

EMERGENCY

City of Cincinnati

CHM

AWB

An Ordinance No. _____ - 2021

AUTHORIZING the City Manager to execute a *Property Sale and Development Agreement* with TI PM, LLC for the sale of the upper levels of the City-owned building located at 120 W. Elder Street in the Over-the-Rhine neighborhood for residential redevelopment.

WHEREAS, the City owns the real property, including the building thereon, located at 120 W. Elder Street at Findlay Market in the Over-the-Rhine neighborhood, as more particularly depicted and described in the *Property Sale and Development Agreement* attached to this ordinance as Attachment A and incorporated herein by reference (the “Property”), which Property is under the management of the City’s Department of Community and Economic Development (“DCED”); and

WHEREAS, the City currently leases the Property to the Corporation for Findlay Market of Cincinnati (“CFFM”), which manages the Property for the City; and

WHEREAS, a commercial tenant presently occupies the Property’s street-level commercial space, and the upper levels of the building are vacant and in need of redevelopment; and

WHEREAS, TI PM, LLC, an Ohio limited liability company (“Developer”), submitted a development proposal to redevelop the upper floors of the Property into residential use, which proposal the City Manager, in consultation with DCED, determined to be the most advantageous to the City and involves the subdivision of the Property into three parcels: (i) a residential air lot primarily comprised of the upper floors of the building (the “Residential Air Lot”) to be sold to Developer for the construction of residential improvements at an estimated cost of approximately \$500,664 (the “Project”); (ii) a commercial air lot to be retained by the City (leased and managed by CFFM); and (iii) a ground parcel to be retained by the City (leased and managed by CFFM); and

WHEREAS, Developer estimates that the Project will create approximately four part-time temporary construction jobs and no full-time permanent jobs; and

WHEREAS, the City Manager, in consultation with DCED, has determined that the Residential Air Lot is not needed for a municipal purpose and that the conveyance to Developer of the Residential Air Lot is not adverse to the City’s retained interest in the Property; and

WHEREAS, the City’s Real Estate Services Division has determined, by appraisal, that the fair market value of the Residential Air Lot is approximately \$42,500, however, Developer has agreed to pay above fair market value for the Residential Air Lot, namely, \$45,000; and

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution, and research; and

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

WHEREAS, the City has determined 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 above-stated public purposes because the Project will restore the vacant upper levels of the building to a productive use, create additional housing and employment opportunities, stimulate economic growth in the area, and help to revitalize the Over-the-Rhine neighborhood, all for the economic benefit of the City; and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-5, Council may authorize the sale of City-owned real property without competitive bidding in those cases in which it determines that it is in the best interest of the City; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's sale of the Residential Air Lot to Developer at its meeting on October 23, 2020; now, therefore,

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

Section 1. That the City Manager is hereby authorized to execute a *Property Sale and Development Agreement* with TI PM, LLC, an Ohio limited liability company ("Developer"), in substantially the form attached to this ordinance as Attachment A and incorporated herein by reference (the "Agreement"), pursuant to which the City will sell to Developer an air lot located at 120 W. Elder Street in Over-the-Rhine, as more particularly detailed in the Agreement (the "Residential Air Lot").

Section 2. That the Residential Air Lot is not needed for a municipal purpose and that the conveyance to Developer of the Residential Air Lot is not adverse to the City's retained interest in the building and property located at 120 W. Elder Street.

Section 3. That the City's Real Estate Services Division has determined, by appraisal, that the fair market value of the Residential Air Lot is approximately \$42,500; however, Developer has agreed to pay above fair market value for the Residential Air Lot, namely, \$45,000.

Section 4. That it is in the best interest of the City to eliminate competitive bidding in connection with the City's sale of the Residential Air Lot because the City Manager, in consultation with the Department of Community and Economic Development, determined Developer's proposal to be the most suitable and advantageous to the City.

Section 5. That proceeds from the sale of the Residential Air Lot shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City's Real Estate Services Division in connection with the sale, and that the City's Finance Director is hereby authorized to deposit amounts in excess thereof into Miscellaneous Permanent Improvement Fund 757.

Section 6. That the City's Finance Director is authorized to transfer and appropriate such excess funds from the unappropriated surplus of Miscellaneous Permanent Improvement Fund 757 to capital improvement program project account no. 980x162x221641, "DCED Property Improvements."

Section 7. That Council authorizes the proper City officials to take all necessary and proper actions to fulfill the terms of the Agreement and this ordinance, including without limitation executing any and all ancillary agreements, deeds, plats, and other documents to facilitate all transactions contemplated by the Agreement.

Section 8. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the

terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to enable the City to convey the Residential Air Lot so that Developer can promptly move forward with restoring the vacant upper levels of 120 W. Elder Street to a productive use and thereby create additional housing, employment opportunities, and significant economic benefits and enhancement for the Findlay Market area and the Over-the-Rhine neighborhood at the earliest possible time.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

ATTACHMENT A

Contract No. _____

PROPERTY SALE AND DEVELOPMENT AGREEMENT

between the

CITY OF CINCINNATI

and

TI PM, LLC
("Developer")

Project:

**Sale and Development of Residential Air Lot
at 120 W. Elder Street**

PROPERTY SALE AND DEVELOPMENT AGREEMENT

THIS PROPERTY SALE AND DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, having an address of 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and **TI PM, LLC**, an Ohio limited liability company, the address of which is 111 W. Elder Street, #4, Cincinnati, Ohio 45202 ("**Developer**").

Recitals:

A. The City owns the land and a 3-story building located at 120 W. Elder Street in Over-the-Rhine in Cincinnati (the "**Building**"), as shown on Exhibit A (Subdivision Plat) hereto, which Building is under the management and control of the City's Department of Community and Economic Development ("**DCED**").

B. Pursuant to a *Lease Agreement* between the City and the Corporation For Findlay Market of Cincinnati, an Ohio non-profit corporation ("**CFFM**"), dated July 1, 2004, as amended by a (i) *First Amendment to Lease Agreement* dated October 23, 2007, (ii) *Second Amendment to Lease Agreement* dated December 24, 2012, (iii) *Third Amendment to Lease Agreement* dated May 7, 2014, (iv) *Fourth Amendment to Lease Agreement and Second Amendment to Findlay Market Management Agreement* dated June 4, 2019, (v) *Fifth Amendment to Lease Agreement and Third Amendment to Findlay Market Management Agreement* dated July 31, 2020, (vi) *Sixth Amendment to Lease Agreement and Fourth Amendment to Findlay Market Management Agreement* dated January 15, 2021, and (vii) *Seventh Amendment to Lease Agreement and Fifth Amendment to Findlay Market Management Agreement* dated September 30, 2021 (as so amended, the "**CFFM Lease**"), the City leases to CFFM various properties at Findlay Market, including the Building.

C. Pursuant to a *Findlay Market Management Agreement* between the City and CFFM dated July 1, 2004, as amended by (i) *First Amendment* dated October 23, 2007, (ii) *Fourth Amendment to Lease Agreement and Second Amendment to Findlay Market Management Agreement* dated June 4, 2019, (iii) *Fifth Amendment to Lease Agreement and Third Amendment to Findlay Market Management Agreement* dated July 31, 2020, (iv) *Sixth Amendment to Lease Agreement and Fourth Amendment to Findlay Market Management Agreement* dated January 15, 2021, and (v) *Seventh Amendment to Lease Agreement and Fifth Amendment to Findlay Market Management Agreement* dated September 30, 2021, (as so amended, the "**CFFM Management Agreement**"), the City retained CFFM to manage various properties at Findlay Market, including the Building.

D. The first floor commercial space is currently occupied by a commercial tenant pursuant to license agreements between CFFM and the tenant (the "**Commercial Tenant License Agreement**" and the "**Commercial Tenant**", respectively). The upper floors of the Building are currently vacant and in need of substantial renovation.

E. The City desires the Building's upper floors to be redeveloped into a more productive use, and in or around July 2018, the City issued a request for proposals to solicit development proposals to redevelop the property (the "**RFP**"). Following the close of the RFP, Developer submitted to DCED a redevelopment proposal for the Building that the City has determined to be the most advantageous to the City and has determined that it is agreeable to moving forward with the redevelopment as follows (the "**Project**"):

- (i) *Pre-Closing Title*: Developer shall engage a title company to conduct a title examination to determine whether there are any liens or other encumbrances that may impair the proposed redevelopment of the Building; and

- (ii) *Survey Work*: Developer has retained a professional surveyor to prepare proposed subdivision plats and any and all other engineering drawings and other documents as may be required by the City's Department of City Planning and Engagement, the Hamilton County Auditor, or Hamilton County Recorder in order to subdivide the Building into two (2) lots, as more particularly described and depicted on the subdivision plat attached as Exhibit A hereto (the "**Subdivision Plat**"); namely:
- [x] one (1) street level commercial lot (designated as "Air Lot 1" on the Subdivision Plat and referred to herein as the "**Commercial Lot**"), which Commercial Lot will remain under the City's ownership and which the parties anticipate will remain occupied by the Commercial Tenant under the terms of the Commercial Tenant License Agreement; and,
 - [y] one (1) residential air lot to be sold by the City to Developer under this Agreement for residential redevelopment (designated as "Air Lot 2" on the Subdivision Plat and referred to herein as the "**Residential Air Lot**", and also as the "**Sale Property**").
- (iii) *Declaration of Covenants, Easements and Restrictions*: Upon the parties' approval of title, the proposed subdivision plats, engineering drawings, and other documents prepared under subparagraph (i) and (ii) above, the City, Developer and CFFM shall work jointly to prepare and mutually approve a proposed *Declaration of Covenants, Easements and Restrictions* (the "**Declaration**") that will set forth the respective rights and obligations of the owners of the Residential Air Lot and Commercial Lot, including without limitation: [a] creating any necessary cross easements (including easements that may be necessary through the Commercial Lot in order for the owners of the Residential Air Lot to access mechanicals and utilities located in the basement of the Building that provide service to the Residential Air Lot; and [b] self-help rights in favor of the owner of the Commercial Lot if the owner of the Residential Air Lot fails to fulfill its maintenance and repair obligations under the Declaration (e.g., roof or structural repairs), to the detriment of the Commercial Lot;
- (iv) *Creation of Lots*: Upon the parties' approval of the proposed Declaration, the parties shall take all steps necessary to [a] subdivide the property into lots as aforesaid, and [b] record the Declaration in the Hamilton County Recorder's office;
- (v) *Closing*: The City shall transfer title to the Residential Air Lot to Developer (the "**Closing**") pursuant to section 2 hereof, and the City shall retain ownership of the Commercial Lot; and
- (vi) *Construction*: Following the Closing, Developer shall [a] perform all work required to functionally separate the Residential Air Lot from the Commercial Lot (including without limitation performing all fire code separation work required by the City's Department of Buildings and Inspections as a condition of receiving a certificate of occupancy for the Residential Air Lot), [b] renovate the residential improvements within the Residential Air Lot, and [c] make certain other improvements to the Building (all of the work under this subparagraph (v) being referred to herein collectively as the "**Improvements**").

F. Developer anticipates that the hard and soft costs associated with creating the air lots and constructing the Improvements, excluding acquisition costs, will be approximately \$500,664 as shown on Exhibit B (*Scope of Work; Preliminary Budget; Source of Funds*) hereto.

G. Developer anticipates that the construction of the Improvements will create approximately four temporary construction jobs and 0 permanent jobs.

H. Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution and research.

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

J. The City 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.

K. The City's Real Estate Services Division has determined that the fair market value of the Residential Air Lot, as determined by a professional appraisal, is \$42,500; however, Developer has agreed to pay \$45,000 (the "Purchase Price").

L. The City has determined that eliminating competitive bidding in connection with the City's sale of the Residential Air Lot is appropriate and in the best interest of the City because the City selected Developer's proposal following a Request for Proposals, which proposal the City has determined to be the most advantageous to the City.

M. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's sale of the Residential Air Lot to Developer at its meeting on October 23, 2020.

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

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

1. **Due Diligence.**

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

- (i) **Title:** a recent 40-year title exam for the Building, prepared by a reputable title company acceptable to the City;
- (ii) **Subdivision Plat:** a proposed subdivision plat and, if needed, engineering drawings, to create the Residential Air Lot and Commercial Lot, prepared by a reputable surveyor or engineering firm acceptable to the City;
- (iii) **Declaration of Covenants, Easements and Restrictions:** the proposed Declaration, the initial form of which shall be provided by the City;
- (iv) **Plans and Specifications:** plans and specifications for the Improvements;

- (v) **Building Permit**: evidence that Developer has obtained (or if the same cannot be obtained prior to the Closing, evidence that Developer is likely to obtain) a building permit issued by the City's Department of Buildings and Inspections for the construction of the Improvements (including a Certificate of Appropriateness by the Historic Conservation Board and, if required, a Certificate of Compliance by the Urban Conservator);
- (vi) **Construction Schedule**: the proposed construction schedule for the Project;
- (vii) **Financing**: evidence that all financing necessary for the Project has been or will be obtained;
- (viii) **Appraisal**: an appraisal showing the prospective "as built" fair market value of the Residential Air Lot following renovation; and
- (ix) **Other Information**: such other information and documents pertaining to Developer or the Project as the City may reasonably require.

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

(B) **Due Diligence Expenses; Copies of Due Diligence Materials and Reports to be Provided to City**. Developer shall be responsible for all expenses incurred by it relating to due diligence investigations of the Sale Property and the Project, and the City shall have no obligation to reimburse or otherwise pay for any such expenses. Prior to Closing and as such reports and materials are obtained by Developer, Developer, at no cost to the City, shall provide DCED with copies of the Due Diligence Materials and, upon the request of DCED, any other inspection, engineering, and environmental report, title report, surveys, and other materials prepared by third party professionals obtained by Developer that pertain to the Project. Unless otherwise directed by the DCED Director or the terms of this Agreement, Developer shall deliver all Due Diligence Materials and other reports to be provided by Developer to the City under this Agreement to the DCED Director (for review by DCED and other City departments as deemed necessary or appropriate by DCED) and shall generally coordinate all aspects of the Project (as they relate to the City) through DCED. All reports and the like obtained by Developer from third parties and delivered to the City shall be recent (*i.e.*, prepared or updated, as the case may be, within 6 months from the date that the item is delivered to the City or such longer period of time as the City may, in its sole discretion, deem reasonable) and each report and the like has been or shall be prepared by properly licensed and qualified companies or individuals acceptable to the City. In addition to the above due diligence items, Developer and the City may conduct whatever other investigations concerning the Project as they deem necessary.

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

(D) **Right to Terminate if City is Unable to Remove Sale Property from CFFM Lease and CFFM Management Agreement**. Notwithstanding anything in this Agreement to the contrary, the parties' obligations under this Agreement shall be contingent upon the City's ability to execute an amendment to the CFFM Lease and CFFM Management Agreement pursuant to which CFFM shall agree to remove the Residential Air Lot from the terms of the CFFM Lease and CFFM Management Agreement (including without limitation causing CFFM to (i) terminate any existing license agreements or other agreements with third parties affecting the Residential Air Lot, and (ii) amend its existing Commercial Tenant License

Agreement with the Commercial Tenant, if necessary, to address any impact of the proposed redevelopment on the Commercial Tenant License Agreement). The City shall use reasonable efforts to execute such amendments with CFFM during the Due Diligence Period. If the City has not executed such amendments prior to the expiration of the Due Diligence Period, either party may terminate this Agreement by giving written notice thereof to the other party at any time thereafter (but prior to the date that the City notifies Developer that the City has executed such amendments with CFFM).

2. Real Estate Closing; Reconveyance for Failure to Timely Commence Construction.

(A) **Purchase Price.** Subject to the terms and conditions set forth herein, the City hereby agrees to sell the Sale Property to Developer, and Developer hereby agrees to purchase the Sale Property from the City, for a purchase price of \$45,000 (the "**Purchase Price**"). Developer acknowledges that it is familiar with the condition of the Sale Property and, at the Closing (as defined below), the City shall convey the Sale Property to Developer in "as is" condition. The City makes no representations or warranties to Developer with respect to the condition of the Sale Property and, from and after the Closing, the City shall have no liability of any kind to Developer for any defects, adverse environmental condition, or any other matters affecting the Sale Property.

(B) **Closing Date.** Subject to the terms and conditions herein, the purchase of the Sale Property by Developer and the sale and conveyance of the Sale Property by the City to Developer (the "**Closing**") shall take place (i) **60 days** from the date that Council authorized the execution of this Agreement, or (ii) on such earlier or later date as the parties may agree upon once both parties agree that the Closing Conditions (as defined below) are reasonably satisfied (the "**Closing Date**").

(C) **Closing Conditions.** The Closing shall not occur unless and until the following conditions have been satisfied (the "**Closing Conditions**"); *provided, however*, that if the City, in its sole discretion, determines that one or more of the Closing Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City's Quitclaim Deed to Developer or handle such Conditions post-Closing. Developer shall perform all work and investigations and shall obtain and prepare all necessary documents pertaining to the satisfaction of the Conditions, at no cost to the City. The City, in its sole discretion, may waive one or more of the Closing Conditions.

- (i) **Due Diligence Materials:** Each party must be satisfied with the various Due Diligence Materials and other reports related to the Project, as described in Section 1 above;
- (ii) **Inspections and Utilities:** Developer's approval (or waiver) of [x] inspections of the Sale Property, to the extent Developer, at its option, elects to obtain such inspections, [y] MSDGC/GCWW: Developer shall (i) have submitted a Request for Availability for Sewer Service to the Metropolitan Sewer District of Greater Cincinnati and be complying with all related City requirements, and (ii) be satisfactorily coordinating construction of the Project with the City's Greater Cincinnati Water Works and Division Stormwater Management Utility and complying with applicable requirements with respect to all matters pertaining to utility service for the Sale Property;
- (iii) **Project Completion:** Based upon all information then available to the City, the City must be reasonably satisfied that the Developer has attained or will attain all approvals and awards necessary to complete the Project; has made no false or misleading claims to the City regarding the Project; and is otherwise prepared, able, and ready to complete the Project in accordance with the requirements of this Agreement;
- (iv) **Plats, Legal Descriptions, and Deeds:** Developer shall have provided the City with all plats and legal descriptions as required by the Department of City Planning, and the

Hamilton County Auditor, Engineer, and Recorder in connection with the City's sale of the Sale Property;

(v) Continued Compliance: Developer is in compliance with all obligations under this Agreement and that all representations made by Developer, as applicable, under this Agreement or the CRA Agreement continue to be true and accurate.

(vi) Coordinated Report Conditions (CR #17-2021/update to #50-2018):

(b) Metropolitan Sewer District of Greater Cincinnati ("MSDGC"):

(1) A current MSDGC Request for Availability for Sewer Service (RASS) will be required for a future development or redevelopment. The MSDGC RASS will determine the availability of a sewer and outline any additional MSDGC project requirements that could impact a project schedule if not considered early in project conceptual planning. Such considerations may include the need to obtain any MSDGC tap permits, easements mentioned above, Ohio EPA Permit to Install, utilization of licensed and bonded sewer tappers with MSDGC, sewer inspection scheduling, project on-site separation of flow requirements, MSDGC Excavation/Fill permitting and bonding, need for a grease interception system, and/ or a reminder for the project to coordinate with the City of Cincinnati Stormwater Management Utility of the Department of the Greater Cincinnati Waterworks for their specific additional detailed storm water, storm water detention, erosion and sediment control, and flood plain requirements

(2) Should the development or redevelopment require a change in water meter size or change in the number of water meters serving the project, please email MSDTapPermits@cincinnati-oh.gov or phone 513.244.1330 immediately for any additional fee to your sewer service.

(c) GCWW:

(1) A fire branch is required for all sprinklers and separate domestic service branches and meters are required for each of the parcels. The service branches for the upper floors must have easements through the parcels below. Each parcel will have its own separate water account, water service branch(es) for the development.

(2) Air Lots necessitate the Owner(s)/Developer(s) to prepare and record a Declaration of Easement document between all of the property owners. Water Works requires a Recorder's office stamped copy of the Declaration of Easement.

(3) In order to get water service, the Owners/Developers will also need to process the Property Information form: Requirement for Water Service to Air Lots/Vertical Parcels. This process can begin at any point prior to needing water service.

(4) Once the Property Information Form is completed by the Owner/Developer, the form is submitted to Water Works to begin preparation of the Water Service Covenant document.

(5) Signatories on the covenant include the GCWW Director, GCWW Attorney and the Owners/Developers. The Owners/Developer will need to have the finalized covenant recorded at the Hamilton County Recorder's Office and then send a stamped copy to GCWW. After GCWW receives the stamped copy of the covenant, this restriction will be lifted from the Branch Sale process.

(6) A Grant of Easement and Water Service Covenant is required and must be recorded so that all created parcels will have access to a public water main. The Grant of Easement and Water Service Covenant must include language on how the water system will function within the building, including language regarding the repair, maintenance, and replacement of the service branches.

(7) The Water Works must review and approve the Grant of Easement and Water Service Covenant prior to the sale of water service to the building.

(d) Cincinnati Bell: There are existing underground telephone facilities at this location. The existing facilities must remain in place, in service and able to be accessed. Any damage done to the facilities, or any work done to relocate the Facilities as a result as a result of this request will be handled entirely at Developer's expense.

(D) Right to Terminate. If the Closing Conditions have not been satisfied or waived and the Closing has not occurred by **December 31, 2021**, then the City or Developer shall have the right to terminate this Agreement by giving written notice thereof to the other, whereupon this Agreement and all rights and obligations of the parties hereunder shall immediately terminate.

(E) Closing Costs; Miscellaneous Closing Provisions. At the Closing, (i) Developer shall pay the Purchase Price in full, and (ii) the City shall convey all of its right, title and interest in and to the Sale Property to Developer by Quitclaim Deed in the form of Exhibit C (Quitclaim Deed) hereto (the "**Deed**"). Developer shall pay all conveyance fees, recording fees, title exam fees, title insurance premiums, settlement fees, and any and all other closing costs associated with the Closing such that the City shall not be required to come up with any funds for the Closing. There shall be no proration of real estate taxes and assessments at Closing, and from and after the Closing, Developer shall pay all real estate taxes and assessments allocable to the Sale Property thereafter becoming due. (For clarity, Developer shall not be responsible for real estate taxes allocable to the Commercial Lot.) At Closing, the parties shall execute a closing statement and any and all other customary closing documents that are necessary for the Closing (except that the City shall not be required to execute a title affidavit or the like). Pursuant to Section 301-20, Cincinnati Municipal Code, at Closing, Developer shall pay to the City any and all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed to the City by Developer or any of its affiliated entities. The provisions of this Agreement shall survive the City's execution and delivery of the City's Deed and shall not be deemed to have been merged therein. Notwithstanding the foregoing, Developer shall not be required to reimburse the City for the City's staff attorneys fees in connection with the Closing.

3. Project Commencement; Reconveyance of Sale Property to City Upon Failure to Timely Commence Construction.

(A) Construction Commencement & Completion Dates. Developer shall commence on-site construction of the Project no later than **July 1, 2022** (the "**Construction Commencement Date**"). Developer shall complete construction of the Project (as evidenced by a certificate of occupancy for the Project) in accordance with the Final Plans and all other City approvals ("**Construction Completion**") no later than **July 1, 2023** (the "**Completion Deadline**").

(B) Re-conveyance of Sale Property to City for Failure to Timely Commence Construction. No later than the Construction Commencement Date, Developer shall (i) have applied for and received the required building permits from the City's Department of Buildings and Inspections for construction of the Project and (ii) have commenced on-site construction of the Project in accordance with the Final Plans ("**Construction Commencement**"). If Construction Commencement has not occurred on or before the Construction Commencement Date, then, at any time thereafter, the City shall have the right to re-purchase the Sale Property, exercisable by written notice thereof to Developer (the "**Repurchase Option**"). If the City elects to re-purchase the Sale Property, the reconveyance shall take place on the

date specified in the City's notice. On the date of reconveyance: [x] the City shall refund the Purchase Price to Developer; [y] Developer shall reconvey the Sale Property (including any and all improvements) to the City in the same condition as presently exists, reasonable wear and tear and damage by the elements excepted (and under no circumstances shall the City be required to pay for the value of any improvements made by Developer to the Sale Property); (iii) Developer shall convey marketable title to the Sale Property to the City by limited warranty deed, free and clear of all liens and encumbrances, except for the lien of real estate taxes not yet then due and payable and except for those encumbrances, if any, that were in existence or newly-created at the time of the City's conveyance of the Sale Property to Developer; (iv) Developer shall pay all customary closing costs associated with such reconveyance (e.g., conveyance fees, transfer tax, recording fees); and (v) real estate taxes and assessments shall be prorated as of the date of the reconveyance. The provisions of this paragraph shall be reflected in the City's Quitclaim Deed attached hereto as Exhibit C.

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

(D) Construction; No Disruption of Commercial Tenant. Following the Closing, Developer shall commence and complete the renovation of the Sale Property. Developer shall not transfer title to the Sale Property to a third party prior to Construction Completion, and any attempt to do so shall constitute a default under this Agreement. During construction, Developer shall take all reasonable steps to avoid disrupting the Commercial Tenant's occupancy of the Commercial Lot.

(E) Applicable Laws. Developer shall obtain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to the Project, including without limitation those set forth on Exhibit D (Additional Requirements) hereto, to the extent applicable. The City makes no representations or other assurances to Developer that Developer will be able to obtain whatever permits and other approvals from the Department of City Planning and Engagement, the Department of Buildings and Inspections, the Department of Transportation and Engineering, Metropolitan Sewer District, Greater Cincinnati Water Works, Storm Water Management Unit, other City departments, City Planning Commission, or Cincinnati City Council that may be required in connection with the Project.

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

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

4. Insurance; Indemnity.

(A) Insurance during Construction. During construction, 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/\$1,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of one hundred percent (100%) of the value of the improvements constructed, (iii) automobile liability insurance in the amount of \$1,000,000 per occurrence, naming the

City as an additional insured, (iv) worker's compensation insurance in such amount as required by law, (v) all insurance as may be required by Developer's lender(s) for the Project, and (vi) such other insurance as may be reasonably required by the City. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City.

(B) **Waiver of Subrogation.** Developer hereby waives all claims and rights of recovery, and on behalf of its respective 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 to be maintained under this Agreement, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Developer shall at all times protect itself against such loss or damage by maintaining adequate insurance. Developer shall cause its property 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 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 its request in connection with each such Project.

5. **Casualty.** If the Sale Property is damaged or destroyed by fire or other casualty during construction, Developer shall cause the damage to be repaired, as expeditiously as possible, and to the extent practicable, to substantially the same condition that existed immediately prior to such occurrence. If the insurance 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. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the damage is being repaired.

6. **Default; Remedies.**

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

(i) The failure of Developer to perform any obligation under this Agreement, and failure to correct such failure within thirty (30) days after their 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 within 30 days, Developer shall not be in default so long as Developer commences to cure the default within such 30-day period and thereafter diligently completes such cure within a reasonable period of time (but not exceeding 90 days) after Developer's receipt of the City's initial notice of default. The foregoing notwithstanding, 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, an event of default shall be deemed to have occurred if Developer fails to take corrective action immediately upon discovering such dangerous condition or emergency; or

(ii) The filing of any bankruptcy or insolvency proceedings by or against Developer, the making by Developer of an assignment for the benefit of creditors, the appointment of a receiver (temporary or permanent) for Developer, or the attachment of, levy upon, or seizure by legal process of any of Developer's property, that, in each such event, is not released within 60 days after the filing thereof.

(B) **Remedies.** Upon the occurrence of an event of default under this Agreement, the City shall be entitled to: (i) terminate this Agreement by giving Developer written notice thereof and, without limitation of its other rights and remedies, (ii) demand immediate repayment of all previously disbursed funds if this Agreement provides for City funding, (iii) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Developer, and (iv) exercise any and all other rights and remedies under this Agreement or available at law or in equity. Developer shall be liable for all costs and damages, including without limitation attorneys' fees, suffered or incurred by the City as a result of a default of Developer under this Agreement or the City's enforcement or termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

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

To the City:

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

To Developer:

TI PM, LLC
111 W. Elder Street, #4
Cincinnati, OH 45202

If Developer sends a notice to the City alleging that the City is in default under this Agreement, it 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 makes the following representations, warranties and covenants to induce the City to enter into this Agreement:

(i) Developer is an Ohio limited liability company, organized and validly existing under the laws of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and 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 therein. 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) The execution, delivery and performance by Developer of this Agreement and the consummation of the transactions contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or any mortgage, indenture, contract, agreement or other undertaking to which Developer is a party or which purports to be binding upon Developer or upon any of its assets, nor is Developer in violation or default of any of the foregoing.

(iv) There are no actions, suits, proceedings or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting Developer, at law or in equity or before or by any governmental authority.

(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 substantially or materially and adversely affect its financial condition or its completion of the Project.

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

(vii) Developer does not owe any outstanding fines, penalties, judgments, water or other utility charges or other amounts to the City.

9. Reporting Requirements.

(A) Submission of Records and Reports; Records Retention. Until such time as the Project has been completed, 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, 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.

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

10. General Provisions.

(A) Assignment. Developer shall not assign its rights or interests under this Agreement or any ancillary agreements with the City without the prior written consent of the City; provided that a collateral assignment of its rights under this Agreement to its lender for the Project (and subsequent assignments by such lender) shall be permitted. Developer may assign its rights and interests under this Agreement to a limited liability company wholly-owned by Developer provided that [a] no such assignment shall relieve Developer from any obligations to the City under this Agreement, and, notwithstanding anything in the assignment document to the contrary, as between the City and Developer, Developer shall remain primarily liable to the City for the performance of all obligations of Developer under this Agreement, [b] Developer shall notify the City in writing of any such proposed assignment prior to the effective date of the assignment, and shall provide the City with a copy of the executed assignment document within 2 business days following the effective date of the assignment, and [c] Developer shall provide such additional information about the assignee as the City may request, including without limitation information establishing that the assignee is in good standing with the City and has the ability to assume and fully perform Developer's obligations under this Agreement.

(B) Entire Agreement; Conflicting Provisions. This Agreement (including the exhibits hereto) and the other agreements referred to herein contain the entire agreement between the parties with respect to the subject matter hereof and 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 agreements are in conflict with the specific provisions of such other agreements, the provisions of such other agreements shall control.

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

(D) 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.

(E) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

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

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

(J) No Third Party Beneficiaries. No third party beneficiary rights are created by this Agreement.

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

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

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

(N) Contingency for Legislative Authorization from City Council. Notwithstanding anything to the contrary in this Agreement, the City shall not be in breach of this Agreement if for any reason City

Council does not pass any and all additional ordinances as may be necessary for the City to carry out the terms of this Agreement.

11. **Counterparts; E-Signature.** This Agreement may be executed via electronic signature and in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute but one and the same instrument.

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

Exhibit A – *Subdivision Plat*

Exhibit B - *Scope of Work; Preliminary Budget; Source of Funds*

Exhibit C - *Quitclaim Deed*

Exhibit D - *Additional Requirements*

[CITY SIGNATURE PAGE FOLLOWS]

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

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

Date: _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

[*Developer Signature Page Follows*]

TI PM, LLC,
an Ohio limited liability company

By: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT B

to Property Sale and Development Agreement

Scope of Work

TI PM, LLC, which is owned by Mark Bruggeman, will renovate the residential upper floors of 120 Elder to create one single family residence containing three bedrooms. Interior renovation work will consist of a complete rehab with new carpentry, plumbing, electric, HVAC, fixtures, and furnishings. Improvements to the first-floor stairs will be made along with the creation of a storage area in the basement.

Exterior work will be comprised of the creation of a fourth-floor deck on the front façade (including modification of the fourth-floor dormer), a third floor deck on the rear façade, replacement of all windows in their existing openings, and tuckpointing and repainting of the front and rear façades. The project will comply with all guidelines of the Over the Rhine Historic District. Total construction period is estimated to be nine months.

Budget

Uses

Acquisition	\$ 45,000
Design/Engineering	\$ 23,110
General Conditions	\$ 65,634
Demo/Sitework	\$ 6,000
Masonry	\$ 3,500
Metals	\$ 500
Carpentry	\$ 38,600
Moisture Protection	\$ 14,700
Doors/Windows	\$ 25,800
Glass/Glazing	\$ 24,000
Finishes	\$ 60,220
Specialties	\$ 1,800
Equipment	\$ 7,250
Sprinkler	\$ 53,500
Plumbing	\$ 40,600
HVAC	\$ 30,000
Lighting	\$ 3,500
Power	\$ 56,435
Contingency	\$ 45,515
TOTAL	\$ 545,664

Sources

Developer Equity	\$ 545,664
TOTAL	\$ 545,664

EXHIBIT C
to Property Sale and Development Agreement

QUITCLAIM DEED

SEE ATTACHED

[SPACE ABOVE FOR RECORDER'S OFFICE]

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), for valuable consideration paid, hereby grants and conveys to **TI PM, LLC**, an Ohio limited liability company, whose address is 111 W. Elder Street, #4, Cincinnati, OH 45202 ("**Grantee**"), all of the City's right, title and interest in and to the real property described on Exhibit A (Legal Description) hereto (the "**Property**").

Property Address: 120 W. Elder St, Cincinnati, OH 45202 (Air Lot 2)

Auditor's parcel: 094-0008-0464

Prior instrument reference: Official Record 14126, Page 1204, Hamilton County, Ohio Records.

Re-conveyance of Property to City for Failure to Timely Commence Construction. The City and Grantee are parties to a *Property Sale and Development Agreement* dated _____, 2021 (the "**Development Agreement**"). As provided in the Development Agreement, if Grantee fails to obtain a building permit and commence on-site construction at the Property on or before July 1, 2022, Grantee shall re-convey the Property to the City free and clear of all liens and encumbrances, as more particularly described in the Development Agreement. At such time as Grantee is no longer required to re-convey the Property to the City under the Development Agreement, the City shall execute and deliver to Grantee a recordable release, for recording in the Hamilton County Recorder's office, at Grantee's cost.

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

[Signature and Acknowledgement Page Follows]

Executed on _____, 2021.

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with respect to the notarial act certified to hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

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

Exhibits:
Exhibit A – *Legal Description*

Exhibit A
to Quitclaim Deed
Legal Description

LEGAL DESCRIPTION
120 WEST ELDER STREET
RESIDENTIAL LOT—AIR LOT 2

Situate in Section 13, Town 3, Fractional Range 2, Millcreek Township, City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Being all of Air Lot 2 of the West Elder Street Subdivision as recorded in Plat Book 489, Page 80, Hamilton County, Ohio Recorder's Office, and as re-recorded in Plat Book 490, Page 12, Hamilton County, Ohio Recorder's Office.

Being subject to all easements, reservations, conditions, and restrictions of record.

EXHIBIT D
to Property Sale and Development Agreement

ADDITIONAL REQUIREMENTS

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

This Exhibit serves two functions:

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

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

(A) Construction Workforce.

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

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

(ii) Requirement. In furtherance of the policy enumerated in City Resolutions No. 32-1983 and 21-1998 concerning the inclusion of minorities and women in City construction work, if Developer is performing construction work for the City under a construction contract to which the City is a

party, Developer shall use Best Efforts to achieve a standard of no less than 11.8% Minority Persons (as defined below) and 6.9% females (of whom at least one-half shall be Minority Persons) in each craft trade in Developer and its general contractor's aggregate workforce in Hamilton County, to be achieved at least halfway through the construction contract (or in the case of a construction contract of six months or more, within 60 days of beginning the construction contract) (collectively, the "Construction Workforce Goals").

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering with Trade Unions.

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

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

(ii) Contracts and Subcontracts; Competitive Bidding.

(a) Applicability. This clause (ii) is applicable to “construction contracts” under Cincinnati Municipal Code Chapter 321. Municipal Code Chapter 321 defines “construction” as “any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than four thousand dollars and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority,” and “contract” as “all written agreements of the City of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction.”

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

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

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

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

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

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

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

(4) “Public Notification” means (a) advertisement of an invitation to bid with ACI (Allied Construction Industries) and the Dodge Report, and (b) dissemination of the advertisement (either by mail or electronically) to the South Central Ohio Minority Business Council, Greater Cincinnati Northern Kentucky African-American Chamber of Commerce, and the Hispanic Chamber of Commerce. The advertisement shall include a

description of the “scope of work” and any other information reasonably necessary for the preparation of a bid, and it shall be published and disseminated no less than fourteen days prior to the deadline for submission of bids stated in the invitation to bid.

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

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

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

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

(F) Small Business Enterprise Program.¹

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

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

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

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.

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

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

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

(N) Americans With Disabilities Act; Accessibility.

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

(ii) Requirement. In furtherance of the policy objectives set forth in the Accessibility Motion, (A) the Project shall comply with the ADA, and (B) if (i) any building(s) within the Project is subject

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

(O) Electric Vehicle Charging Stations in Garages.

(i) Applicability. Cincinnati City Council passed Ordinance No. 89-2017 on May 10, 2017. This ordinance requires all agreements in which the City provides any amount of "qualifying incentives" for projects involving the construction of a parking garage to include a provision requiring the inclusion of certain features in the garage relating to electric vehicles. The ordinance defines "qualifying incentives" as the provision of incentives or support for the construction of a parking garage in the form of (a) the provision of any City monies or monies controlled by the City including, without limitation, the provision of funds in the form of loans or grants; (b) the provision of service payments in lieu of taxes in connection with tax increment financing, including rebates of service payments in lieu of taxes; and (c) the provision of the proceeds of bonds issued by the City or with respect to which the City has provided any source of collateral security or repayment, including, but not limited to, the pledge of assessment revenues or service payments in lieu of taxes. For the avoidance of doubt, "qualifying incentives" does not include (1) tax abatements such as Community Reinvestment Area abatements pursuant to Ohio Revised Code 3735.67, et seq., or Job Creation Tax Credits pursuant to Ohio Revised Code 718.15; (2) the conveyance of City-owned real property for less than fair market value; and (3) any other type of City support in which the City provides non-monetary assistance to a project, regardless of value.

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

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

* * *

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

Intentionally Omitted