemption Form"), showing the conveyance to be exempt pursuant to section (a) of the Exemption Form; and

4.2.2.4. Such funds related to reimbursement as required in Section 5.4.1 and other instruments in recordable form as reasonably may be required by Escrow Agent as a condition of closing.

4.2.3. **Executed Agreement.** Upon the execution of this Agreement, which the Parties shall execute in triplicate, the Parties shall cause one (1) fully-executed copy of this Agreement to be deposited with Escrow Agent.

4.3. **Actions by Escrow Agent.** On the Closing Date as defined in Section 5.1 below, if all the funds and documents set forth in Sections 4.2.1, 4.2.2, and 4.2.3 above have been delivered to Escrow Agent and if all other conditions to Donee's obligation to consummate the transaction contemplated by this Agreement have been satisfied or waived in writing by Donee, then Escrow Agent shall:

4.3.1. Cause the Deed to be filed for record in the Cuyahoga County, Ohio, Records;

4.3.2. Cause the issuance and delivery to Donee of the Title Policy;

4.3.3. Deliver to Donor One Dollar (\$1.00) in consideration for Donor's release of claims under the Lease; and One Dollar (\$1.00) in consideration for Donor's donation of the Property;

4.3.4. Charge the cost of recording any instruments required in order to clear title of all exceptions to title other than Permitted Exceptions to Donee; and

- 4.3.5. Charge the escrow fee, the cost of the title examination, the title insurance premium for the Title Policy, and all other sums properly chargeable against Donee as set forth in Section 5.4 and as customarily charged to Donee in accordance with common escrow practices in Cuyahoga County, except as otherwise specifically provided herein to the contrary, to Donee.
- 4.3.6. Deliver to Donor any funds as required in Section 5.4.1 and deposited with the Escrow Agent pursuant to Section 4.2.2.4 above.

4.4. **Escrow Agent's Actions in the Event of Termination.**

- 4.4.1. If this Agreement is terminated prior to the Closing Date as described in Section 11.1 below due to the default of one of the Parties, then Escrow Agent shall charge to the account of the defaulting Party the escrow fee, the cost of the title examination and title commitment, if completed, and all other sums properly chargeable by Escrow Agent. Escrow Agent shall also, after charging the defaulting Party as described above, return to the Parties all respective funds and documents.
- 4.4.2. If this Agreement is terminated prior to the Closing Date in accordance with Section 11.2 below due to any incurable or unwaived Unpermitted Exceptions to title, then Escrow Agent shall return to the Parties the respective funds and documents deposited by them, and the Parties shall be released from all obligations and liabilities otherwise thereafter accruing hereunder except that Donee shall pay to Escrow Agent its escrow fee, the cost, if any, of the title examination and Title Policy, and all other sums properly payable by Escrow Agent.

Section 5. **Closing and Possession.**

- 5.1. **Closing Date.** The transfer of title to the Property hereunder by the filing of the Deed for record (the "Closing") shall take place on a date agreed to by the Parties on or before \_\_\_\_\_, 2023 (the "Closing Date"), contingent upon the final satisfaction or waiver by Donee of all conditions to Donee's obligation to consummate the transaction as set forth herein. If all such conditions are not satisfied or waived by Donee at the Closing Date, then Donee, at Donee's sole discretion, may postpone the Closing Date until such time as all conditions are satisfied or waived.
- 5.2. **Location of Closing.** The Closing shall be held at such time and place in Cuyahoga County, Ohio as Donee may designate.

- 5.3. **Conditions to Closing.** In addition to the conditions provided elsewhere in this Agreement, the obligation of the Parties to consummate the transaction contemplated by this Agreement shall be subject to the satisfaction or waiver in writing by Donee of each of the following conditions on or before the Closing Date:
- 5.3.1. Title Company shall be in a position to issue to Donee, dated as of the time of Closing, the Title Policy; and
- 5.3.2. At least ten (10) days before the Closing Date, the Board of Trustees of the Cleveland Public Library shall have adopted a Resolution accepting conveyance of the Property and approving the terms of this Agreement.
- 5.4. **Closing Costs and Expenses.** At Closing, Donee shall pay:
- 5.4.1 Subject to submission of an invoice by the Donor, up to Seven Thousand Five Hundred Dollars (\$7,500) as reimbursement for Donor's legal fees incurred in connection with the transfer of the Owners' prior interests in the Property to Donor, obtaining Probate Court approval of the conveyance of the Property, and recording of the Deed and any and all other recorded instruments executed or delivered at Closing;
- 5.4.2 The title insurance fees, costs, and premiums as contemplated by Section 3 above; and
- 5.4.3 Any and all transfer fees and conveyance fees in connection with the sale of the Property.
- 5.5. **Possession and Closing.** Donor shall deliver to Donee possession of Donor's interest in the Property on the Closing Date.

Section 6. **Representations and Warranties.**

- 6.1. **Donor's Representations and Warranties.** Donor represents and warrants to Donee that, to the best of Donor's knowledge and information, the following statements are true on the Effective Date of this Agreement, will be true on the Closing Date, and shall survive the Closing:
- 6.1.1. Donor owns a  $\frac{1}{40}$  fee simple interest in the Property, excluding Rowan's Interest;
- 6.1.2. Donor owns a  $\frac{1}{40}$  interest in the Lease and its proceeds, excluding Rowan's Interest;

- 6.1.3. Donor has all power and authority legally necessary to enter into this Agreement, to execute and deliver all closing documents, to donate the Property in accordance with the terms and conditions of this Agreement, and to release and discharge Donee from any and all obligations and claims arising under the Lease;
  - 6.1.4. Donor has neither pledged nor mortgaged her interest in the Property;
  - 6.1.5. There is no current, threatened, proposed, or contemplated litigation, action, administrative proceeding or assessment (including, without limitation, eminent domain proceedings or public improvement assessments) against the Property or Donor which would adversely affect the Property or Donor's ability to perform her obligations under this Agreement or under any documents executed by Donor pursuant to this Agreement;
  - 6.1.6. Donor is not a "foreign person" under Internal Revenue Code Section 1445 and any related regulations;
  - 6.1.7. Donor has not received any written notice to the effect that any condemnation or involuntary rezoning proceedings are pending or threatened with respect to the Property;
  - 6.1.8. Donor has not received written notice of any violation of any laws affecting any portion of the Property issued by a governmental entity that remains uncured and, to the knowledge of Donor, has not violated in any material respect or failed to comply in any material respect with any laws; and
  - 6.1.9. There are no undisclosed legal or equitable interests in the Property arising out of any agreements to which Donor is a party and which are not of record, are not set forth in this Agreement, and could be binding upon Donee at or subsequent to Closing.
- 6.2. **Donee's Representations and Warranties.** Donee represents and warrants to Donor that, to the best of Donee's knowledge and information, the following statements are true on the Effective Date of this Agreement and will be true on the Closing Date:
- 6.2.1. Upon obtaining a resolution of the Board of Trustees of the Cleveland Public Library accepting conveyance of the Property and the terms of this Agreement, Donee and its representatives shall have all power and authority legally necessary to enter into and perform this Agreement; and



6.2.2. Donee knows of no action, suit, or proceeding, pending or threatened against Donee which, if determined against Donee, would adversely and materially affect Donee's ability to perform its obligations under this Agreement.

Section 7. **Notices and Communications.** All notices, consents, requests, demands and other communications required by this Agreement shall be in writing and shall be deemed to have been duly given to a Party five (5) business days after same shall have been sent by certified mail to the recipient at the address set forth below:

If to Donor, to:

Daryl Dunn  
104 Morningview Park Street  
Houston, TX 77024

With a copy to:

Bruce L. Waterhouse, Jr., Esq.  
Nicola, Gudbranson & Cooper, LLC  
Landmark Office Towers  
Republic Building – Suite 1400  
25 West Prospect Avenue  
Cleveland, Ohio 44115

If to Donee, to:

Felton Thomas, Jr.  
Executive Director, CEO  
Cleveland Public Library  
325 Superior Avenue  
Cleveland, Ohio 44114

With a copy to:

Bryan Szalewski, Esq.  
Director of Legal Affairs  
Cleveland Public Library  
325 Superior Avenue  
Cleveland, Ohio 44114

Section 8. **Deductibility.** Donor acknowledges that while Donee intends to cooperate with Donor in Donor's efforts to consummate the gift contemplated by this Agreement, Donee offers no advice or assurance that any tax deduction will be available to Donor.

Section 9. **No Real Estate Brokers.** Donor and Donee each represent and warrant to the other that no broker, finder, real estate agent, or other person has acted for such Party so as to entitle such broker, finder, agent, or other person to any commission in connection with the donation of the Property to Donee. If for any reason any such commission shall become due, then the Party dealing with such broker, finder, agent, or other person shall pay any such commission.

Section 10. **Claims and Liabilities to Property.** Donor agrees that, immediately following the execution of this Agreement, Donor shall not pledge, mortgage, encumber, or in any way cause the Property to be subject to any claims or liabilities. If Donor in any way causes the Property to be subject to any claim or liability prior to Closing then Donor shall promptly notify Donee. Any such claim or liability existing at Closing shall be considered an Unpermitted Exception as defined in Section 3 above.

Section 11. **Termination.**

11.1. **Termination for Default.** Either Party may, by written notice to the other Party, terminate this Agreement on the basis of the other Party's default of any obligation hereunder if such default remains uncured for a period of thirty (30) days following written notice of the default.

11.2. **Termination for Incurable Unpermitted Exceptions.** Donee may, in its sole discretion and by written notice to Donor, terminate this Agreement in the event that Donor is unable to cure any Unpermitted Exception as defined in Section 3 above or Donee is unwilling to waive any Unpermitted Exception.

Section 12. **Miscellaneous.**

12.1. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, personal representatives, successors, and assigns.

12.2. **Choice of Law.** This Agreement shall be construed, governed, and enforced in accordance with the laws of the State of Ohio.

12.3. **Waiver.** No failure on the part of either Party to exercise and no delay in exercising any right, power, or privilege hereunder operates as a waiver thereof; nor does any

single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof; or the exercise of any other right, power, or privilege.

- 12.4 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes any and all prior agreements, proposals, letters of intent, understandings, negotiations, and discussions of the Parties, whether oral or written, relating to the subject matter hereof, and shall be binding on the Parties' respective successors and permitted assigns.
- 12.5. **Amendments.** Any modifications of this Agreement shall be made only in writing, signed by the duly authorized representatives of both Parties, and a copy shall be attached to the original Agreement.
- 12.6. **Severability of Provisions.** If any part of this Agreement is found by a court of competent jurisdiction or other competent authority, to be invalid, unlawful, or unenforceable, then such part shall be severed from the remainder of this Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 12.7. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall be deemed to have been executed and delivered by either party upon that party's delivery of a digital image hereof signed by the party attached to an e-mail received by the other party, with the same effect as delivery of a signed original.
- 12.8. **Exhibits.** The following exhibits are attached to this Agreement and incorporated herein by reference:
- 12.8.1. Exhibit "A"—The Owners;
  - 12.8.2. Exhibit "B"— The Deed;
  - 12.8.3. Exhibit "C"— The 1919 Lease;
  - 12.8.4. Exhibit "D"— The 1957 Lease Assignment; and
  - 12.8.5. Exhibit "E"—The Exemption Form.

*[Signature page follows.]*

*[Signature page for Release of Lease Obligations and Property Donation Agreement.]*

**IN WITNESS WHEREOF**, Donor and Donee have executed this Agreement as of the Effective Date.

DONEE:                   BOARD OF TRUSTEES OF THE  
                                  CLEVELAND PUBLIC LIBRARY

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Felton Thomas, Jr.  
Executive Director, CEO

DONOR:

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Daryl Dunn

**Exhibit A**  
**The Owners**

Daryl Dunn	$1/4^{\text{th}}$ of $1/40^{\text{th}}$
David R. Boyd	$1/4^{\text{th}}$ of $1/40^{\text{th}}$
Christopher G. Boyd	$1/4^{\text{th}}$ of $1/40^{\text{th}}$
Hannah L. Losey	$1/16^{\text{th}}$ of $1/40^{\text{th}}$
Rhys Dunn	$1/16^{\text{th}}$ of $1/40^{\text{th}}$
Rebecca B. Dunn	$1/16^{\text{th}}$ of $1/40^{\text{th}}$
Rowan Boyd	$1/16^{\text{th}}$ of $1/40^{\text{th}}$

**Exhibit B**  
**The Deed**

**Exhibit C**  
**The 1919 Lease**

**Exhibit D**  
**The 1957 Lease Assignment**



**Exhibit E**  
**The Exemption Form**