

Contract No. _____

FUNDING AND DEVELOPMENT AGREEMENT

by and between the

CITY OF CINCINNATI,
an Ohio municipal corporation

and

[GRAMMERS PLACE, LLC]
an Ohio limited liability company

Project Name: The Lockhart

(loan of City capital funds for the renovation and new construction of 116 residential rental units, including 20 affordable units, and commercial space at 1422-1450 Walnut Street Cincinnati, Ohio 45202)

Date: _____, 2024

FUNDING AND DEVELOPMENT AGREEMENT
(The Lockhart)

This Funding and Development Agreement (this “**Agreement**”) is made as of the Effective Date (as defined on the signature page below) by and among the CITY OF CINCINNATI, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”), and [GRAMMERS PLACE, LLC], an Ohio limited liability company, 1209 Sycamore Street, Cincinnati, Ohio 45202 (“**Developer**”), an affiliate of Urban Sites.

Recitals:

A. Developer [either directly or contingently] owns (pursuant to that certain [Purchase and Sale Agreement dated _____, 20__]), fee title to] several parcels of real property located at 1422-1450 Walnut Street, Cincinnati, Ohio 45202 in the Over-the-Rhine neighborhood of Cincinnati, all as more particularly described on Exhibit A (Legal Description) hereto (the “**Property**”).

B. Developer has proposed consolidating the several parcels making up the Property into a single parcel, renovating the existing buildings on the Property and constructing a new structure to connect the existing buildings to create a new single structure, upon completion of which shall create in the aggregate, approximately 108,000 square feet of residential space, consisting of 116 residential dwelling units and approximately 4,522 square feet of commercial space in accordance with Exhibit B (Statement of Work, Budget, and Sources and Uses of Funds) hereto (the “**Project**”).

C. As further described herein, Developer will initially lease and make affordable 20 of the 116 residential dwelling units to families earning at or below 80% of the area median income (“**AMI**”) as established by United States Department of Housing and Urban Development (“**HUD**”) for the Cincinnati metropolitan area, adjusted for household size, and as may be updated from time to time (the “**Designated Units**”).

D. Developer estimates that the Project will create approximately (i) 12 full-time equivalent permanent jobs following completion of construction of the Project with an approximate annual payroll \$580,000, and (ii) 125 temporary construction jobs during the construction period with an approximate annual payroll of \$11,700,000.

E. The City, upon the recommendation of the City’s Department of Community and Economic Development (“**DCED**”), desires to provide support for the Project in the form of a loan to Developer from tax increment financing funds from District 4 – Downtown-OTR East District Incentive District established by the City pursuant to Ohio Revised Code Section 5709.40 in an amount not to exceed \$2,900,000 on the terms and conditions set forth in this Agreement (the “**Loan**”), to be utilized for the hard construction costs of the residential component of the Project, as further described in Section 2 below, which will assist in creating additional housing opportunities in the City of Cincinnati.

F. In addition to the City’s Loan for the Project, the City and Developer intend to enter into a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* on or about the Effective Date, granting a tax abatement for improvements to the Property (the “**CRA Agreement**”).

G. 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.

H. 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; for this reason the City desires to facilitate the Project by providing the public support as described herein.

I. Execution of this Agreement was authorized by Ordinance No. ____-20__ passed by City Council on _____, 20__, which appropriated funds for the purpose of developing the Property which the City has determined constitutes a Housing Renovation (as defined in Section 5709.40(A)(3) of the Ohio Revised Code), that will benefit and/or serve the District 4-OTR-East District Incentive District.

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

1. **Term.** The term of this Agreement shall commence on the Effective Date, and unless sooner terminated as herein provided, shall end on the date on which the Loan has been paid in full (or otherwise forgiven, in accordance with its terms) and Developer has satisfied all other obligations to the City under this Agreement (the “**Term**”). Any and all obligations of Developer that have accrued but have not been fully performed as of such termination or expiration date shall survive such termination or expiration until fully performed.

2. **Project.**

(A) **Acquisition.** Not later than March 31, 2025, Developer shall close on the purchase of the Property (the “**Closing**”). Developer warrants that at Closing, Developer shall obtain fee simple title to the Property, free and clear of all liens and encumbrances except for recorded utility easements and other encumbrances, if any, that will not impair or impede the redevelopment and completion of the Project (the “**Permitted Encumbrances**”). At Closing, Developer shall execute all customary closing documents and provide copies to the City. Developer shall be responsible for all costs of Closing, including, without limitation, closing, escrow, and recording fees and any other commercially reasonable costs or expenses necessary to complete the transaction contemplated by this Agreement. Notwithstanding anything to the contrary in this Agreement, this Agreement shall automatically terminate, and thereafter neither party shall have any right or obligations to the other, if for any reason the Closing does not occur by April 30, 2025.

(B) **Closing Conditions.** Prior to the Closing, at such time as such documents become available, Developer, at its sole expense, shall obtain and deliver to the City all of the following items (collectively, the “**Closing Conditions**”) unless and until each of the Closing Conditions have been satisfied or waived in writing by the City, at the City’s sole and absolute discretion *provided, however*, that if the City, in its sole and absolute discretion, determines that one or more of the Closing Conditions would be more appropriately handled after the Closing, the City may, if appropriate, handle such Closing Conditions after the Closing, as the City elects:

- (i) **Site Control and Evidence of Clear Title.** Developer must present evidence, satisfactory to the City, that Developer will obtain fee title to the Property in fee simple absolute at Closing, and that said title will be free, clear, and unencumbered except for Permitted Encumbrances;
- (ii) **Survey:** Developer shall deliver ALTA survey(s) of the Property upon which the Project will be constructed, showing all easements and other matters of record that can be shown on a survey, obtained by Developer and acceptable to the City;
- (iii) **Consolidation Plat and Legal Description.** Developer must deliver to the City (a) all plats and legal descriptions as may be required by the City and the Hamilton County Engineer, Auditor, and Recorder in connection with Developer’s consolidation of all parcels consisting of the Property into a single parcel, and (b) a deed conveying the Property from Developer to accompany said plats and legal descriptions in order to effectuate the aforementioned consolidation and place the new consolidated legal description of record, all of which will be recorded immediately following the Closing;
- (iv) **Environmental Report.** Developer must deliver to the City an Environmental Reliance Letter issued by the Developer’s environmental certified professional, satisfactory to the City’s Office of Environment and Sustainability (“**OES**”) stating that the City shall be entitled to rely upon all environmental reports and the like prepared by Developer’s environmental certified professional in connection with the Property, including, without limitation, a Phase I Environmental Site Assessment, and any additional assessments as may be required by OES, in a form acceptable to the City; and
- (v) **Other Information.** Developer shall have provided such other information and documents pertaining to Developer, the Property, or the Project as the City may reasonably require.

(C) Project Terms. Following the Closing and subject to the terms of this Agreement, Developer shall complete the Project in accordance with Exhibit B hereto. Developer shall (a) apply for and receive the required building permits from the City's Department of Buildings and Inspections for construction of the Project, and (b) commence on-site construction at the Property no later than September 30, 2025 (the "**Project Commencement Date**"), and complete the Project, as evidenced by issuance of certificates of occupancy for the Project, no later than March 31, 2027 (the "**Project Completion Date**") *provided however*, upon Developer's request and at the sole and absolute discretion of the Director of DCED, the City may extend the Project Commencement Date or the Project Completion Date by up to 12 months by providing written notice to Developer. Under no circumstances shall Developer use insufficient funds as the justification for requesting an extension of either the Project Commencement Date or the Project Completion Date.

(D) Designated Units Leasing Requirement. Following the Project Completion Date, Developer shall lease the Designated Units to households with an income level at or below 80% AMI (the "**Lease-Up Requirement**") no later than the date that is 6 months following the issuance of all certificates of occupancy for the Project (the "**Lease-Up Date**"), *provided however*, that upon Developer's written request and at the sole and absolute discretion of the Director of DCED, the City may extend the Lease-Up Date by up to 6 months by providing written notice to Developer. In order to satisfy the Lease-Up Requirement, Developer shall (i) certify project rents and verify tenant eligibility by submitting to the City an *Income Verification Form*, in the form of Addendum I to Statement of Work, Budget, and Sources and Uses Exhibit (Form of Income Verification Form) hereto, for all households occupying Designated Units, which must be signed by and certified by each tenant and indicate that the information is complete and accurate, and (ii) submit written and executed rental agreements with all tenants of the Designated Units.

3. City Financial Assistance (Loan)

(A) Amount of Loan; Eligible Uses. Subject to the terms and conditions of this Agreement, the City agrees to lend the Loan to Developer, and Developer agrees to borrow the Loan from the City. The Loan will be funds derived from (ii) District 4–OTR-East District Incentive District, a tax increment financing district established by the City pursuant to Ohio Revised Code Section 5709.40(C), in an amount not to exceed \$2,900,000 (the "**TIF Funds**"). The proceeds of the Loan of the TIF Funds (the "**Funds**") shall be used solely to finance the hard construction costs of the residential component of the Project, as itemized on Exhibit B (the "**Eligible Uses**") and for no other purpose. Developer acknowledges that the TIF Funds shall be utilized solely to finance the hard construction costs of a "Housing Renovation", as that term is defined in Ohio Revised Code Section 5709.40(A)(3), for the Project at the Property. For the avoidance of doubt, Developer shall not use any portion of the Funds to pay for the hard construction costs of the commercial portion of the Project, design fees or other soft costs, or for the purchase of inventory, supplies, furniture, trade fixtures, or any other items of personal property, or to establish a working capital fund. Except for the City's agreement to provide the Funds as described in this Agreement, the City shall not be responsible for any costs associated with the completion of the Project.

(B) Note & Mortgage as Security for the Funds. Prior to the City's disbursement of the Funds, Developer shall execute a promissory note in the form of attached Exhibit C (Form of Promissory Note) hereto (the "**Note**"), and Developer shall execute a mortgage, in the form of attached Exhibit D (Form of Mortgage) in favor of the City for the Property described herein (the "**Mortgage**"; this Agreement, the Note, the Mortgage, the Guaranty (as defined below), and any and all other documents executed by Developer to evidence the Loan are referred to herein collectively as the "**Loan Documents**"). The Note and Mortgage shall be in the full amount of the Funds. Developer shall repay the Loan in accordance with the terms of the Note. Developer shall execute the Mortgage and record it in the real property records of Hamilton County, Ohio, all at Developer's expense. Following recording, Developer shall deliver the recorded Mortgage to the City. If Developer fails to timely complete its construction obligations or any other obligations with respect to the Project as and when required under this Agreement or the Note, the City may declare all amounts of the Loan disbursed by the City to be immediately due and payable and may foreclose the Mortgage on such Property, subject to the Superior Mortgage (as defined below). The Mortgage shall be released only after the repayment (or forgiveness) of the Loan in accordance with the Note and upon Developer's written request. All rights and remedies of the City are cumulative, and the City shall be entitled to all other rights and remedies hereunder, under the Note, the Mortgage, and the Guaranty, or available at law or in equity.

(C) Conditions Precedent to Disbursement. The obligation of the City to disburse any portion of the Loan in accordance with this Section shall not occur unless and until each of the following conditions (collectively, the "**Disbursement Conditions**") have been satisfied at the City's sole and absolute discretion or waived in writing by the City:

(i) Policy of Title Insurance. Developer shall provide a commitment of title insurance for the Property

obtained by Developer and acceptable to the City, evidencing the title company's commitment to issue (1) an Owner's Policy of Title Insurance to Developer, and (2) shall cause the title company to issue to the City a Loan Policy of Title Insurance for the Property, in a form acceptable to the City, insuring the priority of the City's Mortgage, subject only to the Superior Mortgage;

- (ii) Geotechnical and Environmental Condition. Developer shall be satisfied that the geotechnical and environmental condition of the Property is acceptable for development of the Project;
- (iii) Final Budget. Developer must present a final itemized budget for the Project (as the same may be amended from time to time and approved by the City, the "**Budget**"), generally consistent with the budget shown on Exhibit B;
- (iv) Final Plans and Specifications. Developer shall have submitted its final professionally prepared architectural plans and specifications for the Project (as the same may be amended from time to time and approved by the City, the "**Plans and Specifications**");
- (v) Construction Schedule. Developer shall have provided the proposed construction schedule for the Project (as the same may be amended from time to time and approved by the City, the "**Construction Schedule**");
- (vi) Construction Contract; Approval of Contractors. Developer must present (a) an executed construction contract with a general contractor for construction of the Project acceptable to the City, and (b) a list of proposed contractors and major subcontractors for the Project. Neither the proposed general contractor nor subcontractors shall be identified as being debarred on lists maintained by the City or by the federal or state governments;
- (vii) Building Permit and Zoning Approvals. Developer shall have secured all zoning and permitting approvals necessary to construct the Project;
- (viii) Insurance. Developer must present evidence that all insurance policies required under this Agreement have been secured;
- (ix) Financing. Developer shall have delivered to the City a satisfactory loan commitment or letter from Developer's lender or other documentation evidencing that Developer has secured or will be able to secure all financing necessary to complete the Project;
- (x) Note & Mortgage from Developer. Developer shall have executed and delivered to the City the Note and the recorded Mortgage;
- (xi) Guaranty. Developer shall have caused [TBD] ("**Guarantor**"), to execute and deliver to the City a *Completion Guaranty* substantially in the form of the attached Exhibit E (*Form of Guaranty*) hereto ("**Guaranty**");
- (xii) Project Completion. Based upon all information then available to the City, the City must be reasonably satisfied that 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;
- (xiii) Continued Compliance. Developer shall be in compliance with all obligations under this Agreement and all representations made by Developer under this Agreement or any other document executed between Developer and the City related to the Project shall continue to be true and accurate;
- (xiv) No Default. Developer shall be in full compliance with all requirements under the Loan Documents; and

- (xv) Other Information. Developer shall have provided such other information and documents pertaining to Developer or the Project as the City may reasonably require.

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

(D) Copies of Due Diligence Materials to Be Provided to City. Once the aforementioned materials in this Section have been provided by Developer as a Disbursement Condition and have been approved by the City (the "**Project Materials**"), Developer shall not make or permit any changes thereto without the prior written consent of the Director of DCED. Without limitation of Developer's other obligations, prior to the City's disbursement of the Funds, as such due diligence materials are obtained by Developer, Developer, at no cost to the City, shall provide DCED with copies of the inspection, engineering, and environmental reports, title reports, surveys, and other materials prepared by third party professionals obtained by Developer that pertain to the Project or the Property, or are otherwise related to anything authorized pursuant to the terms and conditions of this Agreement.

(E) Disbursement. Provided that all of the Disbursement Conditions have been satisfied in a timely manner, the City shall disburse the Funds to Developer in accordance with Exhibit F (Disbursement of Funds) hereto, with proceeds to be utilized solely for the Eligible Uses. In no circumstances shall the City be obligated to disburse proceeds of the Loan in an amount in excess of the proceeds necessary to finance the Eligible Uses. After the Project Commencement Date and throughout the duration of the Project, Developer shall forward to the City documentation for each proposed draw of construction financing simultaneously with Developer's sending such draw to lenders on the Project for the City's review. Upon request, Developer shall provide to the City written documentation demonstrating the proper use of the Loan proceeds to finance the Eligible Uses.

(F) Subordination of Loan. The City hereby agrees that the Mortgage shall be subordinate to the first mortgage held by [the Developer's chosen construction lender, which lender shall be reasonably acceptable to the City] (the "**Superior Mortgage**") securing an approximately \$[17,500,000] construction-permanent loan given to Developer (the "**Superior Loan**"). Notwithstanding the foregoing, the lien of the Mortgage and Developer's obligations under this Agreement and the Note shall not be subordinate to, and the City shall not be required to subject its lien interest in the Property to, the lien of any financing or mortgage sought or obtained by Developer without the express written consent of the City.

(G) No Other City Assistance. Except for the City's agreement to provide the Loan as described in this Agreement, the City shall not be responsible for any costs associated with the completion of the Project.

4. Construction Requirements

(A) Construction. Following the City's approval of the Project Materials, 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) enter into a construction contract if not previously executed, and (iii) commence construction of the Project on or before the Project Commencement Date. Developer shall cause the Project to be completed in accordance with the approved Plans and Specifications and Construction Schedule, all City of Cincinnati Building Code requirements, and in a good and workmanlike manner on or before the Project Completion Date.

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

(C) Contractors and Subcontractors. In performing work on 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.

(D) Inspection of Work. During construction of the Project, the City, its employees, and agents shall have the right at all reasonable times to inspect the progress of construction to determine whether Developer is complying with its obligations under this Agreement. If the City determines that work on the Project is not in accordance with the Plans and Specifications or other requirements of this Agreement, is not in compliance with all applicable laws, or is not performed in a good and workmanlike manner, the City shall have the right, in its reasonable judgment, to stop such work and order its replacement at Developer's expense (not to be paid for using the Funds), whether or not such work has been incorporated into the Project, by giving notice of such nonconforming work to Developer.

(E) Mechanics' Liens. Developer shall not permit any mechanics' or other similar liens to remain on the Property during the construction of the Project. If a mechanic's lien shall at any time be filed against the Property, Developer shall, within 30 days after notice of the filing thereof, (i) cause the same to be discharged of record or bonded off by a surety bond, or (ii) deposit the amount necessary to discharge such lien with the City, to be held in escrow pending the release of the lien.

(F) Project Information; As-Built Plans. During construction, Developer shall provide the City with such additional pertinent information pertaining to the Project as the City may reasonably request. Following completion of construction, the Developer shall provide the City with a set of as-built plans and shall provide the City such other information pertaining to the Project as the City may reasonably request.

(G) Permits and Fees Payable to DOTE. Developer acknowledges that (i) Developer will be required to obtain barricade, street opening, meter permits, and other related permits when the Project necessitates closing meters, opening and/or closing the adjoining streets or portions thereof, or when otherwise required by DOTE for the Project (ii) Developer will be required to pay DOTE for any such permit fees, and (iii) with many entities competing for space on City street, 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.

5. Insurance; Indemnity.

(A) Insurance during Construction. Until such time as all construction work associated with the Project has been completed, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$1,000,000 per occurrence, combined single limit/\$5,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of 100% of the value of the improvements constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Developer's lenders for the Project, and (v) such other insurance as may be reasonably required by the City. All 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 cancelled or modified without at least 30 days prior written notice to the City. Prior to commencement of construction, Developer shall send proof of all such insurance to DCED 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

(B) Waiver of Subrogation in Favor of City. Developer hereby waives all claims and rights of recovery, and on behalf of Developer's insurers, rights of subrogation, against the City, its employees, agents, contractors, and subcontractors with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Developer, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors, or subcontractors; it being the agreement of the parties that Developer shall at all times protect 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) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Developer shall defend, indemnify, and hold the City, its officers, council members, employees, and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including, without limitation, attorneys' fees), demands, judgments, liability, and damages (collectively, "**Claims**") suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of

Developer, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Developer in connection with the Project. Developer's indemnification obligations under this paragraph shall survive the termination or expiration of this Agreement with respect to Claims arising prior thereto.

(D) Prevailing Wage. For all aspects of the Project, Developer shall comply and cause its contractors, subcontractors, and agents to comply with the applicable requirements of the State of Ohio's Prevailing Wage Law, as set forth in Ohio Revised Code Chapter 4115 (the "**Prevailing Wage Law**"). In the event that Prevailing Wage Law requirements apply, then Developer shall pay the applicable prevailing wage rates. Developer shall defend, indemnify, and hold harmless the Indemnified Parties from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys' fees), demands, judgments, liability, and damages suffered or incurred by or asserted against the Indemnified Parties arising from a violation of the Prevailing Wage Law relating to the Project. Developer acknowledges and agrees that it has not and shall not rely upon determinations or representations made by the City or its agents regarding the applicability of the Prevailing Wage Law and that Developer's decisions regarding the applicability of and compliance with the Prevailing Wage Law shall be based upon its own and its counsel's analysis of the Project as applied to Prevailing Wage Law.

6. Casualty; Eminent Domain. If the Property, or any improvements thereon made pursuant to the Project, is damaged or destroyed by fire or other casualty during construction, or if any portion of a Property is taken by exercise of eminent domain (federal, state, or local) during the Term, Developer shall cause the Property to be repaired and restored, as expeditiously as possible, and to the extent practicable, to substantially the same condition that existed immediately prior to such occurrence. If the proceeds are insufficient to fully repair and restore the affected property, the City shall not be required to make up the deficiency. Developer shall handle all reconstruction in accordance with the applicable requirements set forth herein, including without limitation obtaining the City's approval of the plans and specifications for the construction of the Project if they deviate from the final Plans and Specifications as initially approved by the City hereunder. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the affected Property is being repaired or restored.

7. Default; Remedies.

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

(i) the failure by Developer or Guarantor to pay any sum payable to the City under this Agreement or the Note within 5 days of when such payment is due;

(ii) the dissolution, other than in connection with a merger, of Developer (or, during the pendency of the Guaranty, the Guarantor), the filing of any bankruptcy or insolvency proceedings by either such entity, or the making by either such entity of an assignment for the benefit of creditors, or the filing of any bankruptcy or insolvency proceedings by or against Developer (or, during the pendency of the Guaranty, the Guarantor), the appointment of a receiver (temporary or permanent) for either such entity or the Property, the attachment of, levy upon, or seizure by legal process of any property of either such entity, or the insolvency of either such entity, unless such appointment, attachment, levy, seizure, or insolvency is cured, dismissed, or otherwise resolved to the City's satisfaction within 60 days following the date thereof; or

(iii) The occurrence of a Specified Default (as defined below), or any failure of Developer to perform or observe (or cause to be performed or observed, if applicable), any obligation, duty, or responsibility under this Agreement, the Note, or any other agreement or other instrument executed by Developer in favor of the City in connection with the Project (provided that a failure of Guarantor to perform under the Guaranty shall be deemed a failure of Developer to perform under this Agreement), and failure by Developer to correct such default within 30 days after Developer's receipt of written notice thereof from the City (the "**Cure Period**"), other than a Payment Default (as described below), in which case there shall be a Cure Period of 5 business days after such entity's receipt of written notice thereof from the City; 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 Developer commences to cure the default within such Cure Period and thereafter diligently completes such cure within 60 days after Developer's receipt of the City's initial notice of default. Notwithstanding the foregoing, if Developer's failure to perform or observe any obligation, duty, or responsibility under this Agreement creates a dangerous condition or otherwise constitutes an emergency as determined by the City in good faith, an event of default shall be deemed to have occurred if Developer fails to take reasonable corrective action immediately upon discovering such dangerous condition or emergency. As used in this section, "**Specified Default**" means the occurrence of:

- (a) Development Default. Developer (1) fails to comply with Sections 2 or 4 of this Agreement or (2) abandons the Project.
- (b) Misrepresentation. Any representation, warranty or certification of Developer or Guarantor made in connection with this Agreement, the CRA Agreement, or the Loan Documents, or any other agreement or instrument executed by Developer in favor of the City in connection with the Project shall prove to have been false or materially misleading when made.
- (c) Payment Default. Any payment is not made when and due under the Loan Documents, subject to the 5-business day Cure Period described above (a "**Payment Default**"). Developer acknowledges that time is of the essence with respect to the making of each payment of the Loan.
- (d) Financing Default. Developer, Guarantor, or other related entity otherwise defaults beyond any applicable notice and/or cure period under (1) Loan Documents or (2) the documentation for other third-party financing, either debt or equity, for the Project.

(iv) any event of default under the CRA Agreement.

(B) Remedies. Upon the occurrence and during the continuation of an event of default under this Agreement which is not cured or corrected within any applicable Cure Period, the City shall be entitled to (i) terminate this Agreement by giving Developer written notice thereof and, without limitation of its other rights and remedies, and with or without terminating this Agreement, declare all amounts disbursed by the City with respect to the Loan to be immediately due and payable and demand that Developer repay to the City all such amounts, (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 Developer, and (iii) exercise any and all remedies available under the Loan Documents, as applicable, and (iv) exercise any and all other rights and remedies available at law or in equity, including without limitation pursuing an action for specific performance. Developer shall be liable for all costs and damages, including, without limitation, attorneys' fees, suffered or incurred by the City in connection with administration, enforcement, or termination of this Agreement or as a result of a default of Developer under this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy shall not constitute a waiver of the breach of such covenant or of such remedy.

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

To the City:
 Director
 Dept. of Community and Economic Development
 City of Cincinnati
 805 Central Avenue, Suite 700
 Cincinnati, OH 45202

To Developer:
[Grammers Place, LLC]
 c/o Urban Sites Capital Advisors, LLC
 1209 Sycamore Street
 Cincinnati, Ohio 45202
 Attention: Danny Lipson, Chief Development Officer

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

9. Representations, Warranties, and Covenants. Developer hereby makes the following representations, warranties, and covenants to induce the City to enter into this Agreement (and Developer shall be deemed as having made these representations, warranties, and covenants again upon Developer's receipt of each disbursement of Funds):

(i) Developer is duly organized and validly existing under the laws of the State of Ohio, is qualified to do business in the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws relevant to the transactions contemplated by this Agreement.

(ii) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has by proper action been duly authorized, executed, and delivered by Developer, and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid and binding obligations of Developer.

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

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

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

(vi) The statements made and information contained in the documentation provided by Developer to the City that are descriptive of Developer or the Project have been reviewed by Developer and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.

(vii) With reference to Section 301-20 of the Cincinnati Municipal Code, neither Developer nor any of its affiliates are currently delinquent in paying any fines, penalties, judgments, water, or other utility charges, or any other amounts owed by them to the City.

10. Reporting Requirements.

(A) 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.

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

(C) City's Right to Inspect and Audit. Throughout construction of the Project and for a period of 3 years after the expiration or termination of this Agreement, Developer shall permit the City, its employees, agents, and auditors to have full access to and to inspect and audit Developer's Records and Reports. In the event any such inspection or audit discloses

a material discrepancy with information previously provided by Developer to the City, Developer shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

11. **General Provisions.**

(A) **Assignment.** Developer shall not assign its rights or interests under this Agreement without the prior written consent of the City, which consent may be withheld in the City's sole discretion. An assignment by Developer of its interests under this Agreement shall not relieve Developer from any obligations or liability under this Agreement.

(B) **No Transfer; Due on Sale.** Prior to the Maturity Date (as defined in the Note), Developer shall not sell, convey, assign, mortgage, pledge or otherwise dispose of or encumber all or any part of the Property (with the exception of the Superior Mortgage and loan documents related thereto and any other loans or encumbrances expressly authorized under this Agreement, including the Port Authority Arrangement) without the prior written consent of the City. If Developer desires to sell or transfer the Property prior to the date on which all payments required to be paid under the Loan Documents have been fully paid, Developer shall notify the City thereof in writing. Provided that the proposed buyer is not in default on any other contract(s) with the City, is financially sound, provides proof that it is capable of properly managing the Project, and is otherwise qualified to participate in the program, the buyer may, with the City's prior written consent, assume in writing Developer's obligations hereunder and under the Note and Mortgage, or execute a new agreement, note and mortgage in favor of the City, at which time this Agreement and the Note and Mortgage shall be cancelled. If the proposed buyer is not so approved by the City, the entire unpaid and outstanding principal balance of the Loan and accrued and unpaid interest thereon, together with any and all other amounts due and owing to the City under the Loan Documents, shall become due and payable upon Developer's sale or transfer of the Property.

(C) **Entire Agreement; Conflicting Provisions.** This Agreement (including the Exhibits hereto) constitutes the entire agreement of 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 Loan Documents are in conflict with the specific provisions of such other Loan Documents, the provisions of such other Loan Documents shall control.

(D) **Amendments.** This Agreement may not be amended unless such amendment is set forth in writing and signed by both parties.

(E) **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the City and Developer and their respective successors and permitted assigns.

(F) **Severability.** Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

(G) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Developer agrees that venue in such court is proper. Developer hereby waives trial by jury with respect to any and all disputes arising under this Agreement.

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

(I) **Recognition of City Support.** Developer shall acknowledge the support of the City with respect to the Project in all printed materials such as informational releases, pamphlets and brochures, construction signs, project and identification signage, and any publicity such as that appearing on the Internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a participant, Developer shall use either the phrase "Project made possible by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City. Developer's obligations under this section shall commence on the Effective Date and shall terminate on the date on which the Project has been completed.

(J) Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

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

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

(M) No Brokers. The City and Developer represent to each other 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.

(N) 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.

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

(P) Administrative Actions. To the extent permitted by applicable laws, and unless otherwise expressly provided in this Agreement, all actions taken or to be taken by the City under this Agreement may be taken by administrative action and shall not require legislative action of the City beyond the legislative action authorizing the execution of this Agreement.

(Q) Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature.

(R) Transfer of Fee or Leasehold Title to Port Authority. Nothing in this Agreement shall be construed to prohibit Developer from entering into a sale (or lease) and leaseback arrangement with respect to portion(s) of the Property in which fee or leasehold title to the Property (or any portion thereof) is held by the Port Authority (the "**Port Authority Arrangement**"); *provided, however*, that (i) the purpose for the Port Authority Arrangement is to take advantage of the sales tax exemption on the purchase of Project building materials, and (ii) Developer shall provide the City with such documents and other information with respect to this arrangement as the City may reasonably request, including the final form of the Port Authority Arrangement, at least 10 business days prior to any conveyance of any portion of the Property to the Port Authority. Notwithstanding any of the foregoing to the contrary, Developer may not assign its rights, obligations, or any other interest under this Agreement to any other party except as in accordance with Section 11(A). Developer hereby provides notice to the City that Developer (or its affiliates) will enter into the Port Authority Arrangement.

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

Exhibit A – *Legal Description*

Exhibit B – *Statement of Work, Budget and Sources of Funds*

Addendum I to Statement of Work, Budget and Sources of Funds Exhibit – *Income Verification Form*

Exhibit C – *Form of Promissory Note*

Exhibit D – *Form of Mortgage*

Exhibit E – *Form of Completion Guaranty*

Exhibit F – *Disbursement of Funds*

Exhibit G – *Additional Requirements*

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

SIGNATURE PAGE FOLLOWS

The parties have executed this Agreement on the dates indicated below, effective as of the later of such dates (the "Effective Date").

CITY OF CINCINNATI
an Ohio municipal corporation

[GRAMMERS PLACE, LLC,]
an Ohio limited liability company

By: _____
Sheryl M. M. Long, City Manager

Date: _____, 20__

By: _____

Name: _____

Title: _____

Date: _____, 20__

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A
to Funding and Development Agreement

Legal Description

Auditor Parcel ID No.: 080-0001-0194-00

Situate in Section 18, Town 4, Fractional Range 1, Cincinnati Township, in the City of Cincinnati, County of Hamilton, State of Ohio and being part of Lot 29 of the out lots (of the Town of Cincinnati) as recorded in Deed Book E-2, Pages 62 to 66 of the Hamilton County, Ohio Recorder's Office and also being formerly known as part of Clay Street and being more particularly described as follows:

From the intersection of the westerly line of Clay Street, a 40 foot street as originally laid out, and the southerly line of Liberty Street, a 33 foot street as originally laid out, measure along said westerly line of Clay Street, South 15° 19' East, a distance of 64.28 feet to the southerly line of Liberty Street, an existing 95 foot street as established in 1959 (see Drawing File E-64-13 in the City Engineer's Office); thence due East, along the existing southerly line of Liberty Street, a distance of 10.23 feet to a point, said point being the true place of beginning for the property herein described, thence continuing due East, along the existing southerly line of Liberty Street, a distance of 27.13 feet; thence South 15° 19' East, a distance of 56.04 feet; thence South 74° 44' 02" West, a distance of 26.17 feet; thence North 15° 19' West, a distance of 63.18 feet to the place of beginning. Containing 1,560 square feet.

461-1-08

DESCRIPTION ACCEPTABLE
HAMILTON COUNTY ENGINEER
Tax Map - 1-2-13 B

Parcel No. 080-0001-0194-00

Auditor Parcel ID No.: 080-0001-0110 and -0111

Situated in the City of Cincinnati, Hamilton County, Ohio and more particularly described as follows:

Beginning at a point on the east side of Walnut Street, 34.26 feet south of the south line of Liberty Street and thence extending southwardly along the east line of Walnut Street, a distance of 84 feet to a point; and thence eastwardly from said two points named between lines parallel to each other and at right angles to Walnut Street for a distance of 90 feet more or less to an alley.

LESS the following described real estate which was conveyed to the City of Cincinnati for widening of Liberty Street:

Situated in Section 18, Town 4, Fractional Range 1, Hamilton County, Ohio and described as follows: From the intersection of the southerly line of Liberty Street (a 33 foot street) and the easterly line of Walnut Street (A 60 foot street) measure south 15° 27' east along the easterly line of Walnut Street, 34.26 feet to the northerly line of Charles Berkman and Alice Mae Berkman property for the place of beginning; thence continuing along the easterly line of Walnut Street, south 15° 27' east, 44.59 feet; thence northeastwardly along a curve tangent to the easterly line of Walnut Street and deflecting to the right with a radius of 15 feet, a distance of 27.61 feet (the chord of said curve bearing north 37° 16' 30" east for 23.87 feet) thence due east 73.72 feet to the westerly line of Brackett Alley (a 10 foot private alley); thence north 15° 25' 30" west along said westerly line 49.74 feet to the northerly line of said Berkman property; thence south 74° 33' west along said northerly line 90 feet to the place of beginning.

Parcel No. 80-1-110 and 111

CONDITIONAL APPROVAL
EXCEPTION(S) IN DESCRIPTION
HAMILTON COUNTY ENGINEER
Tax Map - 9/6/02

Auditor Parcel ID No.: 080-0001-0114-00

Situate in the City of Cincinnati and being more particularly described as follows:

Beginning at a point in the east line of Walnut Street, south 15° 31' east, 181.65 feet from the intersection of the east line of Walnut Street and the south line of Liberty Street; the above mentioned 181.65 feet being measured along the east line of Walnut Street; thence from said beginning point, south 15° 31' east along the east line of Walnut Street, 29.78 feet; thence north 74° 25' east, 90 feet to the west line of a 10 foot alley; thence north 15° 31' west along the west line of said 10 foot alley and parallel with Walnut Street, 29.91 feet; thence south 74° 20' west, 90 feet to the east line of Walnut Street and the place of beginning.

Being the same premises described in Registered Land Certificate of Title No. 113064 in the Registered Land Records of Hamilton County, Ohio.

Parcel No. 80-1-114

Auditor Parcel ID No.: 080-0001-0112-00

Situate in the City of Cincinnati and being more particularly described as follows:

Beginning at a point in the east line of Walnut Street south 15° 31' east, 119.3 feet from the intersection of the east line of Walnut Street and the south line of Liberty Street; the above mentioned 119.3 feet being measured along the east line of Walnut Street; thence from said point of beginning south 15° 31' east along the east line of Walnut Street, 41.29 feet; thence north 74° 27' east, 90 feet to the west line of a 10 foot alley; thence north 15° 31' west along the west line of said alley and parallel with Walnut Street, 41.23 feet; thence south 74° 29' west, 90 feet to the east line of Walnut Street and the place of beginning.

Being the same premises described in Registered Land Certificate of Title No. 113064 in the Registered Land Records of Hamilton County, Ohio.

Parcel No. 80-1-112

Auditor Parcel ID No.: 080-0001-0113-00

Situate in the City of Cincinnati and being more particularly described as follows;

Beginning at a point in the east line of Walnut Street at the northwest corner of the property identified as Tract 1, on Registration Certificate No. 25294 of the Registered Land Records of Hamilton County, Ohio; thence from said beginning point, north 15° 31' west along the east line of Walnut Street 21.06 feet to the southwest corner of the land identified as Tract 2, on said Registration Plat; thence north 74° 27' east along the south line of said Tract 2, 90 feet to the west line of a 10 foot alley; thence south 15° 31' east along the west line of said 10 foot alley and parallel to Walnut Street, 20.87 feet to the northeast corner of said Tract 1; thence south 74° 20' west along the north line of said Tract 1, 90 feet to the east line of Walnut Street and the place of beginning.

Being the same leasehold estate registered in Book 95, page 33459 of the Registered Land Records of Hamilton County, Ohio.

Being the same tract or parcel of land described in Registered Land Certificate of Title No. 113064 in the Registered Land Records of Hamilton County, Ohio.

Parcel No. 80-1-113 *Lab.*

Auditor Parcel ID No.: 080-0001-0115-00

Situate in the City of Cincinnati, in the County of Hamilton and State of Ohio, and more particularly described as follows:

Beginning at a point 335 feet 4-3/4 inches, north of the northeast corner of Walnut Street and Allison Street, on the east side of Walnut Street; thence northeastwardly along the east side of


Walnut Street, 20 feet to a point; thence eastwardly 95 feet to a point; thence southwardly parallel to Walnut Street, 20 feet to a point; thence westwardly parallel to the north line, 95 feet to the place of beginning.

Parcel No. 80-1-115 *Lab.*

Auditor Parcel ID No.: 080-0001-0191-00

Situate in Section 18, Town 4, Fractional Range 1, Cincinnati Township, in the City of Cincinnati, County of Hamilton, State of Ohio and being part of Lot 29 of the Outlots (of Town of Cincinnati) as recorded in Deed Book E-2, pages 62-66, Hamilton County Recorder's Office and being more particularly described as follows:

Beginning at the intersection of the southerly line of Liberty Street, a 33 foot street and the westerly line of Clay Street, a 40 foot street (as originally laid out); thence along said westerly line south 15° 19' east, a distance of 64.28 feet to the place of beginning; thence continuing along said westerly line south 15° 19' east, a distance of 65.88 feet; thence south 74° 44' 02" west, a distance of 83.59 feet to a point in the easterly line of an unnamed alley, (a ten foot street); thence along said easterly line north 15° 25' 30" west a distance of 88.74 feet; thence due east a distance of 86.84 feet to a point in the westerly line of Clay Street and being the place of beginning. Containing an area of 6,467.00 square feet, more or less.

Parcel No. 80-1-191 

Auditor Parcel ID No.: 080-0001-0193-00

PARCEL SEVEN:

Situate in Section 18, Town 4, Fractional Range 1, Cincinnati Township, in the City of Cincinnati, County of Hamilton, State of Ohio and being part of Lot 29 of the Outlots (of Town of Cincinnati) as recorded in Deed Book E-2, pages 62-66, Hamilton County Recorder's Office and also being known as Clay Street and being more particularly described as follows:

From the intersection of the westerly line of Clay Street, a 40 foot street as originally laid out, and the southerly line of Liberty Street, a 33 foot street, as originally laid out, measure along said westerly line, south 15° 19' east, a distance of 64.28 feet to the southerly line of Liberty Street, an existing 95 foot street, as established in 1959 (file drawing E-64-13 in City Engineer's Office) and the place of beginning; thence along said southerly line due east a distance of 88.80 feet to a point in the easterly line of Clay Street, as established in 1959; thence along said easterly line due south a distance of 53.78 feet; thence south 74° 40' west, a distance of 31.44 feet to a point in the original easterly line of Clay Street; thence along said easterly line, south 15° 19' east, a distance of 59.17 feet; thence south 74° 41' west, a distance of 40.00 feet to a point in said westerly line of Clay Street; thence along said westerly line north 15° 19' west, a distance of 134.51 feet to the point in said existing southerly line of Liberty Street and the place of beginning. Containing 7,445.8 square feet.

SUBJECT to all utility easements.

EXCEPTING FROM the above Parcel Seven, the following described real estate, to-wit:

Situate in Section 18, Town 4, Fractional Range 1, Cincinnati Township, in the City of Cincinnati, County of Hamilton, State of Ohio and being part of Lot 29 of the Outlots (of the Town of Cincinnati) as recorded in Deed Book E-2, pages 62 to 66 of the Hamilton County, Ohio Recorder's Office and also being known as Clay Street and being more particularly described as follows:

Parcel A:

From the intersection of the westerly line of Clay Street, a 40 foot street as originally laid out, and the southerly line of Liberty Street, a 33 foot street, as originally laid out, measure along said westerly line of Clay Street, south 15° 19' east, a distance of 64.28 feet to the southerly line of Liberty Street, an existing 95 foot street as established in 1959 (see Drawing File E-64-13 in City Engineer's Office); thence due east along the existing southerly line of Liberty Street, a distance of 37.36 feet to a point; said point being the true place of beginning for this conveyance; thence continuing due east along the existing southerly line of Liberty Street, a distance of 51.44 feet to a point in the easterly line of Clay Street, as established in 1959; thence due south along said easterly line of Clay Street, as established in 1959; thence due south along said easterly line of Clay Street, a distance of 53.78 feet; thence south 74° 40' west a distance of 31.44 feet to a point in the originally easterly line of Clay Street; thence south 15° 19' east, along the easterly line of Clay Street, a distance of 59.17 feet; thence south 74° 41' west, a distance of 17.76 feet; thence north 15° 19' west, a distance of 68.61 feet; thence north 74° 44' 02" east, a distance of 13.79 feet; thence north 15° 19' west, a distance of 56.04 feet to the place of beginning. Containing 3,723.3 square feet. Subject to all utility easements.

Parcel B:

From the intersection of the westerly line of Clay Street, a 40 foot street, as originally laid out, and the southerly line of Liberty Street, a 33 foot street, as originally laid out, measure along said westerly line of Clay Street, south 15° 19' east, a distance of 64.28 feet to the southerly line of Liberty Street, an existing 95 foot street as established in 1959 (see Drawing E-64-13 in the City Engineer's Office); thence due east, along the existing southerly line of Liberty Street, a distance of 10.23 feet to a point, said point being the true place of beginning for the easement herein described; thence continuing due east, along the existing southerly line of Liberty Street, a distance of 27.13 feet; thence south 15° 19' east, a distance of 56.04 feet; thence south 74° 44' 02" west, a distance of 26.17 feet; thence north 15° 19' west, a distance of 63.18 feet to the place of beginning. Containing 1,560 square feet.

Parcel No. 80-1-193

SAID PARCEL SEVEN: being also described as follows:

Situate in Section 18, Town 4, Fractional Range 1, Cincinnati Township, in the City of Cincinnati, County of Hamilton, State of Ohio and being part of Lot 29 of the Outlots (of the Town of Cincinnati) as Recorded in Deed Book E-2, pages 62-66, Hamilton County Recorder's Office and being more particularly described as follows;

From the intersection of the Westerly line of Clay Street, a 40 foot street as originally laid out, and the southerly line of Liberty Street a 33 foot street as originally laid out measure along said westerly line, South 15° 19' East, a distance of 64.28 feet to the southerly line of Liberty Street, an existing 95 foot street, as established in 1959 (file drawer E-64-13 in the City Engineer's Office) and the place of beginning; thence South 15° 19' East 134.51 feet to a point in the westerly line of Clay Street; thence North 74° 41' East a distance of 22.24 feet; thence North 15° 19' a distance of 68.61 feet; thence South 74° 44' 02" West a distance of 12.38 feet; thence North 15° 19' West a distance of 63.18 feet; thence due West 10.23 feet to the place of beginning.

Parcel No. 80-1-193

Auditor's Parcel ID No.: 080-0001-0190-00

Situated in the City of Cincinnati, County of Hamilton and State of Ohio; from the southeast corner of Registered Land Certificate No. 25294 (original Certificate No. 20529 designated as Tract I and recorded in Book 61, Registered Land, Hamilton County Records), said point being also the southwest corner of Brackett Alley; thence eastwardly along the easterly prolongation of the southerly line of said Registered Land tract, and along the southerly line of Brackett Alley, 5.00 feet to the real place of beginning; thence continuing eastwardly along the southerly line of Brackett Alley, 1.76 feet to the westerly face of a concrete block wall; thence southwardly along the westerly face of said concrete block wall, 20.00 ft.; thence westwardly and parallel to the southerly line of Brackett Alley, 1.26 feet; thence northwardly and parallel to Walnut Street, 20 feet to the place of beginning.

Parcel No. 80-1-190

Auditor Parcel ID No.: 080-0001-0131-00

Situate in the City of Cincinnati, Hamilton County, Ohio, and being more particularly described as follows:

Beginning at a point in the westerly line of Clay Street, said point lying North 16° 00' West, 18.50 feet from the intersection of said westerly line with the northerly line of Melindy Street extended westwardly; thence South 74° 02' West, 88.43 feet; thence North 16° 08' West, 35.90 feet; thence North 73° 45' East, 1.26 feet; thence North 14° 41' West, 20.00 feet to a point in the southerly terminus of Brackett Alley; thence North 73° 45' East along said southerly line, 3.24 feet; thence North 16° 00' West along the easterly line of said alley, 29.25 feet; thence North 73° 45' East, 83.56 feet to a point in the westerly line of Clay Street; thence South 16° 00' East along said westerly line 85.59 feet to the place of beginning.

Parcel Number: 080-0001-0131-00

Auditor Parcel ID No.: 080-0001-0139-00

Situate in the City of Cincinnati, Hamilton County, Ohio, and more particularly described as follows:

A lot of ground situated on the west side of Clay Street and bounded as follows:

Commencing at a point 135-1/2 feet north from the northwest corner of Clay and Allison Streets; thence running north on west side of Clay Street 35.25 feet; thence westwardly on a line at right angles with Clay Street, 78 feet; thence south on a line parallel with Clay Street, 35.25 feet; thence eastwardly 78 feet to the place of beginning.

Parcel Number: 080-0001-0139-00

Auditor Parcel ID Nos.: 080-0001-0117-00 and 080-0001-0118-00 cons.

Situate in the City of Cincinnati, Hamilton County, Ohio, fronting on the east side of Walnut Street 34-1/2 feet, and being more particularly described as follows:

Beginning on the east side of Walnut Street 250 feet south of Liberty Street at the north line of a lot set off to David and Julia Ann Gallup in distribution of the Estate of Lemuel Woodward, deceased; thence south on Walnut Street 34-1/2 feet to the north line of Out Lot #29 or to the line of the Highway property; thence east along said line 95 feet or to the rear of lots fronting on Clay Street; thence north parallel with Walnut Street 34-1/2 feet to the north line of the lot set off to said David and Julia Ann Gallup in distribution of the estate of Lemuel Woodward, deceased; thence west along the line of said lot to Walnut Street and the place of beginning.

Parcel Number: 080-0001-0117-00 & 080-0001-0118-00 cons.

Auditor Parcel ID Nos.: 080-0001-0119-00 & 080-0001-0120-00 & 080-0001-0135-00 through 138 cons.

Situate in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:


Beginning at a point in the easterly line of Walnut Street, said point lying 212.85 feet north of the intersection of said easterly line and the northerly line of Fourteenth Street; thence North 73° 45' East, 91.36 feet; thence South 16° 08' East, 41.98 feet; thence North 73° 45' East, 91.96 feet to a point in the westerly line of Clay Street; thence North 16° 00' West along said westerly line, 128.00 feet; thence South 74° 02' West, 88.43 feet; thence South 16° 08' East, 18.42 feet; thence South 73° 45' West, 95.20 feet to a point in the easterly line of Walnut Street; thence South 16° 08' East along said easterly line, 68.04 feet to the place of beginning.

Parcel Number: 080-0001-0119-00 & 080-0001-0120-00 & 080-0001-0135-00 through 138 cons.

Auditor Parcel ID No.: 080-0001-0116-00

Situate in the City of Cincinnati, Hamilton County, Ohio

Beginning at a point 315 feet 4-3/4 inches north of the northeast corner of Walnut and Allison Streets on the East side of Walnut Street; thence northwardly 20 feet to a point; thence eastwardly 95 feet to a point; thence southwardly parallel to Walnut Street 20 feet to a point; thence westwardly and parallel to the north line 95 feet to the place of beginning.

Parcel Number: 080-0001-0116-00 

Auditor Parcel ID No.: 080-0001-0227-00

Situate in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows: Beginning at a set 5/8" iron pin and cap at the intersection of the southerly right of way of Liberty Street with the easterly line of an un-named alley, said point is 100 feet from the easterly right of way of Walnut Street as measured at right angles; thence leaving the southerly right-of-way of Liberty Street along the easterly line of said un-named alley, South 15° 31' 00" East, 118.31 feet to a set 5/8" iron pin and cap at the southeast corner of said alley; thence along the southerly line of said alley, South 74° 25' 00" West, 10.00 feet to the southwest corner of said alley, said point being witnessed by an existing building corner which is 0.28 feet west; thence along the westerly line of said alley, North 15° 31' 00" West, 121.08 feet to a set 5/8" iron pin and cap in the southerly right of way of Liberty Street; thence along the southerly right-of-way of Liberty Street, North 89° 56' 00" East, 10.37 feet to the place of beginning. Thus containing 0.0275 acres of land.

Exhibit B
to Funding and Development Agreement

Statement of Work, Budget, and Sources and Uses

1. STATEMENT OF WORK

Developer will create a single mixed-use building on the Property, consisting of new construction and rehabilitation, creating approximately 108,000 square feet of residential and approximately 4,522 square feet of commercial space. The residential portion of the development will include approximately 116 residential apartment units. The total unit count will consist of approximately twenty-four studio apartments, approximately eighty-four one-bedroom apartments, and approximately eight two-bedroom apartments. The Designated Units will consist of twenty of the apartments within the Project. Developer shall make available and lease all of the Designated Units to households earning at or below 80% AMI, pursuant to the Lease-Up Requirement no later than the Lease-Up Date.

Developer shall certify project rents and verify tenant eligibility by submitting to the City an *Income Verification Form* in the form of Addendum I to this Exhibit for all households occupying Designated Units, which must be signed by and certified by each tenant and indicate that the information is complete and accurate.

The Funds shall be used only for hard construction costs for the residential components of the Project.

2. BUDGET

Use of Funds:

	City Funds	Non-City Funds	Total
Acquisition Cost			
Land Acquisition		\$1,500,000	\$1,500,000
SUBTOTAL ACQUISITION COSTS		\$1,500,000	\$1,500,000
Hard Construction Costs			
Demo Abatement		\$108,453	\$108,453
Site Work & Utilities		\$213,000	\$213,000
Construction Costs – Commercial		\$1,059,671	\$1,059,671
Construction Costs – Residential	\$2,900,000	\$17,191,440	\$20,091,440
Appliances		\$807,300	\$807,300
General Requirements		\$450,000	\$450,000
General Conditions		\$1,250,000	\$1,250,000
Contractor Fee		\$747,284	\$747,284
Contingency		\$1,186,165	\$1,186,165
SUBTOTAL HARD CONSTRUCTION COSTS	\$2,900,000	\$23,013,313	\$25,913,313
Soft Costs			
Environmental + 3 rd Party Reports		\$50,000	\$50,000
Title Fees		\$90,000	\$90,000
LEED Fees		\$0	\$0
Architect (external)		\$1,036,533	\$1,036,533
Loan Closing/Commitment fees		\$169,870	\$169,870
Legal Fees		\$100,000	\$100,000
Marketing		\$25,000	\$25,000
Holding Costs – (RE Tax, Utilities)		\$120,000	\$120,000
Furniture + Equipment		\$100,000	\$100,000
TI Allowance		\$350,000	\$350,000
CRA application/fees		\$3,500	\$3,500
Construction Period Interest		\$597,860	\$597,860
Interest During Lease-Up		\$692,220	\$692,220

SUBTOTAL SOFT COSTS	\$0	\$3,334,983	\$3,334,983
Developer Fee			
Developer Fee		\$1,522,415	\$1,522,415
SUBTOTAL DEVELOPER FEE COSTS	\$0	\$1,522,415	\$1,522,415
TOTAL PROJECT COSTS	\$2,900,000	\$27,870,711	\$30,770,711

Source of Funds:

Construction Loan	\$17,000,000
City TIF District 4 Funds	\$2,900,000
Developer Equity	\$13,248,296
TOTAL	\$33,148,296

The parties may elect to revise the Budget to reallocate Funds between budget line items through a letter signed by both the City and Grantee. However, in no event will the City add any additional funds to the Budget. In the event of cost overruns, it shall be Grantee's responsibility to complete the Project.

Addendum I
to
Statement of Work, Budget, and Sources and Uses Exhibit

Income Verification Form

TO BE ATTACHED TO EXECUTION VERSION

Exhibit C
to Funding and Development Agreement

Form of Promissory Note

SEE ATTACHED

PROMISSORY NOTE

Date: _____, 2024
Cincinnati, Ohio

\$2,900,000.00

FOR VALUE RECEIVED, the undersigned, [GRAMMERS PLACE, LLC,] an Ohio limited liability company, 1209 Sycamore Street, Cincinnati, Ohio 45202 (“**Borrower**”), hereby promises to pay to the order of the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this note is 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202; Attention: Director, Department of Community and Economic Development (the “**City**”), the principal sum of Two Million Nine Hundred Thousand and 00/100 Dollars (\$2,900,000), or so much thereof as is disbursed by the City to Borrower under that certain *Funding Agreement* executed between the Borrower and the City and dated on or about the date of this Promissory Note (the “**Funding Agreement**” and this “**Note**”, respectively), together with interest as described below (the “**Loan**”).

This Note is secured by an Open-End Mortgage of even date herewith (the “**Mortgage**”) on real estate located at 1422-1450 Walnut Street, Cincinnati, Ohio 45202 (the “**Property**”), as more particularly described in the Mortgage. This loan is being made in connection with Borrower’s development of the Property to renovate buildings containing, in the aggregate, approximately 116 residential rental units, of which 20 will be made affordable to households at or below 80% AMI, as more particularly described in the Funding Agreement (the “**Project**”). The Funding Agreement, this Note, and the Mortgage, of even date herewith, and any and all other related agreements executed by Borrower in favor of the City in connection with the Project are sometimes referred to herein collectively as the “**Loan Documents**”. Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Funding Agreement.

Under the Funding Agreement, Borrower is required to use the Loan proceeds for the hard construction costs of the Designated Units, which are a portion of the Project, as further described therein.

1. **Terms.** The terms of the Loan are as follows:

- (a) Amount: The principal and amount of the Loan evidenced by this Note is Two Million Nine Hundred Thousand and 00/100 Dollars (\$2,900,000).
- (b) Term: The term of the Loan (the “**Term**”) shall be 17 years, beginning on the date of this Note (the “**Effective Date**”), and ending on the 17th anniversary thereof (the “**Maturity Date**”).
- (c) Interest Rate: No interest shall accrue on the outstanding amount of the Loan.
- (d) Loan Repayment:
 - i. Deferred Payment; Balloon Payment. No interest shall accrue on the unpaid principal balance of the Loan, and no payments shall be due from Borrower beginning on the Effective Date of this Note and continuing until the Maturity Date. On the Maturity Date, Borrower shall pay a balloon payment equal to all unpaid principal and interest, if any, and other charges outstanding on the Loan.
 - ii. Loan Forgiveness. Not later than the Maturity Date and upon Borrower providing documentation, satisfactory to the City in its sole and absolute discretion that (1) the Project has been completed (as evidenced by a Certificate of Occupancy) in accordance with the terms of the Funding Agreement, (2) Developer has satisfied its obligation to satisfy the Lease-Up Requirement by making available and leasing all of the Designated Units to households earning at or below 80% AMI no later than the Lease-Up Date, all in accordance with the Funding Agreement, and (3) Borrower is not in default of its obligations under this Note, or the Funding

Agreement, then upon written request by Borrower, the City agrees to forgive the entire amount of outstanding principal and accrued interest (if any) on the Loan. Upon request by Borrower, the City will provide written confirmation of compliance or forgiveness under this provision.

- iii. Loan Acceleration Upon Default. If Borrower fails to make any payment hereunder when due or otherwise defaults under this Note or the Funding Agreement, then the City shall have the right to declare the entire outstanding principal balance of this Note and all accrued interest and other charges thereon to be immediately due and payable.
 - iv. Loan Acceleration Upon Failure to Secure Certificates of Occupancy by Completion Date. If Borrower fails to secure certificates of occupancy for all of the units at the Property by the Completion Date, the entire amount of the principal and all accrued interest shall become immediately due and payable.
 - v. Prepayment. Borrower may prepay the Loan and accrued interest at any time, without penalty.
 - vi. Default Rate of Interest; Late Charges. If any payment due hereunder is not received by the City when due, a late charge equal to five percent (5%) of the past due amount shall automatically become due, and interest on the past due amount shall accrue from the due date at the rate of twelve percent (12%) per annum until the entire past due amount has been paid. The foregoing is in addition to the City's other rights and remedies hereunder and under the Funding Agreement in the event of a default.
 - vii. Due on Sale. Notwithstanding the Maturity Date specified herein, the entire outstanding principal balance and all accrued interest shall automatically become due and payable in full upon the sale of all or any portion of the Property other than as authorized under the terms of the Funding Agreement.
2. **Authority.** The officer or representative of Borrower subscribing below represents that s/he has full power, authority, and legal right to execute and deliver this Note and that the debt hereunder constitutes a valid and binding obligation of Borrower.
 3. **Place of Payment.** Payments due under this Note shall be made by check payable to the "City of Cincinnati-Treasurer" and mailed to the City at the address set forth in the introductory paragraph of this Note or such other place as the City may designate in writing from time to time.
 4. **Loan Documents.** All of the terms, covenants, provisions, conditions, stipulations, promises and agreements contained in the Loan Documents to be kept, observed and performed by Borrower are hereby made a part of this Note and incorporated herein by reference to the same extent and with the same force and effect as if they were fully set forth herein, and Borrower promises and agrees to keep, observe and perform them or cause them to be kept, observed and performed strictly in accordance with the terms and provisions thereof.
 5. **Borrower's Waivers.** Borrower waives presentment, demand for payment, notice of non-payment, notice of dishonor, protest, notice of protest, and all suretyship type defenses.
 6. **Default.** Upon any default under the Funding Agreement or default in the payment of principal or any other sum when due under this Note that is not cured within five (5) days after Borrower is given written notice thereof, the entire principal sum hereof and accrued and unpaid interest hereon may, at the option of the Note holder, be declared to be immediately due and payable, time being of the essence, and the Note holder may proceed to enforce the collection thereof by suit at law or in equity or proceedings pursuant to the Mortgage to foreclose on the Property. If suit is brought to

collect this Note, the Note holder shall be entitled to collect, and Borrower shall indemnify the Note holder against, all expenses of suit, including, without limitation, attorneys' fees. Failure of the Note holder to exercise its rights under this Note in the event of default shall not constitute a waiver of the right of the holder to exercise the same or to exercise such rights in the event of a subsequent default.

7. **General Provisions.** This Note and any and all ancillary documents executed by Borrower in connection with the Loan constitute the entire agreement of the parties with respect to the matters described herein and supersede any and all prior communications and agreements between the parties. This Note may be amended only by a written amendment signed by Borrower and the Note holder. This Note shall be governed by the laws of the City of Cincinnati and the State of Ohio. This Note shall be binding upon Borrower and its successors and assigns. If any provision of this Note is determined to be in violation of any applicable local, state, or federal law, such provision shall be severed from this Note and the remainder of this Note shall remain in full force and effect. All notices given under this Note shall be sent by regular or certified U.S. mail to Borrower at its address set forth above, to the Note holder at the address where loan payments are made. Any action or proceeding arising under this Note shall be brought only in the Hamilton County Court of Common Pleas.

SIGNATURE PAGE FOLLOWS

Executed by Borrower on the date first above written.

BORROWER:

[GRAMMERS PLACE, LLC]
an Ohio limited liability company

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM

Assistant City Solicitor

cc: Karen Alder, City Finance Director

Exhibit D
to Funding and Development Agreement
Form of Mortgage

SEE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE]

OPEN-END MORTGAGE

Maximum Principal Amount: **\$2,900,000**

THIS OPEN-END MORTGAGE ("**Mortgage**"), effective as of the Effective Date (as defined on the signature page hereof) is given by [GRAMMERS PLACE, LLC,] an Ohio limited liability company, with offices at 1209 Sycamore Street, Cincinnati, Ohio 45202 ("**Borrower**"), to the CITY OF CINCINNATI, an Ohio municipal corporation, the address of which is 801 Plum Street, Room 214, Cincinnati, Ohio 45202 ("**Lender**"). Borrower owes Lender the principal sum of \$2,900,000. This debt is evidenced by that certain *Funding and Development Agreement* between Borrower and Lender dated [_____], 20__ (as the same may hereafter be amended, restated or replaced from time to time, the "**Agreement**"), and by a promissory note in the amount of \$2,900,000 in favor of Lender (as the same may hereafter be amended, restated or replaced from time to time, the "**Note**"). The Agreement, Note, and this Mortgage of even date herewith, and any and all other related agreements executed by Borrower in favor of Lender in connection with the Project, as defined in the Agreement, are sometimes referred to herein collectively as the "**Loan Documents**". This Mortgage secures to Lender the repayment of the debt evidenced by the Note, the payment of all other sums, with interest, advanced by Lender under this Mortgage, and the performance by Borrower of all of Borrower's other obligations under the Loan Documents. For this purpose, Borrower does hereby mortgage, grant and convey to Lender certain real property as described on Exhibit A hereto, together with all improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property (the "**Property**"). Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Agreement.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record and except for the Superior Mortgage.

Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any and all other amounts that may become due and payable under the Loan Documents, all in accordance with the terms thereof.

2. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under paragraph 1 hereof shall be applied: first, to charges and other advances (other than principal and interest) due under the terms of the Loan Documents; second, to accrued interest; and third, to unpaid principal, or in such other order as Lender may elect.

3. Charges; Liens. Borrower shall pay all real property taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Mortgage. If Borrower fails to do so in a timely fashion, Lender may, at its option, pay such amounts pursuant to paragraph 6 hereof and Borrower shall promptly reimburse Lender for any such payment. Borrower shall promptly discharge any lien that has priority over this Mortgage unless Lender has consented in writing to the superiority of such lien.

4. Property Insurance. Borrower shall maintain full replacement cost special peril property insurance on any improvements now existing or hereafter erected on the Property. All insurance policies and renewals shall include a standard mortgagee clause in favor of Lender. If Borrower fails to maintain insurance as required hereunder, Lender may, at its option, obtain such insurance pursuant to paragraph 6 hereof. Unless Lender and Borrower otherwise agree in writing or unless otherwise provided in the Agreement, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to Borrower.

5. Maintenance of the Property. Borrower shall maintain the Property in good condition and repair and otherwise in accordance with the terms of the Loan Documents.

6. Protection of Lender's Rights to the Property. If Borrower fails to perform the covenants and agreements contained in this Mortgage, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Mortgage, appearing in court, paying attorneys' fees and entering onto the Property to make repairs. Any amounts disbursed by Lender under this paragraph shall become additional debt of Borrower secured by this Mortgage. These amounts shall bear interest, at the rate of 12% per annum, from the date of disbursement and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

7. Successors and Assigns Bound; Governing Law. The covenants and agreements of this Mortgage shall bind and benefit the successors and assigns of Lender and Borrower subject to the provisions of paragraph 9 hereof. This Mortgage shall be governed by the law of the jurisdiction in which the Property is located.

8. Notices. Any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to Borrower's address stated herein or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower.

9. Transfer of the Property; Due on Sale. Except as permitted in the Agreement if all or any part of the Property is sold or transferred without Lender's prior written consent, the Note shall immediately become due and payable.

10. Acceleration; Remedies. Except as otherwise provided in the Loan Documents, in the event Borrower fails to make payment or fails to perform, in a timely fashion, any of the agreements contained in the Loan Documents (a "default"), Lender, at Lender's option, without notice, may declare the principal balance of the Note and interest accrued thereon and all other sums due under the Loan Documents to be immediately due and payable. Unless prohibited by law, Borrower shall pay to Lender any and all sums, including expenses and attorneys' fees, that Lender may incur or expend (a) in any proceeding to sustain the lien of this Mortgage or its priority or to defend against the liens or claims of any person asserting priority over this Mortgage or (b) in connection with any suit at law or in equity to enforce the Loan Documents, to foreclose the Mortgage or to prove the amount of or to recover any indebtedness hereby secured.

11. Advances to Protect Security. This Mortgage shall secure the unpaid balance of advances made by Lender with respect to the Property for the payment of taxes, assessments, insurance premiums,

costs incurred for the protection of the Property, and other costs that Lender is authorized by this Mortgage to pay on Borrower's behalf.

12. Maximum Principal Amount. This Mortgage shall secure the payment of any and all amounts advanced from time to time by Lender to Borrower under the Loan Documents and under any other promissory notes or other documents signed by Borrower and stating that such advances are secured hereby. Lender shall not be obligated to make any additional advances unless Lender has agreed to do so in writing. The maximum amount of unpaid loan indebtedness which may be outstanding at any time and secured hereby shall be \$2,900,000, exclusive of interest thereon (capitalized or otherwise) and unpaid balances of advances made by Lender under this Mortgage.

13. Release. Upon payment (or forgiveness, as applicable) of all sums secured by this Mortgage and the performance by Borrower of all of Borrower's other obligations under the Loan Documents, Lender shall discharge this Mortgage at Borrower's sole expense and upon Borrower's written request.

14. Subordination. Lender expressly acknowledges and agrees that this Mortgage is, and all of the Lender's rights hereunder are, subject and subordinate to the Superior Mortgage in the amount of the Superior Loan (together with all advances made thereunder or interest thereon, and all renewals, replacements, modifications, consolidations, refinancings and extensions thereof and related loan and security documents evidencing the Superior Loan; *provided, however*, in no event shall the amount of the Superior Loan be increased) but without in any other manner releasing or relinquishing the lien, security interest, operation or effect of this Mortgage. The subordination of this Mortgage shall be self-operative and shall not require any further writing or confirmation hereof. Such subordination is expressly for the benefit of the holder of the Superior Mortgage, its successors and assigns, and may not be modified or terminated without the express written consent of the holder of the Superior Mortgage. Notwithstanding any provisions set forth therein or as provided by law, the Lender shall not take any action to initiate any judicial proceedings, including but not limited to commencement or institution of foreclosure proceedings, lawsuits, bankruptcy filings, reorganization or receivership filings under this Mortgage unless and until the holder of the Superior Mortgage has filed a foreclosure action. If the holder of the Superior Mortgage files a foreclosure action and the Lender subsequently files for mortgage foreclosure, but thereafter the holder of the Superior Mortgage dismisses its foreclosure action, the Lender shall also dismiss its mortgage foreclosure (but may re-file upon a subsequent re-filing by the Superior Mortgage).

SIGNATURE PAGE FOLLOWS

Executed by the Borrower on the date of acknowledgement indicated below (the “Effective Date”).

BORROWER:

[Urban Sites Capital Advisors, LLC]
an Ohio limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____,
COUNTY OF _____, SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the _____, a Ohio limited liability company, on behalf of the company.

Notary Public
My Commission Expires: _____

Approved as to Form:

Assistant City Solicitor

Forward all correspondence to:

City of Cincinnati
Department of Community and Economic
Development
Two Centennial Plaza - Suite 700
805 Central Avenue
Cincinnati, OH 45202

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

Exhibit A
to Open-End Mortgage

Legal Description

[TO BE ATTACHED TO EXECUTION VERSION]

Exhibit E
to Funding and Development Agreement

Form of Completion Guaranty

[SEE ATTACHED]

COMPLETION GUARANTY

This Completion Guaranty (“**Guaranty**”) is made as of the Effective Date (as defined on the signature page hereof) by **[TBD]**, an Ohio limited liability company, the address of which is 1209 Sycamore Street, Cincinnati, Ohio 45202 (“**Guarantor**”) in favor of the CITY OF CINCINNATI, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”).

Recitals:

A. The City, **[TBD]**, an Ohio limited liability company (the “**Obligor**”), are parties to a *Funding and Development Agreement* dated _____, 20__ (the “**Funding Agreement**”). Capitalized terms used, but not defined, herein shall have the meanings ascribed thereto in the Funding Agreement.

B. Pursuant to the Funding Agreement, among other things, the Obligor is obligated to complete the Project, which includes the remodeling of existing buildings and new construction of a structure connecting said existing buildings into a new single structure, upon completion of which will contain approximately 116 residential rental units on that certain real property more particularly detailed on Exhibit A (Legal Description) hereto. Pursuant to the terms of the Funding Agreement, Obligor has executed or will execute a promissory note in the principal amount of \$2,900,000 in favor of the City (the “**Note**”) in connection with the City’s partial financing of Developer’s construction of the Project.

C. Guarantor, as a partner in the Project, will benefit from the provision of the Loan provided by the City in connection with the Project.

D. Pursuant to Section 3 of the Funding Agreement, and as a material inducement to the City to enter into the Agreement, Guarantor is required to execute and deliver this Guaranty to the City.

NOW, THEREFORE, for and in consideration of the City’s execution of the Funding Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby promises and agrees as follows:

1. Guaranty

(A) Guarantor hereby absolutely, unconditionally and irrevocably guarantees to the City:

(i) That Guarantor will complete or cause to complete the construction of the Project by the Project Completion Date as prescribed in the Funding Agreement.

(ii) The due and punctual payment in full (and not merely the collectability) of any and all loss, damages or expenses incurred by the City and arising out of any default by Developer or Guarantor in completing the Project pursuant to the terms and conditions set forth in the Funding Agreement.

(B) If Guarantor (i) fails duly and punctually to perform and complete the construction of the Project, or (ii) for any reason, Guarantor shall abandon construction of the Project for a period of 30 days after written notice of such cessation by the City to Guarantor (each such occurrence being a “default” under this Guaranty), Guarantor, within 10 days after its receipt of written demand for performance or payment from the City (a “**Performance Demand**”), shall duly and punctually cure the default. If Guarantor shall fail to resume construction or complete the Project, as the case may be, within such 10 day period, the City shall have the right to take such actions as the City deems necessary or appropriate to cure the default, whereupon Guarantor shall pay to the City an amount equal to all costs incurred by the City in so doing, payable within 10 days after the City’s written demand. All rights and remedies of the City under this

Guaranty are cumulative, and nothing in this Guaranty shall be construed as limiting the City's rights and remedies available under or with respect to the Funding Agreement or any other agreements pertaining to the Project, or at law or in equity.

(C) The City may from time to time, in the exercise of its sole and absolute discretion and without providing notice to, or obtaining the consent of, Guarantor, and without in any way releasing, altering, or impairing any of Guarantor's obligations and liabilities to the City under this Guaranty: (i) waive compliance with, or any default occurring under, or grant any other indulgence with respect to the Funding Agreement; (ii) modify or supplement any of the provisions of the Funding Agreement upon written agreement of the parties thereto; and (iii) grant any extension or renewal of or with respect to the Funding Agreement upon written agreement of the parties thereto and/or effect any release, compromise or settlement in connection therewith.

2. Liability of Guarantor.

(A) Guarantor's liability under the provisions of this Guaranty (i) shall be primary, direct and immediate and is a guaranty of payment, performance and completion and not of collection; (ii) shall not be conditioned or contingent upon the pursuit by Guarantor or Developer of any remedy that it may have against its contractors, subcontractors or any other person with respect to the Project or at law or in equity; and (iii) shall be unconditional, irrespective of the genuineness, validity, regularity or enforceability of the Funding Agreement, or of the adequacy of any consideration or security given therefor or in connection therewith, or of any other circumstance that might otherwise constitute a legal or equitable discharge of a surety or a guarantor under applicable law. Guarantor hereby waives any and all defenses at law or in equity that may be available to Guarantor by virtue of any such circumstance.

(B) Without limiting the generality of the foregoing provisions of this Section 2, the City shall not be required (i) to make any demand of Guarantor or any other person; or (ii) otherwise to pursue or exhaust its remedies against Guarantor or any other person or entity or against any or all of the Project, before, simultaneously with, or after enforcing any of its rights and remedies under this Guaranty against Guarantor. The City may bring one or more successive and/or concurrent actions against Guarantor, as often as the City deems advisable in the exercise of its sole and absolute discretion.

(C) Guarantor's liability under the provisions of this Guaranty shall continue after any assignment or transfer by the City or Developer of any of their respective rights or interests under the Funding Agreement, if permitted by the same, with respect to the Project until the satisfaction of all provisions contained in this Guaranty (but the foregoing shall not be deemed to be or constitute the consent by the City to any such assignment by Developer, which shall continue to be governed by the terms of the Funding Agreement). Guarantor's liability under this Guaranty shall not be affected by any bankruptcy, reorganization or insolvency of Developer or any successor or assignee thereof or by any disaffirmance or abandonment by a trustee of Developer.

(D) Waivers. Guarantor hereby expressly waives: (i) presentment and demand for payment of any sum payable under the provisions of the Funding Agreement, and protest of any nonpayment thereof; (ii) notice of acceptance of this Guaranty and of such presentment, demand and protest; (iii) notice of any default under this Guaranty or under the provisions of the Funding Agreement, except as stated herein; (iv) demand for observance or performance, and enforcement, of any of the terms or conditions of this Guaranty and/or of the Funding Agreement, except as stated herein; (v) any and all other notices and demands that may otherwise be required by law to be given or made; and (vi) any and all rights that Guarantor may have to a trial by jury in any action brought on or with respect to this Guaranty, all rights and remedies accorded by applicable law to Guarantor, including, without limitation, any extension of time conferred by any law now or hereafter in effect, and all rights of redemption, homestead, dower and other rights or exemptions of every kind, whether common law or statutory. In addition, Guarantor hereby expressly agrees that, if this Guaranty is enforced by suit or otherwise, or if the City exercises any of its rights or remedies under the provisions of the Funding Agreement upon any default by Developer in performing any of its construction obligations thereunder, Guarantor shall reimburse the City, upon demand, for any and all

expenses, including without limitation attorneys fees, that it incurs in connection therewith, payable within 10 days after the City's written demand.

3. Subrogation. No payment by Guarantor under this Guaranty shall give Guarantor any right of subrogation to any rights or remedies of the City under the Funding Agreement.

4. Effect of this Guaranty. Guarantor hereby represents and warrants to the City that: (A) Guarantor (i) has a financial interest in Developer; (ii) is duly organized, validly existing and in good standing under the laws of the State of Ohio; (iii) has full power, authority and legal right to execute, acknowledge and deliver this Guaranty; and (iv) there are no actions, suits or proceedings pending or to the knowledge of Guarantor, threatened against Guarantor, at law or in equity, or before any governmental department, commission, board, bureau, agency or instrumentality which involve the possibility of any judgment or order that may result in any material adverse effect upon Guarantor; (B) this Guaranty constitutes Guarantor's binding and enforceable legal obligation; and (C) Guarantor is not in default under any contract or guaranty between Guarantor and the City.

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 Guarantor and the City, as the case may be, at the addresses set forth in the introductory paragraph of this Guaranty or such other address as may be designated from time to time by notice given to the other party in the manner prescribed herein. Guarantor shall simultaneously send, by U.S. certified mail, a copy of each notice given by Guarantor to the City hereunder to: (i) City of Cincinnati, Department of Community and Economic Development, 805 Central Avenue, Suite 700, Cincinnati, OH 45202, and (ii) City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202, and (iii) City Finance Director, City of Cincinnati, 801 Plum Street, 2nd Floor, Cincinnati, OH 45202.

6. General Provisions.

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

(B) Waiver. No party hereto shall be deemed to have waived the exercise of any right which it holds under this Guaranty 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. This instrument shall be given effect and construed by application of the laws of the City of Cincinnati and the State of Ohio, and any action or proceeding arising under this Guaranty shall be brought only in the Hamilton County Court of Common Pleas. Guarantor hereto agrees that the City shall have the right to join Developer or anyone else in any action or proceeding commenced by the City under this Guaranty; however, the City may commence any action or proceeding based upon this Guaranty solely against Guarantor without making Developer or anyone else a party to such action.

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

(E) Headings. The headings of the paragraphs and subparagraphs of this Guaranty 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 Guaranty, (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 Guaranty, and (d) to Guarantor, 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. Terms used in capitalized form in this Guaranty and not otherwise defined herein shall have the meanings given to such terms in the Funding Agreement.

(G) Severability. No determination by any court or governmental body that any provision of this Guaranty 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 Guaranty 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 Guaranty shall be effective upon the execution hereof and shall remain in effect until such time as the Project shall have received a permanent Certificate of Occupancy from the relevant permitting authority. Upon issuance of the aforementioned Certificate of Occupancy, and provided there is then no uncured default under this Guaranty, this Guaranty shall terminate and be of no further force and effect.

Signature Page Follows

Executed and effective as of _____, 20__ (the “**Effective Date**”).

GUARANTOR:

[TBD],

By: _____

Name: _____

Title: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

Office of the City Solicitor
801 Plum Street, Room 214
Cincinnati, Ohio 45202

Exhibit A
to Completion Guaranty

Legal Description

[TO BE ATTACHED TO EXECUTION VERSION]

Exhibit F
to Funding and 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 Funds unless and until the following conditions are satisfied and continue to be satisfied:

- (i) Disbursement Conditions: The Disbursement Conditions must be satisfied or waived by the City, each in its sole discretion.
- (ii) Insurance: Developer must have provided proof of insurance as required by the Agreement, naming the City as an additional insured.
- (iii) Consolidation: Developer must have acquired fee title to the Property and have completed the consolidation of the Property into a single parcel.
- (iv) Note & Mortgage from Developer: Developer shall have executed and delivered to the City the Note and the recorded Mortgage.
- (v) Guaranty: Developer shall have caused the delivery to the City of the fully executed Guaranty.
- (vi) Licenses: 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.
- (vii) Other Information: Developer shall provide to the City such other information and documents pertaining to Developer or the Project as the City may reasonably require.
- (viii) No Default: Developer shall be in full compliance with all requirements under the Agreement, Note, Mortgage, the Guaranty, and the CRA Agreement.
- (ix) Project Completion: Developer shall be prepared and capable of otherwise undertaking and completing all necessary actions to commence the Project promptly following the Effective Date and thereafter to pursue completion of this Project in a timely manner and otherwise in accordance with the terms of the Agreement.

(B) Disbursement of Funds. Provided all of the requirements for disbursement of the Funds shall have been satisfied, the City shall endeavor to disburse the Funds to Developer within 30 days of receipt of a completed draw request in accordance with Section (C)(ii) of this Exhibit. The City shall disburse the Funds on a reimbursement basis and pro-rata with all other construction funds being utilized by Developer for the Project (i.e., the Funds shall not be first in). Developer shall not be entitled to a disbursement of Funds to pay for costs incurred prior to the Effective Date. Developer shall request the Funds and shall use the Funds solely for the purposes permitted under the Agreement. 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 in writing by the City. Developer shall not request a disbursement of Funds for any expenditure that is not itemized on or contemplated by the approved 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 Project 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 Project. Notwithstanding anything in this Agreement to the contrary, the City's obligation to make the Funds available to Developer, to the extent such Funds have not been disbursed, shall terminate 90 days following completion of construction of the Project.

(C) Draw Procedure.

(i) Frequency. Developer may make disbursement requests no more frequently than once in any 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 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) Retainage. After review and approval of a disbursement request, the City shall disburse 90% of the amount requested (with retainage of 10%). The retained amount shall be disbursed when (i) construction of the Project has been completed and evidence thereof, in form satisfactory to the City, has been delivered to the City; (ii) the City has obtained final lien waivers and all other conditions to payment set forth in this Agreement have been satisfied with respect to such payment; and (iii) Developer has complied with all of its other obligations, as it relates to the Project, under this Agreement as determined by the City in its sole discretion. For the avoidance of doubt, Developer may, following the completion of the Project, and upon the provision of the required documentation and the satisfaction of the other disbursement conditions in this Exhibit, request disbursement of the entire amount of Funds in one lump sum, in which case such amount would not be subject to retainage.

(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) all work done and materials supplied to date are in accordance with the approved plans and specifications and in strict compliance with all legal requirements as of the date of the request, (ii) the construction is being completed in accordance with the 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.

End of Exhibit

Exhibit G
to Funding and Development Agreement

Additional Requirements

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

This Exhibit serves two functions:

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

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

(A) Construction Workforce.

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

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

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

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

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering with Trade Unions.

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

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

(ii) Contracts and Subcontracts; Competitive Bidding.

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

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

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

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

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

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

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

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

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

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

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

(C) City Building Code. All construction work must be performed in compliance with City of Cincinnati 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.

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

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

(1) Including qualified SBEs on solicitation lists.

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

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

(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.

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(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.

(Q) Use of Nonfranchised Commercial Waste Haulers Prohibited. The City requires that persons providing commercial waste collection services (as that term is defined under CMC Chapter 730) within the City of Cincinnati obtain a franchise, and the City maintains a list of franchised commercial waste haulers. Developer is prohibited from using or hiring (or causing to be used or hired) a nonfranchised commercial waste hauler to provide commercial waste collection services in connection with the performance of this Agreement, and Developer is responsible for ensuring that any commercial waste collection services provided in connection with the performance of this Agreement are provided by a franchised commercial waste hauler. Questions related to the use of commercial waste franchisees can be directed to, and a list of current franchisees can be obtained from, the City's Office of Environment & Sustainability by calling (513)352-3200.

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

SEE ATTACHED



SUBTOTAL SOFT COSTS	\$0.00	\$4,534,983	\$4,534,983
TOTAL PROJECT COSTS	\$2,900,000	\$30,248,296	\$33,148,296

Project Scope: (Provide a detailed description of the entire project scope under the agreement. If applicable, please include information about the numbers of stories in the building, the number of residential units, or the number of HOME units.) *

The Developer will create a single mixed-use building at 1422-1450 Walnut Street, consisting of new construction and rehabilitation, creating 103,931 square feet of residential and 4,522 square feet of commercial space. The residential portion of the development will include 116 residential apartment units. The total unit count will consist of twenty-four studio apartments, eighty-four one-bedroom apartments, and eight two-bedroom apartments. Twenty of the twenty-four studio apartments will be affordable to households earning eighty percent (80%) of the area median income (AMI), during their initial lease up period.

Upload Supporting Documents (0)

Supporting Documents

DEI USE ONLY

Assigned Number 55946220	Dept Submitted Date 10/21/2024	DEI Received Date
Original Assigned Number		

Funding Guidelines:

State
 Federal
 Prevailing Wage Will Not Apply

Rates That Apply:

Building
 Heavy
 Highway
 Residential

Decision Number: **Modification Number:** **Publication Date:**

Determination By:

Name * JONAH JAMES	Title Development Manager	Date * 10/24/2024
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Decision Summary: *

As described, the project exceeds the prevailing wage threshold of \$75,000 for alteration to a building under ORC 4115.03. However, projects being undertaken by a port authority are exempt from prevailing wage requirements pursuant to ORC 4115.04(B)(6) as defined in ORC 4528.01 and 4582.21. Therefore, State of Ohio prevailing wage requirements will not apply to the project.

The project does not meet the definition of a "Development Agreement" as defined in CMC 321-1-D2. Therefore, local prevailing wage requirements do not apply.

NOTE: Any changes to the scope, funding, or developer will require revision to this determination.

Director Approval Signature LAURA CASTILLO	Director Approval Date 10/24/2024
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