

PROPERTY SALE AND DEVELOPMENT AGREEMENT

(College Hill Station - Single-Family Home Development)

THIS PROPERTY SALE AND DEVELOPMENT AGREEMENT (this “**Agreement**”) is made and entered into effective as of the Effective Date (as defined on the signature page hereof) between the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”) and **D-HAS DEVELOPMENT, LLC**, an Ohio limited liability company, 288 Compton Road, Cincinnati, Ohio 45215 (“**Developer**”).

A. The City owns a large, vacant development site in the College Hill neighborhood of Cincinnati, Ohio located at 1630 West North Bend Road (HC Auditor Parcel 232-0004-0138-00), as described more particularly on the attached Exhibit A (Site Plan) (the “**Property**” or “**Project Site**”).

B. The City and the College Hill Community Urban Redevelopment Corporation, an Ohio non-profit corporation (“**CHCURC**”), are parties to a certain *Preferred Developer Agreement*, dated September 15, 2017, as amended by that *First Amendment to Preferred Developer Agreement*, dated October 4, 2018, (as amended, the “**PDA**”), pursuant to which CHCURC agreed to conduct certain due diligence and solicit proposals for redevelopment of the Project Site.

C. Following the process set forth in the PDA and after CHCURC vetted the submitted development proposals, CHCURC selected the development proposal of Developer.

D. Developer proposes to construct on the Project Site (i) a private roadway, streetscape, related infrastructure, and all other infrastructure required to provide utilities (water, storm and sanitary sewer, electric, gas, etc.) and otherwise create buildable lots for development of approximately thirty-one single-family homes (the “**Private Infrastructure**”) (note that the water main extension under the private street will be constructed by Developer but publicly-owned) and (ii) a private community greenspace comprised of approximately 10,000 square feet ((i) and (ii) collectively, the “**Project**”), with a total project cost (including construction, financing, and other hard and soft costs) of approximately \$2,209,781, described more particularly in the attached Exhibit B (Project Scope of Work, Budget, and Source of Funds).

E. Developer will commence on-site construction of the Project no later than December 1, 2021, or sixty (60) days from the date of Closing (as defined below), whichever occurs later (the “**Commencement Deadline**”) and will substantially complete construction in accordance with Section 3(C).

F. Developer anticipates that the Project will result in the creation of approximately 40 temporary full-time equivalent construction jobs with an estimated total payroll of \$550,000 during the duration of the Project.

G. In furtherance of the City’s redevelopment goals, pursuant to the terms of this Agreement the City intends to provide the following incentives and funding to the Project:

- (i) The City’s Real Estate Services Division has determined, by appraisal, that the as-is fair market value of the Project Site is Four and 35/100 Dollars Per Square Foot (\$4.35/ft²), that the Project Site consists of 124,076 ft² (2.8484 acres), which equals a total fair market value of \$540,000.00; however, to support the economic viability of the Project the City intends to convey the Project Site to Developer for one dollar (\$1.00);

- (ii) The City intends to provide a cash grant to Developer of \$180,000 (the “**Grant**”) to be utilized for hard construction costs of removing an existing building foundation that exists on the Property (“**Site Development**”); and
- (iii) The Developer intends to apply for or have purchasers of the homes constructed in the Project to apply for Residential CRA tax abatements, but the parties acknowledge that such tax abatements shall be applied for and granted in accordance with the terms of such established City program and shall not be dictated or in any way approved by the terms of this Agreement.

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 Property is not needed for a municipal purpose, (ii) the Property poses a financial liability to the City because the City must continue to incur expenses in maintaining it and other expenses related to ownership, 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 pursuant to the PDA the City worked with CHCURC to solicit and review proposals from other developers to redevelop the Property and has identified Developer’s development proposal as being the most suitable and advantageous to the City.

K. The City believes that the Project is in the vital and 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.

L. As used herein, the term “**Project Documents**” shall mean this Agreement and any and all other agreements pertaining to the Project entered into by the City, on the one hand, and Developer, on the other hand, or any instruments or other documents pertaining to the Project made by the City in favor of Developer or Developer in favor of the City.

M. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Project Site at its meeting on April 19, 2019.

N. The execution of this Agreement and the Project Documents was authorized by Cincinnati City Council by Ordinance No. [_____], passed by Cincinnati City Council on [_____].

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DUE DILIGENCE.

(A) Due Diligence Materials. Developer shall conduct due diligence investigations for the Property and Project and, in connection therewith, shall obtain and, as they are received, shall deliver to the City, at no cost to the City, the following items (collectively the “**Due Diligence Materials**”):

- (i) *Title Commitment.* A current title commitment for the Property;
- (ii) *ALTA Survey.* An ALTA survey of the Property;

- (iii) *Construction Schedule*: The proposed construction schedule for the Project;
- (iv) *Environmental Site Assessment*: A Phase I Environmental Site Assessment of the Property; if the Phase I Environmental Site Assessment reports any recognized environmental conditions, then Developer shall also obtain a Phase II Environmental Site Assessment;
- (v) *Financing*: Evidence 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;
- (vi) *Traffic Impact Study*: A copy of a completed traffic impact study, as required by the City's Department of Transportation and Engineering ("**DOT**");
- (vii) *Zoning Approval*: Evidence that any and all zoning approvals that may be required for completion of the Project, including any needed approval to re-zone the Project Site;
- (viii) *Building Permit*: Evidence that Developer has obtained or is ready to obtain a building permit issued by the City's Department of Buildings and Inspections for the construction of the Project;
- (ix) *Project Plans*: A copy of the Final Plans (as defined below), as specified below;
- (x) *Final Bids and Budget*: A copy of the Final Bids (as defined below) and Budget (as defined below) for the Project, as specified below;
- (xi) *Construction Contract*: A copy of the executed final construction contract for construction of the Project executed by Developer's general contractor or bids from subcontractors if the Developer is the general contractor;
- (xii) *As-Built Appraisal*: An "as-built" appraisal of the Project (if required by Developer's lender); and
- (xiii) *Other Information*: Such other information and documents pertaining to Developer or the Project as the City may reasonably require.

The City may, in its sole and absolute discretion, waive the requirement for delivery of any of the Due Diligence Materials or may permit that any of the Due Diligence Materials be delivered following the Closing.

(B) Preparation of Plans and Specifications; Coordinated Site Review Process. Promptly following the Effective Date, and at no cost to the City, the Developer shall prepare plans and specifications for the Project and shall submit the same to the City's Department of Planning and the Coordinated Site Review process ("**CSPRO**") for review and approval, including completion of all levels of review and approval. The plans and specifications for the Project, as approved by the City and its various departments during CSPRO, are referred to herein as the "**Final Plans**". Following approval, the Final Plans shall not be materially altered without the City's prior written consent.

(C) Major Subdivision of Property Prior to Closing. Promptly following the Effective Date, Developer, at no expense to the City, shall, in accordance with the City's established subdivision regulations and the Final Plans, seek and finalize approval of a major subdivision to subdivide the Property into buildable lots for single-family home development (each a "**Buildable Lot**") and to accommodate the Private Infrastructure (the "**Major Subdivision**"). Developer shall be responsible for all costs and expenses of completing the Major Subdivision, including but not limited to completing all plats and other surveying work, and shall undertake all additional tasks required for such completion. The

parties at this time contemplate that the Property will be subdivided into 31 Buildable Lots through the Major Subdivision.

(D) Final Bids. Following approval of the Final Plans in accordance with Section 1(B) above, Developer shall solicit bids for construction of the Project. 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. The final bids for the Project, as approved by Developer, are referred to herein as the "**Final Bids**".

(E) Budget. Promptly after Final Bids have been approved, Developer shall provide the City with an updated budget for the Project (as the same may thereafter be updated from time to time during construction, the "**Budget**").

(F) Due Diligence Expenses; Copies of Due Diligence Materials and Reports to be Provided to City. Developer shall be responsible for all expenses incurred by it relating to due diligence investigations of the Property and the Project, and the City shall have no obligation to reimburse or otherwise pay for any such expenses. Prior to Closing and as such reports and materials are obtained by Developer, Developer, at no cost to the City, shall provide the City's Department of Community and Economic Development ("**DCED**") with copies of the Due Diligence Materials and, upon the request of DCED, any other inspection, engineering, and environmental report, title report, surveys, and other materials prepared by third party professionals obtained by Developer that pertain to the Project. Unless otherwise directed by the DCED Director or the terms of this Agreement, Developer shall deliver all Due Diligence Materials and other reports to be provided by Developer to the City under this Agreement to the DCED Director (for review by DCED and other City departments as deemed necessary or appropriate by DCED) and shall generally coordinate all aspects of the Project (as they relate to the City) through DCED. All reports and the like obtained by Developer from third parties and delivered to the City shall be recent (*i.e.*, prepared or updated, as the case may be, within three (3) months from the date that the item is delivered to the City or such longer period of time as the City may, in its sole discretion, deem reasonable) and each report and the like has been or shall be prepared by properly licensed and qualified companies or individuals acceptable to the City. In addition to the above due diligence items, Developer and the City may conduct whatever other investigations concerning the Project as they deem necessary.

(G) Right to Terminate. If prior to Closing, either party determines that the Project is not feasible or desirable for any reason, then, notwithstanding anything in this Agreement to the contrary, such party may terminate this Agreement by giving the other party written notice thereof, whereupon this Agreement shall terminate and neither party shall thereafter have any rights or obligations hereunder. Upon Closing, the termination rights of the parties under this Section 1(G) shall automatically terminate.

2. CLOSING

(A) Purchase Price. Subject to the terms and conditions set forth herein, at the Closing the City hereby agrees to sell the Property to Developer, and Developer hereby agrees to purchase the Property from the City, for a purchase price of \$1.00 (the "**Purchase Price**"). Developer acknowledges that it is familiar with the condition of the Property and at Closing the City shall convey the Property to Developer in "as is" condition. The City makes no representations or warranties to Developer with respect to the condition of the Property and, from and after the Closing, the City shall have no liability of any kind to Developer for any defects, site conditions, adverse environmental condition, or any other matters affecting the Property.

(B) Closing Date. Subject to the terms and conditions herein, the purchase of the Property by Developer and the sale and conveyance of the Property by the City to Developer (the "**Closing**") shall take place on (i) the date that is 6 months after the Effective Date, or (ii) on such earlier or later date as the parties may agree upon once both parties agree that the Closing Conditions (as defined below) are reasonably satisfied (the "**Closing Date**").

(C) Closing Conditions. The Closing shall not occur until each of the following conditions (“**Closing Conditions**”) have been satisfied or waived:

(i) *Due Diligence Materials*: Each party must be satisfied with the various Due Diligence Materials and other reports related to the Project, as described in Section 1 above;

(ii) *Plats*: In accordance with Section 1(C) above, approval and recording of all applicable plats, including, without limitation, a consolidation plat, a subdivision plat, and a dedication plat;

(iii) *Major Subdivision*: Completion of the Major Subdivision, as described in Section 1(C) above;

(iv) *MSDGC/SMU*: Developer shall (i) have submitted a Request for Availability for Sewer Service to the Metropolitan Sewer District of Greater Cincinnati and be complying with all related City requirements and (ii) be satisfactorily coordinating construction of the Project with the City’s Stormwater Management Utility and complying with applicable requirements;

(v) *Pre-Sale of Buildable Lots*: Evidence satisfactory to the City that the Developer has secured a homebuilder or homebuilders to purchase at minimum ten (10) Buildable Lots and complete single-family homes thereon, all as acceptable to the City and approved in accordance with Section 3(E) below, and such homebuilders have executed a Home Completion Agreement (as defined below);

(vi) *Project Completion*: Based upon all information then available to the City, the City must be reasonably satisfied that the Developer has attained or will attain all approvals and awards necessary to complete the Project; has made no false or misleading claims to the City regarding the Project; and is otherwise prepared, able, and ready to complete the Project in accordance with the requirements of this Agreement; and

(vii) *Continued Compliance*: The City must be satisfied that Developer is in compliance with all obligations under this Agreement and that all representations made by Developer under this Agreement or any other Project Document continue to be true and accurate.

(D) Right to Terminate. If the Closing Conditions have not been satisfied or waived and the Closing has not occurred by the date that is 8 months after the Effective Date, then the City or Developer 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 immediately terminate.

(E) Conveyance. At the Closing, (i) Developer shall pay the Purchase Price and (ii) the City shall convey the Property to Developer by a Quitclaim Deed in substantially the form of the attached Exhibit C (Form of Quitclaim Deed) (the “**City Deed**”). Developer shall pay all conveyance fees, transfer taxes, recording fees, title exam fees, title insurance premiums, settlement fees, and any and all other closing costs associated with the Closing such that the City shall not be required to come up with any funds for the Closing. The parties agree that upon Closing and delivery of the City Deed that the doctrine of merger shall not apply, and all terms of this Agreement shall survive such delivery.

(F) Miscellaneous Closing Provisions. There shall be no proration of real estate taxes and assessments at Closing, and it is understood that the City shall in no way be responsible for the payment of any real estate taxes, service payments in lieu of taxes, or assessments due or thereafter becoming due. 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 by Developer to the City. At Closing, the City and Developer shall execute a closing statement, County exempt transfer forms, and any and all other customary closing documents that may be deemed necessary for Closing by the City.

(G) Maintenance of Property Between Closing and Prior to Construction. Between the Closing and Developer's commencement of on-site construction, Developer, at no expense to the City, shall maintain the Property in a safe and presentable condition, including keeping the site reasonably free of debris and other unsightly materials.

3. CONSTRUCTION; REPURCHASE OPTIONS; SALE OF BUILDABLE LOTS.

(A) Commencement of Construction. Following Closing, Developer shall (i) apply for and receive the required building permits from the City's Department of Buildings and Inspections for construction of the Project, (ii) apply for and receive approval for the Major Subdivision, and (iii) commence on-site construction of the Project in accordance with the Final Plans (the "**Construction Commencement**") no later than the Commencement Deadline; *provided however*, the City may, upon Developer's request and at the City's sole discretion, extend the Commencement Deadline for up to a maximum of nine (9) additional months, with any such extension effective upon written approval by the Director of DCED.

(B) First Repurchase Option. As memorialized in the City Deed, if Construction Commencement has not occurred on or before the Commencement Deadline, the City by written notice to Developer delivered prior to the date of Construction Commencement, shall have the option to repurchase the 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 ("**First Repurchase Option**"), exercisable by giving written notice thereof to Developer at any time after the Commencement Deadline, but in any case prior to the date of Construction Commencement. At such time as the City no longer has the right of the First Repurchase Option under this Section 3(B) and promptly after written request by Developer, the City shall execute and deliver to Developer a recordable release of the City's First Repurchase Option. Such release shall be in a form substantially similar to the release attached as Exhibit D (Repurchase Option Release Form).

(C) Completion of Construction and Sale of Buildable Lots. Developer shall complete construction of the Project ("**Construction Completion**") by December 31, 2022 ("**Completion Deadline**"), all in accordance with the Final Plans and all other City approvals; *provided however*, the City may, upon Developer's request and at the City's sole discretion, extend the Completion Deadline for up to a maximum of nine (9) additional months, which any such extension shall be granted in no more than 3-month increments, with any such extension effective upon written approval by the Director of DCED. Following Construction Completion and in accordance with Section 3(E) below, Developer shall have sold all of the Buildable Lots to homebuilders approved by the City in accordance with Section 3(E) by December 31, 2027 (the "**Outside Sale Date**"); *provided however*, the City may, upon Developer's request and at the City's sole discretion, extend the Outside Sale Date for up to a maximum of twelve (12) additional months, with any such extension effective upon written approval by the Director of DCED.

(D) Second Repurchase Option.

- (i) Terms of Repurchase. As memorialized in the City Deed, if a Construction Completion has not occurred on or before a Completion Deadline or if any Buildable Lots have not been sold by Developer by the Outside Sale Date, then the City shall have the option to repurchase all or any portion of the Property not previously released pursuant to Section 3(D)(v) for the Second Repurchase Option Purchase Price (as defined below) 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 ("**Second Repurchase Option**"), exercisable by delivering written notice thereof to Developer at any time after Developer's non-compliance with a Completion Deadline or Outside Sale Date, as applicable; *provided however*, that if the applicable portion of the Property is encumbered by any encumbrances related to the operation of a homeowners' association or similar organization set up for managing the Private Infrastructure, then the City may elect to take title to the applicable portion

of the Property subject to such encumbrance. Further, the the City may, in its sole discretion, elect to take title to the applicable portion of the Property subject to any other liens and encumbrances that were not in existence as of the date and time of the Closing, but the Developer shall promptly repay to any third parties the amount required for it to release its interest in the Property. Should Developer not comply with its obligations under this section, in addition to other remedies or rights the City may have under this Agreement or applicable law, the Developer shall compensate the City for any expense, including reasonable attorneys' fees, incurred by the City to accomplish the release of liens or encumbrances on the Property or otherwise effectuate the provisions of this section.

- (ii) Second Repurchase Option Purchase Price. The “**Second Repurchase Option Purchase Price**” shall be calculated on a per Buildable Lot basis as follows: (i) the total documented and costs incurred by Developer to develop the Project Site in accordance with the Budget, as approved by the City; (ii) less the amount of the Grant; and then (iii) divide the difference of (i) and (ii) by the total number of Buildable Lots originally subdivided from the Project Site, which is currently anticipated as 31. For example, if the documented hard costs are \$1 million dollars, the Grant is \$180,000, and the total number of Buildable Lots subdivided from the Project Site is 31, then the calculation would be as follows: $(\$1,000,000 - \$180,000)/31 = \$26,451$ 24,848 per Buildable Lot. If the City elected to exercise the repurchase option on 10 Buildable Lots, then the aggregate Second Repurchase Option Purchase Price would be \$264,510.
- (iii) Subordination of Second Repurchase Option. As further described in the City Deed, the City's Second Repurchase Option, as a contractual agreement, is subordinate and subject to any lien on the Property granted as security to any third-party construction financier of the Project, regardless of the timing of the recording of any document evidencing such lien. Upon written request, the City will promptly execute a subordination agreement or other instrument of subordination, in form and substance acceptable to the City, with respect to such third-party's construction financing lien.
- (iv) Assignment of Second Repurchase Option. In the event that the City elects to exercise its Second Repurchase Option, the City may choose to assign its interest or a portion of its interest under such Second Repurchase Option to one or more third-parties, who will then close on the repurchase with Developer.
- (v) Release of Second Repurchase Option. Upon (i) written request by Developer and (ii) approval by the City of the sale of a Buildable Lot to a homebuilder pursuant to Section 3(E) below, the City shall execute and deliver into escrow as part of the closing of such Buildable Lot a recordable release of the City's Second Repurchase Option in the form set forth in Exhibit D. Such release shall only be for the applicable Buildable Lot that is being sold to such homebuilder. The Developer shall be responsible for recording such releases and paying any expense associated with recording.

(E) Sale of Buildable Lots Following Construction Completion. Following Construction Completion, Developer shall utilize best efforts to market the Buildable Lots to homebuilders, who will agree to construct single-family homes on the Buildable Lots in accordance with this Section. The Developer covenants and agrees to not sell any of the Buildable Lots until the following conditions have been satisfied and the City has approved of such sale in accordance with the following:

- (i) *City Approval of Homebuilder*. The City shall have approved of the proposed homebuilder as qualified and able to complete development of the proposed single-family home. The City shall operate in good-faith to approve any proposed homebuilder that is reasonably qualified.

- (ii) *City Approval of Proposed Home Design*: The Developer or proposed homebuilder shall have submitted to the City the total estimated construction costs and plans for the proposed home to be built on the subject Buildable Lot, and the City shall have approved the costs and plans for such proposed home. The City shall operate in good-faith to approve any proposed home that reasonably meets the quality, form, and characteristics of other homes approved by the City in connection with the Project.
- (iii) *Summary of Sale Terms*: Developer shall have delivered to the City a summary of all proposed sale terms for sale of the Buildable Lot, including any compensation that that purchaser will pay to Developer.
- (iv) *Additional Information*: Developer shall provide any other information regarding the proposed transaction as may be reasonably requested by the City.
- (v) *Homebuilder Execution of a Home Completion Agreement*: As condition to closing on the Buildable Lot, the homebuilder shall have executed a *Home Completion Agreement*, substantially in the form attached as Exhibit E (*Home Completion Agreement Form*), pursuant to which the homebuilder will covenant to the City that it will complete the proposed home substantially in accordance with the submitted and approved plans (each a "**Home Completion Agreement**").

(F) Inspection of Work. During construction of the Project, the City, its employees and agents shall have the right at all reasonable times, and upon reasonable notice, to enter upon the construction site to examine and inspect the progress of construction to determine whether Developer is complying with the requirements of this Agreement. If the City determines that the Project is not substantially in accordance with the Final Plans 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.

(G) Mechanics Liens. Developer shall not permit any mechanics' or other liens to be filed against the Property during construction. If a mechanics' lien shall at any time be filed, Developer shall, within thirty (30) days after notice of the filing thereof, cause the same to be either (i) discharged of record or (ii) bonded against in the full amount of such mechanic's lien and challenged in an appropriate court having jurisdiction.

(H) 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.

(I) Barricade Fees Payable to DOTE. Developer acknowledges that (i) it may be required to obtain a barricade permit and pay barricade fees to DOTE for the closure of any sidewalks and curb lanes of the adjacent streets if and when demolition or construction necessitates closing the adjoining streets or portions thereof, and (ii) with many entities competing for space on City streets, it is important that construction activities be limited to as little space and the shortest duration as possible and that all work be scheduled and performed to cause the least interruption to vehicular travel, bicyclists, pedestrians and businesses; therefore, DOTE shall have the right to evaluate Developer's need for a barricade throughout construction and, if at any time after consultation with Developer DOTE determines that a barricade is not needed, DOTE shall have the right to withdraw the permit.

(J) Environmental Indemnity. As a material inducement to the City to enter into this Agreement, Developer does hereby agree that with respect to any environmental condition on or otherwise affecting the Property that (i) arises from the actions of Developer, its agents or employees, at any time or (ii) otherwise arises from activities of third-parties occurring after the Closing (herein, a "**Environmental Condition**"), Developer shall (i) at no expense to the City, promptly take all steps necessary to remediate such Environmental Condition, within a reasonable time after discovery, to the

satisfaction of the City's Office of Environment and Sustainability, and (ii) defend, indemnify, and hold the City harmless from and against any and all actions, suits, claims, losses, costs (including without limitation reasonable attorneys' fees), demands, judgments, liability, and damages suffered or incurred by or asserted against the City as a result of or arising from any such Environmental Condition. Developer's remediation and indemnity obligations under this paragraph shall survive the completion of the Project.

4. CITY'S FINANCIAL SUPPORT.

(A) Grant to Developer (\$180,000). Following the Closing and upon written request from Developer, provided Developer is not in default under this Agreement at the time of disbursement, the City shall pay to the Developer the Grant proceeds during construction and on a reimbursement basis in accordance with the attached Exhibit F (Disbursement of Funds). Developer shall only use the Grant proceeds to finance the hard costs of Site Development in accordance with Exhibit B.

(B) 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 at the final Construction Completion.

(C) No Other City Assistance. Except for the City's agreement to provide the Property and the Grant as described in this Agreement, the City shall not be responsible for any other costs or expenses associated with the Project.

5. INSURANCE; INDEMNITY.

(A) Insurance during Construction. From the time of Construction Commencement until completion of construction of the Project, 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 with respect to the Project, (ii) builder's risk insurance in the amount of one-hundred percent (100%) of the value of the improvements constructed as part of the Project and then under construction, (iii) worker's compensation insurance in such amount as required by law, and (iv) all insurance as may be required by Developer's construction lenders, if any. 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 thirty (30) days prior written notice to the City. Prior to Construction Commencement, Developer shall send proof of all such insurance to the City at 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202, Attention: Monitoring and Compliance Division, or such other address as may be specified by the City from time to time; *provided however*, that if the City requests an additional insured endorsement with respect to the Commercial General Liability insurance described above, Developer shall have 3 months following the date of the City's request to obtain such an endorsement from its insurer and provide the original endorsement to the City.

(B) Waiver of Subrogation. Developer hereby waives all claims and rights of recovery, and on behalf of its 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 ordinarily would be covered by the insurance required under this Agreement, 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 itself against such loss or damage by maintaining adequate insurance. Developer shall cause its 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 harmless the City, its officers, council members, employees, and agents (collectively, the “**Indemnified Parties**”) from and against any and all Claims (as defined below) 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. The obligations of Developer 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.

6. DEFAULT; REMEDIES.

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

(i) The failure of Developer to perform or observe (or cause to be performed or observed) any obligation, duty, or responsibility under this Agreement or any other Project Document and failure by such defaulting party to correct such default within thirty (30) days after the receipt by Developer 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 the defaulting party commences to cure the default within the Cure Period and thereafter diligently completes such cure within sixty (60) days after 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 such entity fails to take reasonable corrective action immediately upon discovering such dangerous condition or emergency;

(ii) The dissolution of Developer, the filing of any bankruptcy or insolvency proceedings by Developer, or the making by Developer of an assignment for the benefit of creditors;

(iii) The filing of any bankruptcy or insolvency proceedings by or against Developer, 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, unless such appointment, attachment, levy, seizure, or insolvency is cured, dismissed, or otherwise resolved to the City’s satisfaction within sixty (60) days following the date thereof; or

(iv) Any representation, warranty, or certification of Developer made in connection with this Agreement or any other Project Document shall prove to have been false or materially misleading when made.

(B) Remedies. Upon the occurrence of an event of default under this Agreement, the City shall be entitled to: (i) demand immediate repayment of all previously disbursed funds if this Agreement provides for City funding; (ii) terminate this Agreement by giving Developer written notice thereof; (iii) 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 default, all at the expense of Developer; and (iv) exercise any and all other rights and remedies under this Agreement or otherwise available at law or in equity. 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 of Developer under this Agreement or the City’s enforcement or termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement 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 (i) personally delivered; (ii) delivered by Federal Express, UPS, or other recognized overnight courier; or (iii) mailed by U.S. registered or certified mail, postage prepaid, and return receipt requested and 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 Manager
City of Cincinnati
801 Plum Street
Cincinnati, Ohio 45202

To Developer:

D-HAS Development LLC
288 Compton Road
Cincinnati, Ohio 45215

with a copy to:

Director, Dept. of Community & Economic
Development
City of Cincinnati
805 Central Avenue, Suite 700
Cincinnati, Ohio 45202

with a copy to:

Robbins Kelly Patterson & Tucker, LPA
Attn: Jack Tucker
7 West 7th Street, Suite 1400
Cincinnati, Ohio 45202

If Developer sends a notice to the City alleging that the City is in default under this Agreement or any other Project Document, they shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 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 a limited liability company duly organized and validly existing under the laws of the State of Ohio, is qualified to do business in Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and it is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement or any other Project Document.

(ii) Developer has full power and authority to execute and deliver this Agreement and every other Project Document to which it is or will be a party and to carry out the transactions provided for herein and therein. This Agreement and each other Project Document to which Developer is a party has by proper action been duly authorized, executed, and delivered by Developer and all actions necessary have been taken to constitute this Agreement and the other Project Documents to which Developer is a party, when executed and delivered, valid, and binding obligations of Developer.

(iii) The execution, delivery, and performance by Developer of this Agreement and each other Project Document to which it is a party and the consummation of the transactions contemplated hereby and thereby will not violate any applicable laws; any writ or decree of any court or governmental instrumentality; the organizational documents of Developer; or any mortgage, indenture, 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 it, at law or in equity or before or by any governmental authority, which would materially adversely affect Developer's ability to perform the Developer's obligations set forth under this Agreement.

(v) Prior to completion of construction of the Project, Developer shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute, or governmental proceeding or investigation affecting it that could reasonably be expected to interfere substantially with its normal operations or materially and adversely affect its financial condition.

(vi) The statements made in the documentation provided by Developer to the City that are descriptive of it or the Project have been reviewed by it 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 not misleading, in light of the circumstances under which they were made.

(vii) With reference to Section 301-20 (*Delinquencies in Accounts Receivable and Loans Receivable; Policy*) of the Cincinnati Municipal Code, to the best of Developer's knowledge neither it nor any of its affiliates are in breach of any of its obligations to the City under any existing agreements with the City nor does it nor any of its affiliates owe any fines, penalties, judgment awards, or any 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, Site Development, or this Agreement, including without limitation CPA-certified 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 until the date that is 3 years following the completion of construction of the Project, or such later time as may be required by applicable law (the "**Retention Termination Date**").

(B) City's Right to Inspect and Audit. During construction of the Project and thereafter until the Retention Termination Date, Developer shall permit the City and its designees and auditors to have full access to and to inspect and audit its 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) Assignment; Change of Control.

(i) Assignment. Developer shall not assign its rights or interests under this Agreement to any third party without the prior written consent of the City, which consent may be withheld in the City's sole discretion. The City hereby consents to Developer's collateral assignment of its rights under this Agreement to any construction lender(s) for the Project and to an assignment of Developer's rights under this Agreement to any affiliate of Developer for purposes of completing the Project. Any such permitted assignment shall not act as a release of Developer, unless otherwise agreed to in writing by the City, and any prohibited assignment shall be void. Neither Developer nor its affiliates are in any way prohibited from selling homes constructed as part of the Project and the related lot following completion of construction of a home. Further, Developer is not prohibited following development of the Project Site from transferring title in those common areas of the Project to a homeowners' association or similar organization.

(ii) Change of Control. Developer shall not permit a Change of Control (as defined below) without the prior written consent of the City, which consent may be withheld in the City's sole discretion. As used herein, "**Change of Control**" means a change in the ownership of Developer such that Douglas Hinger has less than a 51% direct or indirect voting interest in Developer and lack the power

to direct or cause the direction of the management and policies of Developer, whether through the ownership of ownership interests in Developer, by contract, or otherwise.

(B) Entire Agreement; Conflicting Provisions. This Agreement, together with the other Project Documents, contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations, or agreements, written or oral, between them respecting the subject matter hereof. In the event that any of the provisions of this Agreement purporting to describe specific provisions of other Project Documents are in conflict with the specific provisions of such other Project Documents, the provisions of such other Project Documents shall control.

(C) Amendments. This Agreement may be amended only by a written amendment signed by all parties.

(D) Governing Law; Venue; Jury Trial Waiver. 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. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) 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.

(F) 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.

(G) 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.

(H) No Recording. This Agreement shall not be recorded in the Hamilton County Recorder's office.

(I) Time. Time is of the essence with respect to the performance by the parties of their respective obligations under this Agreement.

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

(K) No Brokers. The parties represent that they have not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(L) 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.

(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, including execution and delivery of all releases relating to the City's First Repurchase Option and Second Repurchase Option, and shall not require legislative action of the City beyond the legislative action authorizing the execution of this Agreement.

(N) Counterparts. The parties may execute this Agreement in multiple counterparts, each of which shall be deemed an original, and all of which shall, collectively, constitute only one agreement. The signatures of all parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or electronic mail is as effective as executing and delivering this Agreement in the presence of the other parties.

(O) Applicable Laws. Developer shall obtain and maintain all necessary City and other governmental permits, licenses, and other approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances, and other governmental requirements, including without limitation, those set forth on Exhibit G (Additional Requirements) hereto that are applicable to the Project. Notwithstanding anything to the contrary in this Agreement, by executing this Agreement the City makes no representations or other assurances to any party that Developer will be able to obtain whatever variances, permits, or other approvals from the City's Department of Buildings and Inspections, DOTE, City Planning Commission, or City Council that may be required in connection with the Project.

11. **EXHIBITS**. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A – *Site Plan*
- Exhibit B – *Scope of Work, Budget, and Source of Funds*
- Exhibit C – *Form of Quitclaim Deed*
- Exhibit D – *Repurchase Option Release Form*
- Exhibit E – *Home Completion Agreement Form*
- Exhibit F – *Disbursement of Funds*
- Exhibit G – *Additional Requirements*

[SIGNATURES ON FOLLOWING PAGE]

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

CITY OF CINCINNATI

D-HAS DEVELOPMENT, LLC

By: _____
Paula Boggs Muething, City Manager

By: _____
Douglas Hinger, President

Date: _____, 2021

Date: _____, 2021

Authorized by resolution dated _____, 2021

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

SITE PLAN

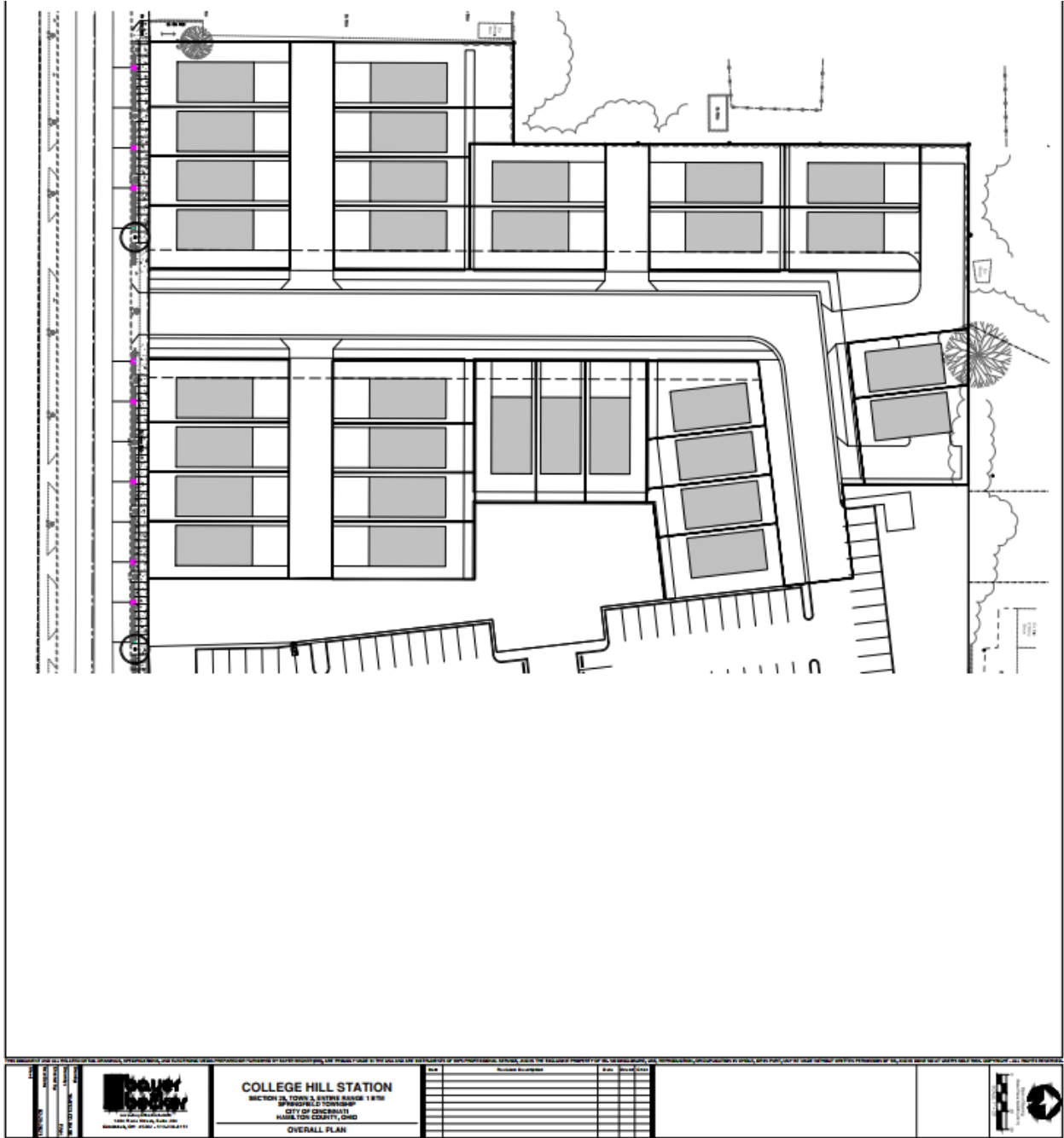


EXHIBIT B
to
Property Sale and Development Agreement

SCOPE OF WORK, BUDGET, AND SOURCE OF FUNDS

After acquiring the Property from the City, Developer will subdivide the Project Site into 31 Buildable Lots, complete the Site Development, and design and build the Private Infrastructure and related amenities on the Project Site. The Site Development will consist of (i) the removal and disposal of the existing foundations; (ii) demolition of debris currently on the Project Site; and (iii) associated excavation and site remediation, including import and export of rocks and soil removal. The Private Infrastructure will consist of (i) a private roadway, streetscape, and related infrastructure; (ii) utility infrastructure to provide utilities to the homes, and (iii) a greenspace comprised of approximately 10,000 square feet. Following completion of the Project, Developer will sell the Buildable Lots to a qualified homebuilder(s).

The homebuilder(s) will construct 31 single-family homes on the Buildable Lots, which will be served by a Homeowners' Association that maintains the grounds and roadways through a monthly fee paid by each of the homeowners. Each home will be customized and designed to achieve variety within the pedestrian-scaled community. The homes will be approximately 2,000 square feet, and similar in size and style, with a 3-story wood frame. Each home will have a first floor consisting of the entry, a 2-car garage, and a studio; a second floor consisting of a customizable main living level; and a third floor consisting of two bedrooms. Homebuyers will also have the option of adding a customizable fourth floor, which could consist of an unfinished attic for storage, or a luxury rooftop terrace with a covered porch and kitchenette.

Budget and Source of Funds – Private Infrastructure	
Sources:	
Developer Equity	\$261,956
Developer Senior Debt	\$1,767,825
Total Sources	\$2,029,781
Uses:	
Private Infrastructure	
Soft Costs	\$353,394
Hard Costs	\$1,502,387
<i>Subtotal Private Infrastructure</i>	<i>\$1,855,781</i>
Private Greenspace	
Soft Costs	\$20,000
Hard Costs	\$154,000
<i>Subtotal Greenspace</i>	<i>\$174,000</i>
Total Project Costs	\$2,029,781

Budget and Source of Funds – Site Development	
Sources:	
City Grant	\$180,000
Total Sources	\$180,000
Uses:	
Site Development	
Hard Costs – Foundation Removal	\$180,000
<i>Subtotal Site Development</i>	<i>\$180,000</i>
Total Project Costs	\$180,000

The City may, at its sole discretion, elect to revise the Scope of Work and Budget through a letter signed by both the City and Developer. However, in no event will the City contribute any additional funds to the Budget. In the event of cost overruns, it shall be the Developer's responsibility to complete the Project.

EXHIBIT C
to
Property Sale and Development Agreement

FORM OF QUITCLAIM DEED

----- space above for Recorder's Office -----

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), for valuable consideration paid, hereby grants and conveys to _____, an _____ limited liability company, the address of which is [_____] (the "**Developer**"), all of the City's right, title and interest in and to the real property described on Exhibit A (Legal Description) hereto (the "**Property**"), together with any and all appurtenant easements and rights.

Property Address: [_____] North Bend Avenue, Cincinnati,
Ohio 45224]

Auditor's Parcel ID No(s): [_____]

Prior Instrument Reference: Official Record _____, Page _____
of the Hamilton County Recorder's Office

Reconveyance to City upon Failure to Timely Commence Construction or Complete Construction: The City and Developer are parties to a *Property Sale and Development Agreement* dated _____, 2021 (the "**Agreement**") pursuant to which Developer is required to redevelop the Property. If (i) Developer does not commence construction at the Property on or before the Commencement Deadline (as defined in the Agreement) (the "**First Repurchase Option**"); or (ii) if (a) Developer does not complete construction on or before a Completion Deadline (as defined in the Agreement), or (b) any Buildable Lots have not been sold by Developer by the Outside Sale Date (as defined in the Agreement) (the "**Second Repurchase Option**"), the City may require Developer to reconvey all or a part of the Property to the City as described in the Agreement. Such restriction is intended to run with the land and be binding on Developer and its successors-in-interest. At such time as the City no longer has the right to reacquire all or a part of the Property under the First Repurchase Option or the Second Repurchase Option, the City, at Developer's request, shall execute and deliver to Developer a release of such rights for recording in the Hamilton County, Ohio Records. Notwithstanding the above, the City's rights in the Second Repurchase Option shall at all times be subordinate and subject to the lien on the Property of a third-party construction financier of the Project (as defined in the Agreement), regardless of the timing of the recording of any document evidencing such lien.

Prohibition on Transfer or Sale of Property: Pursuant to Section 3(E) of the Agreement, the Developer may not transfer or sell the Property without first receiving certain City approvals, as described therein, and prior to the transferee of the Property executing a Home Completion Agreement (as defined in the Agreement).

This conveyance was authorized by Ordinance No. ____-20__, passed by Cincinnati City Council on _____, 20__.

Executed on _____, 20__.

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, City Manager

STATE OF OHIO)
) ss.
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before this ___ day of _____, 20__, by Paula Boggs Muething, City Manager of the **City of Cincinnati**, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public
My commission expires: _____

Recommended by:

Markiea Carter
Interim Director, Department of Community and Economic Development

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street
Cincinnati, OH 45202

Exhibits:
Exhibit A – *Legal Description*

This instrument prepared by: City of Cincinnati, Office of the City Solicitor; 801 Plum Street, Room 214;
 Cincinnati, Ohio 45202

EXHIBIT A TO QUITCLAIM DEED

Legal Description

[TO BE ATTCHED TO EXECUTION VERSION]

EXHIBIT D
to
Development Agreement

REPURCHASE OPTION RELEASE FORM

----- space above for Recorder's office -----

RELEASE OF ENCUMBRANCE

The CITY OF CINCINNATI, an Ohio municipal corporation, with offices at 801 Plum Street, Cincinnati, Ohio 45202 (the "City"), being the holder of a certain [First Repurchase Option/Second Repurchase Option] (the "Encumbrance"), which was referenced in a certain Quitclaim Deed recorded in OR [_____], Page [_____], Hamilton County, Ohio Records, (the "Deed"), does hereby acknowledge that the applicable obligations of the Developer under the Agreement (as such terms are defined in the Deed) relating to the Encumbrance have been satisfied in relation to the herein described real property, and the City releases any and all remaining interest in such Encumbrance on such real property described herein [provided, however, that this instrument shall not be construed to waive or in any manner affect or invalidate the Second Repurchase Option upon the residue of the real property described in the Deed.] The real property released pursuant to this instrument is described in the attached Exhibit A.

Executed on the date of acknowledgment indicated below.

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 _____, 20__, by Paula Boggs Muething, City Manager of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public
My commission expires: _____

Recommended by:

Markiea Carter, Interim Director
Department of Community and Economic Development

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:
City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, OH 45202

Exhibit A to Release of Encumbrance

[LEGAL DESCRIPTION TO BE INCLUDED]

EXHIBIT E
to
Development Agreement

HOME COMPLETION AGREEMENT FORM

HOME COMPLETION AGREEMENT

This HOME COMPLETION AGREEMENT ("**Agreement**") is made as of the Effective Date (as defined on the signature page hereof) by the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**") and [_____] , an Ohio [limited liability company/corporation], the address of which is [_____] ("**Builder**").

Recitals:

A. Pursuant to a *Property Sale and Development Agreement* dated _____ executed between the D-HAS Development, LLC, an Ohio limited liability company ("**Developer**") and the City (the "**Sale Agreement**"), the City sold certain real estate in the College Hill neighborhood of Cincinnati, Ohio located at 1630 West North Bend Road to Developer for the development of buildable lots to support the construction of single-family homes.

B. Builder seeks to purchase the following buildable lot(s) developed by Developer: [INSERT ADDRESSES/PARCEL/SHORT DESCRIPTION] (each a "**Lot**" or, if multiple, "**Lots**").

C. Builder seeks to construct a single-family home or homes on the Lot(s). The completion of the single-family home(s) on the Lot(s) is referenced herein as the "**Project**". The proposed design and estimated costs of the Project are further described in Exhibit A (Plans) to this Agreement (the "**Plans**").

D. In accordance with the Sale Agreement, Builder or Developer has submitted to the City and the City has approved of Builder and the Plans, and the City has otherwise approved of the terms of the sale of the Lot(s) from Developer to Builder as required by the Sale Agreement.

E. As set forth in the Sale Agreement, it is a condition of the sale by Developer to Builder of the Lot(s) that Builder enter into this Agreement with the City to covenant that Builder will complete the Project.

NOW, THEREFORE, for and in consideration of good and valuable consideration between the parties, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Completion of Project. Builder hereby agrees that it shall complete the Project substantially in accordance with the Plans and shall utilize best efforts to complete the Project in a commercially reasonable time frame following the Effective Date (as defined on the signature page hereof). Builder shall be permitted to make non-material alterations to the Plans without approval by the City, but prior written approval by the City's Director of the Department of Community and Economic Development shall be required for any Material Alterations (as defined below). A "**Material Alteration**" to the Plans is (1) any single change that would diminish the overall estimated cost of construction by more than 20% or (2) any change that would alter the use from a single-family home.

2. No Other City Assistance. Builder agrees that the City shall not be responsible for any other costs or expenses associated with the Project.

3. Representations and Warranties. Builder represents and warrants to the City the following:

(i) Builder is a duly organized corporation or limited liability company validly existing under the laws of the State of Ohio, is qualified to do business in 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 of the State of Ohio relevant to the transactions contemplated by this Agreement.

(ii) Builder 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 Builder and all actions necessary have been taken to constitute this Agreement, when executed and delivered, a valid, and binding obligation of Builder.

(iii) The execution, delivery, and performance by Builder of this Agreement and the consummation of the transactions contemplated hereby will not violate any applicable laws; any writ or decree of any court or governmental instrumentality; the organizational documents of Builder; or any mortgage, indenture, contract, agreement, or other undertaking to which Builder is a party or which purports to be binding upon Builder or upon any of its assets, nor is Builder 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 Builder, threatened against or affecting it, at law or in equity or before or by any governmental authority, which would materially adversely affect Builder's ability to perform the Builder's obligations set forth under this Agreement.

(vii) With reference to Section 301-20 (*Delinquencies in Accounts Receivable and Loans Receivable; Policy*) of the Cincinnati Municipal Code, to the best of Builder's knowledge neither it nor any of its affiliates are in breach of any of its obligations to the City under any existing agreements with the City nor does it nor any of its affiliates owe any fines, penalties, judgment awards, or any other amounts to the City.

4. Default; Remedies.

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

(i) The failure of Builder to perform or observe (or cause to be performed or observed) any obligation, duty, or responsibility under this Agreement and failure by Builder to correct such default within thirty (30) days after the receipt by Builder 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, Builder shall not be in default under this Agreement so long as the Builder commences to cure the default within the Cure Period and thereafter diligently completes such cure within sixty (60) days after receipt of the City's initial notice of default. Notwithstanding the foregoing, if Builder'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 such entity fails to take reasonable corrective action immediately upon discovering such dangerous condition or emergency;

(ii) The dissolution of Builder, the filing of any bankruptcy or insolvency proceedings by Builder, or the making by Builder of an assignment for the benefit of creditors;

(iii) The filing of any bankruptcy or insolvency proceedings by or against Builder, the appointment of a receiver (temporary or permanent) for Builder, the attachment of,

levy upon, or seizure by legal process of any property of Builder, or the insolvency of Builder, unless such appointment, attachment, levy, seizure, or insolvency is cured, dismissed, or otherwise resolved to the City's satisfaction within sixty (60) days following the date thereof; or

- (iv) Any representation, warranty, or certification of Builder made in connection with this Agreement or the Project shall prove to have been false or materially misleading when made.

(B) Remedies. Upon the occurrence of an event of default under this Agreement, the City shall be entitled to: (i) terminate this Agreement by giving Builder 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 default, all at the expense of Builder; and (iii) exercise any and all other rights and remedies under this Agreement or otherwise available at law or in equity, including but not limited to filing an action for specific performance. Builder 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 of Builder under this Agreement or the City's enforcement or termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

5. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person; (ii) upon receipt or refusal if delivered by overnight delivery with any reputable overnight courier service; or (iii) upon receipt or refusal if sent by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to Builder and the City, as the case may be, at the addresses set forth in the introductory paragraph of this Agreement or such other address as may be designated from time to time by notice given to the other party in the manner prescribed herein. Builder shall simultaneously send, by U.S. certified mail, a copy of each notice given by Builder to the City hereunder to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, Ohio 45202.

6. General Provisions.

(A) Amendment. This Agreement may be amended or supplemented by, and only by, an instrument executed by the City and Builder.

(B) Waiver. Neither party hereto shall be deemed to have waived the exercise of any right which it holds under this Agreement unless that waiver is made expressly and in writing (and no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right.

(C) Applicable Law. Builder shall obtain and maintain all necessary City and other governmental permits, licenses, and other approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances, and other governmental requirements that are applicable to the Project. Notwithstanding anything to the contrary in this Agreement, by executing this Agreement the City makes no representations or other assurances to any party that Builder will be able to obtain whatever variances, permits, or other approvals from the City's Department of Buildings and Inspections, the City's Department of Transportation and Engineering, City Planning Commission, or City Council that may be required in connection with the Project.

(D) Time of Essence. Time shall be of the essence of this Agreement.

(E) Headings. The headings of the paragraphs and subparagraphs of this Agreement are provided herein for and only for convenience of reference and shall not be considered in construing their contents.

(F) Construction. As used in this Agreement, (i) the term “person” means a natural person, a trustee, a corporation, a partnership, a limited liability company, and any other form of legal entity; and (ii) all references made (a) in the neuter, masculine, or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to any paragraph or subparagraph shall, unless herein expressly indicated to the contrary, be deemed to have been made to such paragraph or subparagraph of this Agreement, and (d) to Builder, the City, and Developer shall be deemed to refer to each person hereinabove so named and their respective heirs, executors, personal representatives, successors and assigns.

(G) Severability. No determination by any court or governmental body that any provision of this Agreement or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (i) any other such provision, or (ii) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with applicable law.

(H) Entire Agreement. This Agreement represents the complete understanding between or among the parties hereto as to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, statements or agreements, either written or oral, between or among the parties hereto as to the same.

(I) Term. This Agreement shall be effective upon the execution hereof and shall remain in effect until such time as Builder’s obligations hereunder are satisfied and discharged in full. At such time, Builder may request, and the City will endeavor to promptly provide, a written statement from the City acknowledging the same and confirming that Builder has no further obligations hereunder.

(J) Assignment. Builder shall not assign its rights or interests or delegate its duties or obligations under this Agreement to any third party without the prior written consent of the City, which consent may be withheld in the City’s sole and absolute discretion. Any non-permitted assignment shall be void.

7. Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

Exhibit A - *Plans*

[Signature Page Follows]

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

BUILDER:

[_____]

By: _____

Name: _____

Title: _____

Date: _____

Authorized by resolution dated _____, 20____

[CITY SIGNATURE PAGE ATTACHED]

**CITY:
CITY OF CINCINNATI**

By: _____
Paula Boggs Muething, City Manager

Date: _____, 20__

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

EXHIBIT A
to
Home Completion Agreement

PLANS

[ESTIMATED BUDGET AND PROPOSED DESIGNS TO BE ATTACHED]

EXHIBIT F
to
Development Agreement

DISBURSEMENT OF FUNDS

(A) Conditions to be Satisfied Prior to Disbursement of Funds. The City shall be under no obligation to disburse the Grant proceeds (the “**Funds**”) to Developer for the construction of the Project until the following conditions are satisfied:

- (i) the Closing has occurred, and all Closing Conditions have been satisfied or waived;
- (ii) Developer shall have provided the City with evidence of the insurance required under this Agreement;
- (iii) Developer shall have provided the City with evidence that it has obtained all licenses, permits, governmental approvals, and the like necessary for the construction work;
- (iv) the parties shall have approved the construction budget and construction schedule for the Project;
- (v) the Final Plans for the Project shall have been submitted to and approved by the City, and on-site construction of the Project shall have commenced and be proceeding in accordance with the City-approved Final Plans and proposed construction schedule;
- (vi) Developer shall have provided the City with such other documents, reports, and information relating to the Project as the City may reasonably request; and
- (vii) Developer shall not be in default under this Agreement.

(B) Disbursement of Funds Upon Completion. Provided all of the requirements for disbursement of the Funds shall have been satisfied, the City shall disburse the Funds from the Project account. Upon satisfaction of the conditions and requirements herein, the City shall disburse the Funds for the hard construction costs of the Site Development incurred by Developer upon completion of the Site Development. Developer shall request the Funds and shall use the Funds solely to reimburse itself for documented hard construction costs paid by Developer to third parties for the aforementioned Site Development and for no other purpose. Nothing in this Agreement shall permit, or shall be construed to permit, the expenditure of Funds for the acquisition of supplies or inventory, or for the purpose of purchasing materials not used in the construction, or for establishing a working capital fund, or for any other purpose expressly disapproved by the City. Developer shall not request a disbursement of Funds for any expenditure that is not itemized on or contemplated by the Budget or if the costs for which the disbursement is being requested exceeds the applicable line item in the Budget; however, Developer may request, in writing, that funds be transferred between line items, with the City’s approval thereof not to be unreasonably withheld. Disbursements from the Project account shall be limited to an amount equal to the actual cost of the work, materials, and labor incorporated in the work up to the amount of such items as set forth in Developer’s request for payment. Anything contained in this Agreement to the contrary notwithstanding, the City shall not be obligated to make or authorize any disbursements from the Project account if the City determines, in its reasonable discretion, that the amounts remaining from all funding sources with respect to the Site Development are not sufficient to pay for all the costs to complete construction. Developer acknowledges that the obligation of the City to disburse the Funds to Developer for construction shall be limited to the Funds to be made available by the City under this Agreement. Developer shall provide all additional funds from other resources to complete the Private Improvements, Site Development, and Project. Notwithstanding anything in this Agreement to the contrary, the City’s obligation to make the Funds for construction available to Developer, to the extent such Funds have not been disbursed, shall terminate ninety (90) days following Construction Completion.

(C) Draw Procedure.

(i) Frequency. Developer may make disbursement requests no more frequently than once in any thirty (30) day period.

(ii) Documentation. Each disbursement request shall include the following: For construction costs shown on the approved budget, Developer shall submit a draw request form provided by the City, with the following attachments: (i) an AIA G-702-703 Form (AIA) or such other similar form acceptable to the City, (ii) sworn affidavits and/or unconditional lien waivers (together with copies of paid invoices, contracts, or other supporting data) from all contractors, subcontractors and materialmen covering all work, labor and materials for the work through the date of the disbursement and establishing that all such work, labor and materials have been paid for in full, (iii) waivers or disclaimers from suppliers of fixtures or equipment who may claim a security interest therein, and (iv) such other documentation or information requested by the City that a prudent construction lender might request. All affidavits and lien waivers shall be signed, fully-executed originals.

(D) Intentionally Deleted.

(E) Estoppel Certification. A request for the disbursement of Funds shall, unless otherwise indicated in writing at the time Developer makes such request, be deemed as a representation and certification by Developer that (i) that all work done and materials supplied to date are in accordance with the City-approved plans and specifications for the Project and in strict compliance with all legal requirements as of the date of the request, (ii) the Project is being completed in accordance with the City-approved budget and construction schedule, and (iii) Developer and the City have complied with all of their respective obligations under this Agreement. If Developer alleges that the City has been or is then in default under this Agreement at the time Developer makes such request, and if the City disputes such allegation, the City shall not be obligated to make or authorize such disbursement until the alleged default has been resolved.

* * *

EXHIBIT G
to
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 Conferring 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

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.

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.

(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 suspended or 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 suspended or debarred by any federal, state, or local government agency. If Developer or any of its principals becomes suspended or debarred by any federal, state, or local government agency during the term of this Agreement, Developer shall be considered in default under this Agreement.

Addendum I
to
Additional Requirements Exhibit
City's Prevailing Wage Determination

[TO BE ATTACHED TO EXECUTION VERSION]