

EMERGENCY

City of Cincinnati

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An Ordinance No. _____

- 2021

AUTHORIZING the City Manager to execute a *Property Sale and Development Agreement* with 6121-23 Madison Rd. Opportunity Fund, LLC, for the sale of City-owned real property located at 6007 Madison Road in the Madisonville neighborhood of Cincinnati, to be consolidated with the purchaser's own property and redeveloped as a mixed-use development; **ESTABLISHING** new capital improvement program project account no. 980x162x221641, "DCED Property Improvements," for the purpose of providing resources for permanent improvements to vacant buildings and properties controlled or previously controlled by the Department of Community and Economic Development; and further, **DECLARING** expenditures from capital improvement program project account no. 980x162x221641, "DCED Property Improvements," to be for a public purpose.

WHEREAS, the City owns certain real property located at 6007 Madison Road in Cincinnati, as more particularly described in the *Property Sale and Development Agreement* attached to this ordinance as Attachment A, which is under the management and control of the City's Department of Community and Economic Development (the "Property"); and

WHEREAS, 6121-23 Madison Rd. Opportunity Fund, LLC ("Developer") owns the adjoining property located at 6011 Madison Road in Cincinnati and desires to purchase the Property from the City, for consolidation with Developer's adjoining property to facilitate the renovation and expansion of an existing building into a mixed-use development consisting of approximately 3,793 square feet of commercial space, approximately 7,707 square feet of residential space comprised of 7-8 apartments, and 12 surface parking spaces, at an estimated project cost of \$1,921,900 (the "Project"); and

WHEREAS, Developer estimates that the Project will create approximately (i) 15 full-time temporary construction jobs during the construction period with an approximate annual payroll of \$600,000; and (ii) 25 full-time equivalent permanent jobs following completion of construction of the Project with an approximate annual payroll of \$1,000,000; and

WHEREAS, the City desires that the Property be put to its highest and best use; and

WHEREAS, the City's Real Estate Services Division has determined, by appraisal, that the fair market value of the Property is approximately \$39,500; however, the City desires to sell the Property to Developer for less than fair market value; namely, for \$28,442, because Developer has agreed to incur expenses totaling \$15,000 to assist the Civic Garden Center of Greater Cincinnati with relocation of a community garden located at the Property; and

WHEREAS, 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 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; and

WHEREAS, Section 16 of Article VIII of the Ohio Constitution provides that it is in the public interest and a proper public purpose for the City to enhance the availability of adequate housing and to improve the economic and general well-being of the people of the City of Cincinnati by providing or assisting in providing housing; and

WHEREAS, the City has determined that: (i) the Property is not needed for municipal purposes; (ii) the Property poses a financial liability to the City because the City must continue to incur expenses in maintaining it; and (iii) it is in the best interest of the City to eliminate competitive bidding in connection with the City's sale of the Property because Developer owns the adjoining property and consolidation of the Property will put the Property to the highest and best use; and

WHEREAS, City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's sale of the Property at its meeting on May 7, 2021; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute a *Property Sale and Development Agreement* with 6121-23 Madison Rd. Opportunity Fund, LLC ("Developer"), in substantially the form attached to this ordinance as Attachment A (the "Agreement"), pursuant to which the City will sell to Developer certain real property located at 6007 Madison Road in Cincinnati (the "Property"), for consolidation with Developer's adjoining property to facilitate the renovation and expansion of an existing building into a mixed-use development consisting of approximately 3,793 square feet of commercial space, approximately 7,707 square feet of residential space comprised of 7-8 apartments, and 12 surface parking spaces (the "Project").

Section 2. That the Property is not needed for municipal purposes.

Section 3. That the fair market value of the Property, as determined by professional appraisal by the City's Real Estate Services Division, is approximately \$39,500; however, the City desires to sell the Property to Developer for less than fair market value; namely, for

\$28,442, because Developer has agreed to incur expenses totaling \$15,000 to assist with relocating a community garden located at the Property.

Section 4. That eliminating competitive bidding in connection with the City's sale of the Property is in the best interest of the City because Developer owns the adjoining property and consolidation and redevelopment of the Property with Developer's parcel will put the Property to the highest and best use.

Section 5. That the City's Finance Director is hereby authorized to establish new capital improvement program project account no. 980x162x221641, "DCED Property Improvements" for the purpose of providing resources for permanent improvements to vacant buildings and properties controlled or previously controlled by the Department of Community and Economic Development.

Section 6. That the proceeds from the sale of the Property shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City's Real Estate Services Division in connection with the sale, and that the City's Finance Director is hereby authorized to deposit amounts in excess thereof into Miscellaneous Permanent Improvement Fund 757.

Section 7. That the City's Finance Director is authorized to transfer and appropriate such excess funds from the unappropriated surplus of Miscellaneous Permanent Improvement Fund 757 to capital improvement program project account no. 980x162x221641, "DCED Property Improvements."

Section 8. That expenditures from capital improvement program project account no. 980x162x221641, "DCED Property Improvements," are hereby declared to be for a public purpose because it will provide local improvements and increase neighborhood vitality.

Section 9. That the City Manager and other City officials are authorized to take all necessary and proper actions to carry out the provisions of this ordinance and the Agreement, including, without limitation, executing any and all ancillary agreements, amendments, plats, deeds, terminations, releases, and other documents.

Section 10. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to expedite the City’s execution of the Agreement, so that Developer can move forward with the Project without delay, thereby creating jobs, stimulating economic growth in the area and enabling the Property to be put to its highest and best use, all for the economic benefit of the City, at the earliest possible time.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

ATTACHMENT A

Contract No. _____

PROPERTY SALE AND DEVELOPMENT AGREEMENT

between the

CITY OF CINCINNATI

and

6121-23 MADISON RD. OPPORTUNITY FUND, LLC

Project Name: 6007 and 6011 Madison Road

(sale of City-owned real property at 6007 Madison Road for consolidation with real property at 6011 Madison Road, and renovation into a mixed-use development consisting of approximately 3,793 square feet of commercial space, 7-8 residential units, and 12 surface parking spaces)

Dated: _____, 2021

PROPERTY SALE AND DEVELOPMENT AGREEMENT

This Property Sale and Development 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 is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and **6121-23 MADISON RD. OPPORTUNITY FUND, LLC**, an Ohio limited liability company, the address of which is P.O. Box 43484, Cincinnati, Ohio 45243 ("**Developer**").

Recitals:

A. The City owns certain real property located at 6007 Madison Road, consisting of approximately 0.104 acres of vacant land in the Madisonville neighborhood of Cincinnati, as more particularly described on Exhibit A (Legal Description) hereto (the "**City Property**"), which is under the management and control of the City's Department of Community and Economic Development ("**DCED**").

B. Developer owns the abutting property at 6011 Madison Road (the "**Developer's Property**"; and together with the City Property, the "**Property**").

C. Developer desires to purchase the City Property for consolidation with the Developer's Property to facilitate the renovation and expansion of the existing building on the Developer's Property into a mixed-use development consisting of approximately 3,793 square feet of commercial space, approximately 7,707 square feet of residential space comprised of 7-8 apartments, and 12 surface parking spaces, all as more particularly described on Exhibit B (Statement of Work and Budget) hereto, at an estimated project cost (excluding the Purchase Price, as defined below) of approximately \$1,921,900, (the "**Project**").

D. The City previously leased the City Property to the Civic Garden Center of Greater Cincinnati ("**CGC**") for use as a community garden, and the City and Developer now desire to assist CGC with relocating the garden (the "**Garden Relocation**"). Prior to Closing (as defined below), Developer has agreed to (i) perform work associated with the Garden Relocation at the same cost as a third-party bid for work and approved by CGC, and/or (ii) reimburse CGC for expenses associated with the Garden Relocation in an amount totaling \$15,000 (the "**Garden Relocation Expenses**"), and the City is willing to reduce the Purchase Price (as defined below) in consideration thereof.

E. Developer has committed to commence on-site construction at the Property no later than 3 months after the Closing (the "**Outside Construction Commencement Date**"), and to complete construction at the Property no later than 18 months following the actual commencement of on-site construction (the "**Outside Construction Completion Date**").

F. Developer estimates that the Project will create approximately (i) 15 full-time temporary construction jobs during the construction period with an approximate annual payroll of \$600,000, and (ii) 25 full-time equivalent permanent jobs following completion of construction of the Project with an approximate annual payroll of \$1,000,000.

G. The City's Real Estate Services Division has determined, by appraisal, that the fair market value of the City Property is approximately \$39,500; however, to facilitate the Project and in consideration of Developer's reimbursement of the Garden Relocation Expenses, the City is agreeable to (i) selling the City Property to Developer for less than fair market value; namely, for \$28,442 (the "**Purchase Price**"); and (ii) cooperating to facilitate a real property tax abatement for Developer's improvements to the Property pursuant to a *LEED Community Reinvestment Area Tax Exemption Agreement* (the "**CRA Agreement**"), subject to passage by City Council of a separate ordinance authorizing such abatement.

H. 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 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.

I. Section 16 of Article VIII of the Ohio Constitution provides that it is in the public interest and a proper public purpose for the City to enhance the availability of adequate housing and to improve the economic and general well-being of the people of the City by providing or assisting in providing housing.

J. The City has determined that (i) the City Property is not needed for a municipal purpose, (ii) the City Property poses a financial liability to the City because the City must continue to incur expenses in maintaining it, and (iii) it is in the best interest of the City to eliminate competitive bidding in connection with the City's sale of the City Property because Developer owns the adjoining property, and consolidation of the Property will put the City Property to the highest and best use.

K. The City, upon recommendation of DCED, believes that it is in the 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, to enter into this Agreement.

L. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the City Property to Developer at its meeting on May 7, 2021.

M. Execution of this Agreement was authorized by Ordinance No. _____-2021, passed by City Council on _____, 2021.

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 City Property to Developer, and Developer hereby agrees to purchase the City Property from the City, for the Purchase Price. Developer acknowledges that it is familiar with the condition of the City Property and, at Closing (as defined below), the City shall convey the City Property to Developer in "as is" condition. The City makes no representations or warranties to Developer with respect to the condition of the City Property and, from and after the Closing, the City shall have no liability of any kind to Developer for any defects, adverse environmental condition, or any other matters affecting the City Property.

2. **Closing; Conditions to Closing.**

(A) **Conditions.** The Closing shall not occur unless and until the following conditions have been satisfied or waived, including any and all other conditions as may be identified in the City's Coordinated Report (the "**Conditions**"); *provided, however,* that if the City, in its sole and absolute 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 Deed (as defined below) to Developer or handle such Conditions post-Closing. Developer shall perform all work and investigations and shall obtain and prepare all necessary documents pertaining to the satisfaction of the Conditions, all at no cost to the City.

- (i) **Title & Survey.** Developer shall have approved the title to the City Property as set forth in a commitment of title insurance obtained by Developer and, if obtained by Developer, an ALTA property survey of the City Property;
- (ii) **Geotechnical & Environmental Condition.** Developer shall be satisfied that the geotechnical and environmental condition of the City Property is acceptable for development of the Project;

- (iii) Developer Inspections. Developer shall have determined from any inspections and investigations made pursuant to this Section 2, including marketing studies, traffic studies, feasibility studies, and any other studies and investigations related to the Property or the Project that Developer may elect to conduct or have conducted, that the Property and the conditions and circumstances surrounding the Property are suitable for development, construction, and use of the Project in an economically feasible manner;
- (iv) Financing. The City's receipt of a satisfactory loan commitment or letter from Developer's lender evidencing that Developer has secured or will be able to secure all financing necessary to complete the Project;
- (v) Conceptual Drawings. Developer shall have submitted to the City conceptual drawings, followed by preliminary plans and specifications for the Project;
- (vi) Construction Contract. The City's receipt of final construction bids and a final budget for the Project and an executed copy of Developer's construction contract with Developer's general contractor for construction of the Project;
- (vii) Building Permit & Zoning Approvals. Developer shall have provided evidence that Developer has obtained a building permit issued by the City's Department of Buildings and Inspections (the "B&I") for the construction of the Project, including any and all zoning approvals that may be required;
- (viii) Construction Schedule. Developer shall have provided the proposed construction schedule for the Project;
- (ix) As-Built Appraisal. Developer shall have provided an "as-built" appraisal of the Project (if required by Developer's lender);
- (x) Satisfaction of Conditions in Coordinated Report. Developer shall have satisfied the conditions of the sale set forth in the City's Coordinated Report associated with the sale of the City Property, some of which are summarized in Section 11 below;
- (xi) Garden Relocation. The Garden Relocation shall have been completed, and Developer shall have incurred the Garden Relocation Expenses in the amount of \$15,000 and provided documentation satisfactory to the City, in the City's sole and absolute discretion; and
- (xii) Other Information. Developer shall have provided such other information and documents pertaining to Developer or the Project as the City may reasonably require.

All of the investigations and documents referred to in this paragraph (A) shall be performed and obtained, as the case may be, at no cost to the City.

(B) Developer's Right of Entry. Prior to Closing, Developer may enter the City Property during reasonable business hours to conduct tests and inspections related to the Project, *provided that* Developer must provide DCED at least 24 hours' notice prior to entering the City Property. Developer shall promptly repair any damage to the City Property resulting from its inspections and Developer shall hold the City harmless from any loss or expense arising out of Developer's activities on the City Property. Entry shall be at the sole risk of Developer. DCED shall cooperate with Developer in Developer's inspections, studies, and in obtaining all required approvals (it being acknowledged by Developer that the City makes no representations or assurances regarding the granting of any required approvals).

(C) Copies of Due Diligence Materials to Be Provided to City. Without limitation of Developer's other obligations, prior to Closing, and as such due diligence materials are obtained by Developer, Developer, at no cost to the City, shall provide DCED with copies of the inspection, engineering, and environmental reports, title reports, surveys, and other materials prepared by third party professionals obtained by Developer prior to Closing that pertain to the Project or the City Property, or are otherwise related to anything authorized pursuant to the terms and conditions of this Agreement.

(D) Right to Terminate. If prior to Closing, 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 as of the date that is 3 months following the Effective Date, the City, in its sole and absolute discretion, may terminate this Agreement and all rights and obligations of the parties hereunder by giving written notice thereof to Developer.

(E) Closing Date. The closing ("**Closing**") shall take place 90 days after the Effective Date, or on such earlier or later date as the parties may agree upon.

(F) Closing Costs and Closing Documents. At the Closing, (i) Developer shall pay the Purchase Price in full, and (ii) the City shall convey all of its right, title, and interest in and to the City Property to Developer by Quitclaim Deed substantially in the form of Exhibit C (Form of Quitclaim Deed) hereto (the "**City's Deed**"). Developer shall pay all Hamilton County, Ohio, recording fees 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, Developer shall pay all real estate taxes and assessments thereafter becoming due. The provisions of this Agreement shall survive the City's execution and delivery of the City's Deed and shall not be deemed to have been merged therein. At Closing, the parties shall execute a closing statement and any and all other customary closing documents that are necessary for the Closing (except that the City shall not be required to execute a title affidavit or the like). Developer shall not transfer title to the City Property prior to the completion of construction without the City's prior written consent. Pursuant to Section 301-20, Cincinnati Municipal Code, at Closing, Developer 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 to the City by Developer or any of its affiliated entities. The provisions of this Agreement shall survive the City's execution and delivery of the City's Deed and shall not be deemed to have been merged therein.

(G) Maintenance of City Property Between Closing and Prior to Construction. Between the Closing and Construction Commencement (as defined below), Developer, at no expense to the City, shall maintain the City Property in presentable condition, including keeping the site reasonably free of debris and other unsightly materials.

3. Commencement and Completion of Project; Re-Conveyance of City Property to City for Failure to Timely Commence or Complete Project.

(A) Construction Commencement & Completion Dates. Developer shall commence on-site construction of the Project no later than the Outside Construction Commencement Date, and shall complete construction (as evidenced by a certificate of occupancy for the building) no later than the Outside Construction Completion Date.

(B) Construction Commencement; First Repurchase Option. No later than the Outside Construction Commencement Date, Developer shall (i) have applied for and received the required building permits from B&I for construction of the Project, and (ii) commenced on-site construction of the Project ("**Construction Commencement**"). As memorialized in the City's Deed, if Construction Commencement has not occurred on or before the Outside Construction Commencement Date, the City shall have the option to repurchase the City Property for the Purchase Price by limited warranty deed,

free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing, exercisable by giving written notice thereof to Developer at any time after the Outside Construction Commencement Date, but prior to the date of Construction Commencement.

(C) Construction Completion; Second Repurchase Option. No later than the Outside Construction Completion Date, Developer shall complete the Project (as evidenced by a certificate of occupancy for the building) ("**Construction Completion**"). As memorialized in the City's Deed, if Construction Completion has not occurred on or before the Outside Construction Completion Date, the City shall have the option to repurchase the City Property for the Purchase Price, as defined in Section 1, above, by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing, exercisable by giving written notice thereof to Developer at any time after the Outside Construction Completion Date, but prior to the date of Construction Completion.

(D) Plans and Specifications. Developer shall design and construct the improvements in accordance with City-approved plans and specifications that are consistent with Exhibit B, including, without limitation, Developer's proposed site plan for driveway locations, parking, and other ancillary improvements. Once the City's DCED Director has approved Developer's plans, Developer shall not make any material changes thereto without the Director's prior written consent.

(E) Contractors and Subcontractors. Developer shall not solicit bids from any contractors or subcontractors who are identified as being debarred by the federal or state government or who are identified as being debarred on the City's Vendor's Performance list.

(F) Applicable Laws. Developer shall obtain, pay for, and maintain all necessary building permits and other permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances, and other governmental requirements applicable to the construction of the Project, including, without limitation, those set forth on Exhibit D (Additional Requirements) hereto. The City makes no representations or other assurances to Developer that Developer will be able to obtain whatever variances, permits, or other approvals from B&I, the City's Department of Planning, Department of Transportation and Engineering ("**DOT**"), other City departments, City Planning Commission, or City Council that may be required in connection with the Project.

(G) Inspection of Work. During construction, the City, its employees and agents shall have the right at all reasonable times to inspect the progress of construction to determine whether Developer is complying with its obligations under this Agreement. If the City determines that the Project is not substantially in accordance with the City-approved plans and specifications or other requirements of this Agreement, is not in compliance with all applicable laws, or is not performed in a good and workmanlike manner, the City shall have the right, in its reasonable judgment and after giving Developer reasonable prior written notice thereof, to stop such work and order its replacement at Developer's expense.

(H) Mechanics' Liens. Developer shall not permit any mechanics' liens or other liens to be filed against the Property during construction. If a mechanic's lien shall at any time be filed, Developer shall, within 30 days after notice of the filing thereof, cause the same to be discharged of record.

(I) Reporting During Construction. Upon the City's request throughout construction, Developer shall provide the City with reports describing the status of the Project, including, without limitation, information about whether the Project is on budget and on schedule and containing such additional pertinent information thereto as the City may from time to time reasonably request. Developer shall submit a final report to the City upon completion of the Project.

(J) Recognition of City Support. Developer shall acknowledge the support of the City with respect to the Project in all printed materials such as informational releases, pamphlets and brochures, construction signs, Project and identification signage, and any publicity such as that appearing on the

Internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a participant, Developer shall use either the phrase "Project made possible by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City. Developer's obligations under this section shall commence on the Effective Date and shall terminate on the date on which the Project has been completed.

4. Insurance; Indemnity.

(A) Insurance during Construction. Until such time as all construction work associated with the Project has been completed, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$1,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of 100% of the value of the improvements constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Developer's construction lenders, and (v) such other insurance as may be reasonably required by the City's Division of Risk Management Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least 30 days prior written notice to the City.

(B) Waiver of Subrogation. Developer hereby waives all claims and rights of recovery, and on behalf of Developer's insurers, rights of subrogation, against the City, its employees, agents, contractors, and subcontractors with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Developer, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors, or subcontractors; it being the agreement of the parties that Developer shall at all times protect against such loss or damage by maintaining adequate insurance. Developer shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Developer shall defend, indemnify, and hold the City, its officers, council members, employees, and agents (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including, without limitation, attorneys' fees), demands, judgments, liability, and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Developer, its agents, employees, contractors, subcontractors, licensees, invitees, or anyone else acting at the request of Developer in connection with the Project. Developer's obligations under this paragraph shall survive termination of this Agreement with respect to Claims suffered, incurred, asserted, or arising prior to the date of termination. As used herein, "Claims" means, collectively, any and all actions, suits, claims, losses, costs (including, without limitation, attorneys' fees), demands, judgments, liability, and damages.

5. Casualty; Eminent Domain. If the Project or the Property is damaged or destroyed by fire or other casualty during construction, or if any portion of the Property is taken by exercise of eminent domain (federal, state, or local), Developer shall repair and restore the affected property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which the Property was in immediately prior to such occurrence. To the extent the City's participation is required, the City and Developer shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the proceeds are insufficient to fully repair and restore the affected property, the City shall not be required to make up the deficiency. Developer shall handle all construction in accordance with the applicable requirements set forth herein, including without limitation obtaining the City's approval of the plans and specifications if they deviate from the original City-approved plans. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the Project or the Property is being repaired or restored.

6. Default; Remedies.

(A) **Default.** The occurrence of any of the following shall be an “event of default” under this Agreement:

(i) the dissolution of Developer, the filing of any bankruptcy or insolvency proceedings by or against Developer, the making by Developer of an assignment for the benefit of creditors, the appointment of a receiver (temporary or permanent) for Developer, the attachment of, levy upon, or seizure by legal process of any property of Developer, or the insolvency of Developer;

(ii) any representation, warranty, or certification of Developer made in connection with this Agreement or any other related agreements or documents shall prove to have been false or materially misleading when made; or

(iii) a failure of Developer to perform or observe any obligation, duty, or responsibility under this Agreement or any other agreement to which Developer and the City are parties (including, without limitation, the CRA Agreement), and failure by Developer to correct such default within 30 days after Developer's receipt of written notice thereof from the City (the “Cure Period”); *provided, however*, that if the nature of the default is such that it cannot reasonably be cured during the Cure Period, Developer shall not be in default under this Agreement so long as such entity commences to cure the default within such Cure Period and thereafter diligently completes such cure within 90 days after Developer's receipt of the City's initial notice of default. Notwithstanding the foregoing, if Developer's failure to perform or observe any obligation, duty, or responsibility under this Agreement creates a dangerous condition or otherwise constitutes an emergency as determined by the City in good faith, an event of default shall be deemed to have occurred if Developer fails to take reasonable corrective action immediately upon discovering such dangerous condition or emergency.

(B) **Remedies.** Upon the occurrence of an event of default under this Agreement which is not cured or corrected within any applicable Cure Period, the City shall be entitled to (i) terminate this Agreement by giving Developer written notice thereof, (ii) take such actions in the way of “self-help” as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such event of default, all at the expense of Developer, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including, without limitation, pursuing an action for specific performance. Developer shall be liable for all costs and damages, including, without limitation, attorneys' fees, suffered or incurred by the City as a result of a default or event of default of Developer under this Agreement or the City's termination of this Agreement as a result of any such default. The failure of the City to insist upon the strict performance of any covenant or duty, or to pursue any remedy, under this Agreement or any other agreement to which Developer and the City are parties relating to the City Property shall not constitute a waiver of the breach of such covenant or of such remedy.

7. **Notices.** All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by UPS, Federal Express or other recognized courier service, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses below or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City:

City of Cincinnati
Attention: Director of the Department of
Community and Economic Development
Centennial Plaza Two, Suite 700
805 Central Avenue,
Cincinnati, Ohio 45202

To Developer:

6121-23 Madison Rd. Opportunity Fund, LLC
Attention: Bill Carroll, Manager
P.O. Box 43484
Cincinnati, Ohio 45243

If Developer sends a notice to the City alleging that the City is in default under this Agreement, Developer shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, Ohio 45202.

8. Representations, Warranties, and Covenants. Developer makes the following representations, warranties, and covenants to induce the City to enter into this Agreement:

(i) Developer is an Ohio limited liability company, 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) Developer 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 such entity and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid and binding obligations of such entity.

(iii) Developer's execution, delivery, and performance of this Agreement and the transactions contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or Developer's organizational documents, or any mortgage, contract, agreement or other undertaking to which Developer is a party or which purports to be binding upon Developer or upon any of its assets, nor is Developer in violation or default of any of the foregoing.

(iv) There are no actions, suits, proceedings, or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting Developer, or its parents, subsidiaries, or affiliates, at law or in equity or before or by any governmental authority that, if determined adversely, would impair the financial condition of such entity or its ability to perform its obligations with respect to the matters contemplated herein.

(v) Developer 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 Developer that could reasonably be expected to interfere substantially with its normal operations or materially and adversely affect its financial condition or its completion of the Project.

(vi) The statements made in the documentation provided by Developer to the City that are descriptive of Developer or the Project have been reviewed by Developer 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) With reference to Section 301-20 of the Cincinnati Municipal Code, neither Developer nor its affiliates owe any outstanding fines, penalties, judgments, water or other utility charges, or other amounts to the City.

9. Reporting Requirements.

(A) Submission of Records and Reports; Records Retention. Developer shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational, and other reports, records, statements, and information as may be requested by the City pertaining to Developer, the Project, or this Agreement, including, without limitation, reviewed financial statements, bank statements, income tax returns, information pertinent to the determination of finances of the Project, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (collectively, "**Records and Reports**"). All Records and Reports compiled by Developer and furnished to the City shall be in such form as the City may from time to time require. Developer shall retain all Records and Reports for a period of 3 years after the completion of the Project.

(B) City's Right to Inspect and Audit. During construction and for a period of 3 years after the completion of the Project, Developer shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Developer's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Developer to the City, Developer shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

10. General Provisions.

(A) Entire Agreement. This Agreement (including the exhibits hereto) and the other agreements referred to herein contain the entire agreement between the parties with respect to the subject matter hereof and supersede any and all prior discussions, negotiations, representations, or agreements, written or oral, between them respecting the subject matter hereof. In the event that any of the provisions of this Agreement purporting to describe specific provisions of other agreements are in conflict with the specific provisions of such other agreements, the provisions of such other agreements shall control.

(B) Amendments and Waivers. This Agreement may be amended, waived, or otherwise modified only by a written agreement 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 Developer agrees that venue in such court is proper. Developer 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 permitted assigns. Developer 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. The City hereby consents to a collateral assignment of Developer's rights under this Agreement to Developer's construction lender for the Project.

(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 Recording. This Agreement shall not be recorded in the Hamilton County Recorder's Office.

(H) Time. Time is of the essence with respect to the performance by Developer of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. Developer represents to the City that it has not dealt with a real estate broker, salesperson, or other person who might claim entitlement to a fee or other compensation from the other party as a result of the parties' execution of this Agreement.

(K) 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.

(L) 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 Project shall have any personal financial interest, direct or indirect, in Developer or in the Project, and Developer shall take appropriate steps to assure compliance.

(M) 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.

(N) Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

11. Coordinated Report Conditions.

(A) GCWW. There is an active 3/4" copper water service branch to the City Property. All conditions of water service to the Property, including the location of attachment to the public water system and abandonment of any existing water service branches that presently serve the premises, will be determined upon submission of Developer's final plans and application for service to the Greater Cincinnati Water Works ("**GCWW**"). If Developer determines that the existing water system does not meet the project's fire and/or domestic water demands, then Developer may need to upgrade the water mains in the area of the Project to meet Developer's future water demands, which work will be performed at the expense of Developer and not at the expense of GCWW.

(B) MSD. Prior to applying for permits from B&I, the Metropolitan Sewer District of Greater Cincinnati ("**MSD**") may require that Developer submit a Request for Availability for Sewer Service ("**RASS**"). The RASS will outline any additional MSD project requirements, including, without limitation, need for MSD tap permits, easements and/or an Ohio EPA Permit to Install, utilization of licensed and bonded sewer tappers with MSD, sewer inspection scheduling, Project on-site separation of flow requirements, MSD detention requirements, MSD excavation/fill permitting and bonding, need for a grease interception system, and a reminder for the Project to coordinate with Stormwater Management Utility and GCWW for their specific additional detailed stormwater, detention, and flood plain requirements.

(C) DOT. Developer acknowledges that (i) future development of the Property must be reviewed and approved by DOTE if such development impacts the right-of-way, (ii) DOTE will need to approve any vehicular access to the site, and (iii) 10 feet of right-of-way should be retained from the face of the curb to the City Property line as the existing City Property line extends into the sidewalk area.

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

- Exhibit A - *Legal Description*
- Exhibit B - *Scope of Work and Budget*
- Exhibit C - *Form of Quitclaim Deed*
- Exhibit D - *Additional Requirements*

SIGNATURES ON FOLLOWING PAGE

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

CITY OF CINCINNATI,
an Ohio municipal corporation

6121-23 MADISON RD. OPPORTUNITY FUND, LLC,
an Ohio limited liability company

By: _____
Paula Boggs Muething, City Manager

Date: _____, 2021

By: _____

Printed Name: _____

Title: _____

Date: _____, 2021

Authorized by resolution dated _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A
to Property Sale and Development Agreement

Legal Description

Property Address: 6007 Madison Road, Cincinnati, Ohio 45227
Auditor's Parcel No.: 036-0003-0002-90

Situated in Cincinnati, Hamilton County, Ohio, in Section 16, Township 4, Fractional Range 2, of the Miami Purchase, commencing at a point in the south line of Madison Road, sixty-nine and five tenths feet (69.5') east of the east line of Ward Street, said point being the northeast corner of a lot conveyed by Laura Boyer to Sarah E. Settle recorded in Deed Book 1117, at page 307, Hamilton County, Ohio, Recorder's Office, said lot being now owned by The Queen City Motion Picture Company; thence south along the east line of said The Queen City Motion Picture Company lot and parallel to the east line of Ward Street one hundred forty-eight and five-tenths feet (148.5'); thence east on a line parallel to the south line of Madison Road twenty-nine and five-tenths feet (29.5'); thence north on a line parallel to the said east line of said Ward Street one hundred forty-eight and five-tenths feet (148.5') to the south line of said Madison Road; thence west with the south line of said Madison Road twenty-nine and five-tenths feet (29.5') to the place of beginning.

Exhibit B
to Property Sale and Development Agreement

Statement of Work and Budget

I. STATEMENT OF WORK

Restore the façade to its original architectural details. Renovate the existing apartments (approximately 4,210 sq. ft.), expand the apartment dwellings upstairs (approximately 3,497 sq. ft.), and construct a residential rooftop garden (approximately 1,047 square feet). Renovate the first-floor retail/office space. Add new stairways. Construct off-street parking.

II. STATEMENT OF BUDGET

(a) Uses:

| | |
|---------------------------|-----------------------|
| 6011 Madison Acquisition | \$460,000.00 |
| 6007 Madison Acquisition | \$28,442.00 |
| Construction / Hard Costs | \$1,234,650.00 |
| <u>Soft Costs</u> | <u>\$227,250.00</u> |
| Total | \$1,950,342.00 |

(b) Sources:

| | |
|------------------|-----------------------|
| Equity | \$390,022.00 |
| <u>Financing</u> | <u>\$1,560,320.00</u> |
| Total | \$1,950,342.00 |

Exhibit C
to Property Sale and Development Agreement
Form of Quitclaim Deed

SEE ATTACHED

----- space above for recorder -----

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), having an address of 801 Plum Street, for valuable consideration paid, hereby grants and conveys to **6121-23 MADISON RD. OPPORTUNITY FUND, LLC**, an Ohio limited liability company, the address of which is _____ ("**Grantee**"), all of the City's right, title, and interest in and to the real property described on Exhibit A (*Legal Description*) hereto (the "**Property**").

Property Address: 6007 Madison Road, Cincinnati, Ohio 45227

Auditor's Parcel No.: 036-0003-0002-90

Re-conveyance to City upon Failure to Timely Commence or Complete Construction: The City and Grantee are parties to a *Property Sale and Development Agreement* dated [____], 2021 (the "**Agreement**"), pursuant to which Grantee is required to redevelop the Property. If Grantee does not commence construction at the Property on or before the construction commencement date specified in the Agreement, or if Grantee does not complete construction at the Property on or before the construction completion date specified in the Agreement, Grantee shall re-convey the Property to the City as described in the Agreement. At such time as the City no longer has the right to reacquire the Property under the Agreement, the City, at Grantee's request, shall execute and deliver to Grantee a release of such rights for recording in the Hamilton County, Ohio Records. Until such time as the Property has been reconveyed to the City or the City has released or waived its rights to reacquire the Property thereunder, Grantee shall not sell or otherwise transfer title to the Property or any portion thereof without the prior written consent of the City.

This conveyance was authorized by Ordinance No. [____]-2021, passed by Cincinnati City Council on [____], 2021.

Prior instrument reference: Deed Book 4072, Page 41, Hamilton County, Ohio Records.

[Signature and Notary Page Follows]

Executed on _____, 2021.

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, City Manager

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2021 by _____ 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 as to Form:

Assistant City Solicitor

This instrument prepared by:

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

Exhibits. The following exhibit is attached hereto and made a part hereof:
Exhibit A - Legal Description

Exhibit A
to Quitclaim Deed

Legal Description

Property Address: 6007 Madison Road, Cincinnati, Ohio 45227
Auditor's Parcel No.: 036-0003-0002-90

Situated in Cincinnati, Hamilton County, Ohio, in Section 16, Township 4, Fractional Range 2, of the Miami Purchase, commencing at a point in the south line of Madison Road, sixty-nine and five tenths feet (69.5') east of the east line of Ward Street, said point being the northeast corner of a lot conveyed by Laura Boyer to Sarah E. Settle recorded in Deed Book 1117, at page 307, Hamilton County, Ohio, Recorder's Office, said lot being now owned by The Queen City Motion Picture Company; thence south along the east line of said The Queen City Motion Picture Company lot and parallel to the east line of Ward Street one hundred forty-eight and five-tenths feet (148.5'); thence east on a line parallel to the south line of Madison Road twenty-nine and five-tenths feet (29.5'); thence north on a line parallel to the said east line of said Ward Street one hundred forty-eight and five-tenths feet (148.5') to the south line of said Madison Road; thence west with the south line of said Madison Road twenty-nine and five-tenths feet (29.5') to the place of beginning.

Exhibit D
to Property Sale and Development Agreement

Additional Requirements

Developer and Developer's general contractor shall comply with all applicable statutes, ordinances, regulations, and rules of the government of the United States, State of Ohio, County of Hamilton, and City of Cincinnati (collectively, "Government Requirements"), including the Government Requirements listed below, to the extent that they are applicable. Developer hereby acknowledges and agrees that (a) the below listing of Government Requirements is not intended to be an exhaustive list of Government Requirements applicable to the Project, Developer, or Developer's contractors, subcontractors or employees, either on the City's part or with respect to any other governmental entity, and (b) neither the City nor its Law Department is providing legal counsel to or creating an attorney-client relationship with Developer by attaching this Exhibit to the Agreement.

This Exhibit serves two functions:

(i) Serving as a Source of Information with Respect to Government Requirements. This Exhibit identifies certain Government Requirements that may be applicable to the Project, Developer, or its contractors and subcontractors. Because this Agreement requires that Developer comply with all applicable laws, regulations, and other Government Requirements (and in certain circumstances to cause others to do so), this Exhibit flags certain Government Requirements that Developers, contractors and subcontractors regularly face in constructing projects or doing business with the City. To the extent a Developer is legally required to comply with a Government Requirement, failure to comply with such a Government Requirement is a violation of the Agreement.

(ii) Affirmatively Imposing Contractual Obligations. If certain conditions for applicability are met, this Exhibit also affirmatively imposes contractual obligations on Developer, even where such obligations are not imposed on Developer by Government Requirements. As described below, the affirmative obligations imposed hereby are typically a result of policies adopted by City Council which, per Council's directive, are to be furthered by the inclusion of certain specified language in some or all City contracts. The City administration (including the City's Department of Community and Economic Development) is responsible for implementing the policy directives promulgated by Council (which typically takes place via the adoption of motions or resolutions by Council), including, in certain circumstances, by adding specific contractual provisions in City contracts such as this Agreement.

(A) Construction Workforce.

(i) Applicability. Consistent with the limitations contained within the City Resolutions identified in clause (ii) below, this Section (A) shall not apply to contracts with the City other than construction contracts, or to construction contracts to which the City is not a party. For the avoidance of doubt, this Agreement is a construction contract solely to the extent that it directly obligates Developer to assume the role of a general contractor on a construction project for public improvements such as police stations or other government buildings, public parks, or public roadways.

The Construction Workforce Goals are not applicable to future work (such as repairs or modifications) on any portion of the Project. The Construction Workforce Goals are not applicable to the purchase of specialty fixtures and trade fixtures.

(ii) Requirement. In furtherance of the policy enumerated in City Resolutions No. 32-1983 and 21-1998 concerning the inclusion of minorities and women in City construction work, if Developer is performing construction work for the City under a construction contract to which the City is a party, Developer shall use Best Efforts to achieve a standard of no less than 11.8% Minority Persons (as defined below) and 6.9% females (of whom at least one-half shall be Minority Persons) in each craft trade in Developer and its general contractor's aggregate workforce in Hamilton County, to be achieved at least

halfway through the construction contract (or in the case of a construction contract of six months or more, within 60 days of beginning the construction contract) (collectively, the "Construction Workforce Goals").

As used herein, the following terms shall have the following meanings:

(a) "**Best Efforts**" means substantially complying with all of the following as to any of its employees performing such construction, and requiring that all of its construction subcontractors substantially comply with all of the following: (1) solicitation of Minority Persons as potential employees through advertisements in local minority publications; and (2) contacting government agencies, private agencies, and/or trade unions for the job referral of qualified Minority Persons.

(b) "**Minority Person**" means any person who is Black, Asian or Pacific Islander, Hispanic, American Indian or Alaskan Native.

(c) "**Black**" means a person having origin in the black racial group of Africa.

(d) "**Asian or Pacific Islander**" means a person having origin in the original people of the Far East or the Pacific Islands, which includes, among others, China, India, Japan, Korea, the Philippine Islands, Malaysia, Hawaii and Samoa.

(e) "**Hispanic**" means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish cultural origin.

(f) "**American Indian**" or "**Alaskan Native**" means a person having origin in any of the original people of North America and who maintains cultural identification through tribal affiliation.

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering with Trade Unions.

(a) Applicability. Per City of Cincinnati, Ordinance No. 130-2002, this requirement is limited to transactions in which Developer receives City funds or other assistance (including, but not limited to, the City's construction of public improvements to specifically benefit the Project, or the City's sale of real property to Developer at below fair market value).

(b) Requirement. This Agreement may be subject to the requirements of City of Cincinnati, Ordinance No. 130-2002, as amended or superseded, providing that, if Developer receives City funds or other assistance, Developer and its general contractor, prior to the commencement of construction of the Project and prior to any expenditure of City funds, and with the aim of reaching comprehensive and efficient project agreements covering all work done by Developer or its general contractor, shall meet and confer with: the trade unions representing all of the crafts working on the Project, and minority, female, and locally-owned contractors and suppliers potentially involved with the construction of the Project. At this meeting, Developer and/or its general contractor shall make available copies of the scope of work and if prevailing wage rates apply, the rates pertaining to all proposed work on the Project. Not later than ten (10) days following Developer and/or its general contractor's meet and confer activity, Developer shall provide to the City, in writing, a summary of Developer and/or its general contractor's meet and confer activity.

(ii) Contracts and Subcontracts; Competitive Bidding.

(a) Applicability. This clause (ii) is applicable to "construction contracts" under Cincinnati Municipal Code Chapter 321. Municipal Code Chapter 321 defines "construction" as "any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than four thousand dollars and performed by other than full-time

employees who have completed their probationary periods in the classified service of a public authority,” and “contract” as “all written agreements of the City of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction.”

(b) Requirement. If CMC Chapter 321 applies to the Project, Developer is required to ensure that all contracts and subcontracts for the Project are awarded pursuant to a competitive bidding process that is approved by the City in writing. All bids shall be subject to review by the City. All contracts and subcontracts shall be expressly required by written agreement to comply with the provisions of this Agreement and the applicable City and State of Ohio laws, ordinances and regulations with respect to such matters as allocation of subcontracts among trade crafts, Small Business Enterprise Program, Equal Employment Opportunity, and Construction Workforce Goals.

(iii) Competitive Bidding for Certain City-Funded Development Agreements.

(a) Applicability. Pursuant to Ordinance No. 273-2002, the provision in clause (b) below applies solely where the Project receives in \$250,000 or more in direct City funding, and where such funding comprises at least 25% of the Project’s budget. For the purposes of this clause (iii), “direct City funding” means a direct subsidy of City funds in the form of cash, including grants and forgivable loans, but not including public improvements, land acquisitions and sales, job creation tax credits, or tax abatements or exemptions.

(b) Requirement. This Agreement requires that Developer issue an invitation to bid on the construction components of the development by trade craft through public notification and that the bids be read aloud in a public forum. For purposes of this provision, the following terms shall be defined as set forth below:

(1) “Bid” means an offer in response to an invitation for bids to provide construction work.

(2) “Invitation to Bid” means the solicitation for quoted prices on construction specifications and setting a time, date and place for the submission of and public reading of bids. The place for the public reading of bids shall be chosen at the discretion of Developer; however, the place chosen must be accessible to the public on the date and time of the public reading and must have sufficient room capacity to accommodate the number of respondents to the invitation to bid.

(3) “Trade Craft” means (a) general construction work, (b) electrical equipment, (c) plumbing and gas fitting, (d) steam and hot water heating and air conditioning and ventilating apparatus, and steam power plant, (e) elevator work, and (f) fire protection.

(4) “Public Notification” means (a) advertisement of an invitation to bid with ACI (Allied Construction Industries) and the Dodge Report, and (b) dissemination of the advertisement (either by mail or electronically) to the South Central Ohio Minority Business Council, Greater Cincinnati Northern Kentucky African-American Chamber of Commerce, and the Hispanic Chamber of Commerce. The advertisement shall include a description of the “scope of work” and any other information reasonably necessary for the preparation of a bid, and it shall be published and disseminated no less than fourteen days prior to the deadline for submission of bids stated in the invitation to bid.

(5) “Read Aloud in a Public Forum” means all bids shall be read aloud at the time, date and place specified in the invitation for bids, and the bids shall be available for public inspection at the reading.

(C) City Building Code. All construction work must be performed in compliance with City building code requirements.

(D) Lead Paint Regulations. All work must be performed in compliance with Chapter 3742 of the Ohio Revised Code, Chapter 3701-32 of the Ohio Administrative Code, and must comply with OSHA's Lead in Construction Regulations and the OEPA's hazardous waste rules. All lead hazard abatement work must be supervised by an Ohio Licensed Lead Abatement Contractor/Supervisor.

(E) Displacement. If the Project involves the displacement of tenants, Developer shall comply with all Government Requirements in connection with such displacement. If the City shall become obligated to pay any relocation costs or benefits or other sums in connection with the displacement of tenants, under Cincinnati Municipal Code Chapter 740 or otherwise, Developer shall reimburse the City for any and all such amounts paid by the City in connection with such displacement within twenty (20) days after the City's written demand.

(F) Small Business Enterprise Program.¹

(i) Applicability. The applicability of Municipal Code Chapter 323 (Small Business Enterprise Program) is limited to construction contracts in excess of \$5,000. Municipal Code Chapter 323 defines "contract" as "a contract in excess of \$5,000.00, except types of contracts listed by the City purchasing agent as exempt and approved by the City Manager, for (a) construction, (b) supplies, (c) services, or (d) professional services." It defines "construction" as "any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than \$4,000 and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority." To the extent Municipal Code Chapter 323 does not apply to this Agreement, Developer is not subject to the various reporting requirements described in this Section (F).

(ii) Requirement. The City has an aspirational goal that 30% of its total dollars spent for construction and 15% of its total dollars spent for supplies/services and professional services be spent with Small Business Enterprises ("SBE"s), which include SBEs owned by minorities and women. Accordingly, subject to clause (i) above, Developer and its general contractor shall use its best efforts and take affirmative steps to assure that SBEs are utilized as sources of supplies, equipment, construction, and services, with the goal of meeting 30% SBE participation for construction contracts and 15% participation for supplies/services and professional services contracts. An SBE means a consultant, supplier, contractor or subcontractor who is certified as an SBE by the City in accordance with Cincinnati Municipal Code ("CMC") Chapter 323. (A list of SBEs may be obtained from the Department of Economic Inclusion or from the City's web page, <http://cincinnati.diversitycompliance.com>.) Developer and its general contractor may refer interested firms to the Department of Economic Inclusion for review and possible certification as an SBE, and applications may also be obtained from such web page. If the SBE program is applicable to this Agreement, as described in clause (i) above, Developer agrees to take (or cause its general contractor to take) at least the following affirmative steps:

(1) Including qualified SBEs on solicitation lists.

(2) Assuring that SBEs are solicited whenever they are potential sources. Contractor must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials or to bid on construction contracts for the Project. Contractor is encouraged to use the internet and similar types of advertising to reach a broader audience, but these additional types of advertising cannot be used as substitutes for the above.

(3) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.

¹ Note: DCED is currently evaluating revisions to this SBE section due to recent legislative changes adopted by Council. If DCED implements these policy changes prior to the execution of this Agreement, this section will be revised.

(4) When needs permit, establishing delivery schedules that will encourage participation by SBEs.

(iii) Subject to clause (i) above, if any subcontracts are to be let, Developer shall require the prime contractor to take the above affirmative steps.

(iv) Subject to clause (i) above, Developer shall provide to the City, prior to commencement of the Project, a report listing all of the contractors and subcontractors for the Project, including information as to the owners, dollar amount of the contract or subcontract, and other information that may be deemed necessary by the City Manager. Developer or its general contractor shall update the report monthly by the 15th. Developer or its general contractor shall enter all reports required in this subsection via the City's web page referred to in clause (i) above or any successor site or system the City uses for this purpose. Upon execution of this Agreement, Developer and its general contractor shall contact the Department of Economic Inclusion to obtain instructions, the proper internet link, login information, and password to access the site and set up the necessary reports.

(v) Subject to clause (i) above, Developer and its general contractor shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by notarized affidavits executed in a form acceptable to the City, submitted upon the written request of the City. The City shall have the right to review records and documentation relevant to the affidavits. If affidavits are found to contain false statements, the City may prosecute the affiant pursuant to Section 2921.12, Ohio Revised Code.

(vi) Subject to clause (i) above, failure of Developer or its general contractor to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach the minimum percentage goals for SBE participation as set forth in Cincinnati Municipal Code Chapter 323, may be construed by the City as failure of Developer to use best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this section.

(G) Equal Employment Opportunity.

(i) Applicability. Chapter 325 of the Cincinnati Municipal Code (Equal Employment Opportunity) applies (a) where the City expends more than \$5,000 under a non-construction contract, or (b) where the City spends or receives over \$5,000 to (1) employ another party to construct public improvements, (2) purchase services, or (3) lease any real or personal property to or from another party. Chapter 325 of the Municipal Code does not apply where the contract is (a) for the purchase of real or personal property to or from another party, (b) for the provision by the City of services to another party, (c) between the City and another governmental agency, or (d) for commodities such as utilities.

(ii) Requirement. If this Agreement is subject to the provisions of Chapter 325 of the Cincinnati Municipal Code (the City of Cincinnati's Equal Employment Opportunity Program), the provisions thereof are hereby incorporated by reference into this Agreement.

(H) Prevailing Wage. Developer shall comply, and shall cause all contractors working on the Project to comply, with all any prevailing wage requirements that may be applicable to the Project. In the event that the City is directed by the State of Ohio to make payments to construction workers based on violations of such requirements, Developer shall make such payments or reimburse the City for such payments within twenty (20) days of demand therefor. A copy of the City's prevailing wage determination may be attached to this Exhibit as Addendum I to Additional Requirements Exhibit (City's Prevailing Wage Determination) hereto.

(I) Compliance with the Immigration and Nationality Act. In the performance of its construction obligations under this Agreement, Developer shall comply with the following provisions of the federal Immigration and Nationality Act: 8 U.S.C.A. 1324a(a)(1)(A) and 8 U.S.C.A. 1324a(a)(2).

Compliance or noncompliance with those provisions shall be solely determined by final determinations resulting from the actions by the federal agencies authorized to enforce the Immigration and Nationality Act, or by determinations of the U.S.

(J) Prompt Payment. The provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System", may apply to this Agreement. Municipal Code Chapter 319 also (i) provides certain requirements for invoices from contractors with respect to the Prompt Payment System, and (ii) obligates contractors to pay subcontractors for satisfactory work in a timely fashion as provided therein.

(K) Conflict of Interest. Pursuant to Ohio Revised Code 102.03, no officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the Project may have any personal financial interest, direct or indirect, in Developer or in the Project, and Developer shall take appropriate steps to assure compliance.

(L) Ohio Means Jobs. If this Agreement constitutes a construction contract (pursuant to the guidance with respect to the definition of that term provided in Section (A) above), then, pursuant to Ordinance No. 238-2010: To the extent allowable by law, Developer and its general contractor shall use its best efforts to post available employment opportunities with Developer, the general contractor's organization, or the organization of any subcontractor working with Developer or its general contractor with the OhioMeansJobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-946-7200.

(M) Wage Enforcement.

(i) Applicability. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the Cincinnati Municipal Code (the "Wage Enforcement Chapter"). The Wage Enforcement Chapter was then amended by Ordinance No. 96-2017, passed May 17, 2017. As amended, the Wage Enforcement Chapter imposes certain requirements upon persons entering into agreements with the City whereby the City provides an incentive or benefit that is projected to exceed \$25,000, as described more particularly in the Wage Enforcement Chapter. Cincinnati Municipal Code Section 326-5 requires that the language below be included in contracts subject to the Wage Enforcement Chapter.

(ii) Required Contractual Language. Capitalized terms used, but not defined, in this clause (ii) have the meanings ascribed thereto in the Wage Enforcement Chapter.

(a) This contract is or may be subject to the Wage Enforcement provisions of the Cincinnati Municipal Code. These provisions require that any Person who has an Agreement with the city or with a Contractor or Subcontractor of that Person shall report all Complaints or Adverse Determinations of Wage Theft and Payroll Fraud (as each of those terms is defined in Chapter 326 of the Cincinnati Municipal Code) against the Contractor or Subcontractors to the Department of Economic Inclusion within 30 days of notification of the Complaint or Adverse Determination.

(b) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to include provisions in solicitations and contracts regarding a Development Site that all employers, Contractors or Subcontractors performing or proposing to perform work on a Development Site provide an initial sworn and notarized "Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee and, within 30 days of an Adverse Determination or Complaint of Wage Theft or Payroll Fraud, shall provide an "Amended Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee.

(c) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to authorize, and

does hereby specifically authorize, any local, state or federal agency, court, administrative body or other entity investigating a complaint of Wage Theft or Payroll Fraud against the Person (collectively "investigative bodies") to release to the City's Department of Economic Inclusion any and all evidence, findings, complaints and determinations associated with the allegations of Wage Theft or Payroll Fraud upon the City's request and further authorizes such investigative bodies to keep the City advised regarding the status of the investigation and ultimate determination. If the investigative bodies require the Person to provide additional authorization on a prescribed form or in another manner, the Person shall be required to provide such additional authorization within 14 days of a request by the City.

(d) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall include in its contracts with all Contractors language that requires the Contractors to provide the authorizations set forth in subsection (c) above and that further requires each Contractor to include in its contracts with Subcontractors those same obligations for each Subcontractor and each lower tier subcontractor.

(e) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall post a conspicuous notice on the Development Site throughout the entire period work is being performed pursuant to the Agreement indicating that the work being performed is subject to Cincinnati Municipal Code Chapter 326, Wage Enforcement, as administered by the City of Cincinnati Department of Economic Inclusion. Such notice shall include contact information for the Department of Economic Inclusion as provided by the department.

(f) Under the Wage Enforcement provisions, the city shall have the authority, under appropriate circumstances, to terminate this contract or to reduce the incentives or subsidies to be provided under this contract and to seek other remedies, including debarment.

(N) Americans with Disabilities Act; Accessibility.

(i) Applicability. Cincinnati City Council adopted Motion No. 201600188 on February 3, 2016 (the "Accessibility Motion"). This motion directs City administration, including DCED, to include language specifically requiring compliance with the Americans With Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, the "ADA"), and imposing certain minimum accessibility standards on City-subsidized projects regardless of whether there are arguably exceptions or reductions in accessibility standards available under the ADA or State law.

(ii) Requirement. In furtherance of the policy objectives set forth in the Accessibility Motion, (A) the Project shall comply with the ADA, and (B) if (i) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a "place of public accommodation" or another category of structure to which the ADA is applicable) and (ii) such building(s) is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the ADA, applicable building code requirements, or by any other legal requirement, then Developer shall cause such building(s) to comply with the Contractual Minimum Accessibility Requirements in addition to any requirements pursuant to the ADA and the applicable building code or legal requirement. As used herein, "Contractual Minimum Accessibility Requirements" means that a building shall, at a minimum, include (1) at least one point of entry (as used in the ADA), accessible from a public right of way, with respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (2) if such accessible point of entry is not a building's primary point of entry, conspicuous signage directing persons to such accessible point of entry.

(O) Electric Vehicle Charging Stations in Garages.

(i) Applicability. Cincinnati City Council passed Ordinance No. 89-2017 on May 10, 2017. This ordinance requires all agreements in which the City provides any amount of "qualifying incentives" for projects involving the construction of a parking garage to include a provision requiring the

inclusion of certain features in the garage relating to electric vehicles. The ordinance defines "qualifying incentives" as the provision of incentives or support for the construction of a parking garage in the form of (a) the provision of any City monies or monies controlled by the City including, without limitation, the provision of funds in the form of loans or grants; (b) the provision of service payments in lieu of taxes in connection with tax increment financing, including rebates of service payments in lieu of taxes; and (c) the provision of the proceeds of bonds issued by the City or with respect to which the City has provided any source of collateral security or repayment, including, but not limited to, the pledge of assessment revenues or service payments in lieu of taxes. For the avoidance of doubt, "qualifying incentives" does not include (1) tax abatements such as Community Reinvestment Area abatements pursuant to Ohio Revised Code 3735.67, et seq., or Job Creation Tax Credits pursuant to Ohio Revised Code 718.15; (2) the conveyance of City-owned real property for less than fair market value; and (3) any other type of City support in which the City provides non-monetary assistance to a project, regardless of value.

(ii) Requirement. If the applicability criteria of Ordinance No. 89-2017 are met, then the following requirements shall apply to any parking garage included within the Project: (a) at least one percent of parking spaces, rounding up to the nearest integer, shall be fitted with Level 2 minimum 7.2 kilowatt per hour electric car charging stations; provided that if one percent of parking spaces is less than two parking spaces, the minimum number of parking spaces subject to this clause shall be two parking spaces; and (b) the parking garage's electrical raceway to the electrical supply panel serving the garage shall be capable of providing a minimum of 7.2 kilowatts of electrical capacity to at least five percent of the parking spaces of the garage, rounding up to the nearest integer, and the electrical room supplying the garage must have the physical space for an electrical supply panel sufficient to provide 7.2 kilowatts of electrical capacity to at least five percent of the parking spaces of the garage, rounding up to the nearest integer.

(P) Certification as to Non-Debarment. Developer represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, Developer shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If Developer or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, Developer shall be considered in default under this Agreement.