



City of Cincinnati

801 Plum Street
Cincinnati, OH 45202

Agenda - Final

Budget and Finance Committee

Chairperson, Greg Landsman
Vice Chairperson, Reggie Harris
Councilmember Jeff Cramerding
Councilmember Mark Jeffreys
Councilmember Scotty Johnson
Vice Mayor Jan-Michele Kearney
Councilmember Liz Keating
Councilmember Meeka Owens
President Pro Tem Victoria Parks

Tuesday, May 31, 2022

1:00 PM

Council Chambers, Room 300

ROLL CALL

PRESENTATIONS

FY 2023 Biennial Budget Update

AGENDA

1. [202201232](#) ORDINANCE (EMERGENCY) submitted by John P. Curp, Interim City Manager, on 5/25/2022, DETERMINING to proceed with a special assessment for the Urban Forestry Program for the calendar year 2023, for the control of blight and disease of shade trees and for planting, maintaining, trimming, and removing shade trees in the public right-of-way in the City of Cincinnati's Urban Forestry Maintenance District.

Sponsors: City Manager
Attachments: [Transmittal](#)
[Ordinance](#)

2. [202201233](#) ORDINANCE submitted by John P. Curp, Interim City Manager, on 5/25/2022, LEVYING a special assessment for the Urban Forestry Program for the calendar year 2023, for control of blight and disease of shade trees and for planting, maintaining, trimming, and removing shade trees within the public right-of-way in the City of Cincinnati's Urban Forestry Maintenance District.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)
[Ordinance](#)
3. [202201241](#) ORDINANCE submitted by John P. Curp, Interim City Manager, on 5/25/2022, AUTHORIZING the City Manager to execute a Grant of Easement in favor of Daniel K. Epstein, Trustee of the D.K. Epstein Revocable Trust, dated March 7, 2019, pursuant to which the City of Cincinnati will grant an encroachment easement upon a portion of Brookfield Avenue in Mt. Lookout.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)
[Ordinance](#)
[Attachment](#)
4. [202201246](#) ORDINANCE (EMERGENCY) submitted by John P. Curp, Interim City Manager, on 5/25/2022, AUTHORIZING the City Manager to accept donations in an amount of up to \$705,100 from Cincinnati, LLC for the purpose of supporting the operations and maintenance of the Cincinnati streetcar; AUTHORIZING the Director of Finance to deposit the donations into Streetcar Operations Fund revenue account no. 455x8571; and further AUTHORIZING the transfer of service payments received in lieu of taxes for streetcar operations, in accordance with agreements with third-party developers, from Urban Redevelopment Tax Increment Equivalent II Fund 763 to Streetcar Operations Fund 455 for the purpose of operating and maintaining the City's streetcar system.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)
[Ordinance](#)

5. [202201247](#) ORDINANCE submitted by John P. Curp, Interim City Manager, on 5/25/2022, AUTHORIZING the City Manager to apply for, accept, and appropriate a grant in the amount of up to \$393,598, effective in FY 2023 pending award timing, from the Ohio Department of Public Safety, Office of Criminal Justice Services, FY 2022 American Rescue Plan Act Law Enforcement Violence Reduction & Staffing Grant (ALN 21.027) for the purpose of covering costs for overtime, researchers, and equipment to assist with dynamic investigations of emerging violent crime hot spots and prolific offender networks; and AUTHORIZING the Finance Director to deposit the grant funds into Law Enforcement Grant Fund 368, Project Account No. 22ARPA, effective in FY 2023 pending award timing.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)
[Ordinance](#)
6. [202201248](#) ORDINANCE submitted by John P. Curp, Interim City Manager, on 5/25/2022, AUTHORIZING the City Manager to apply for, accept, and appropriate a grant of up to \$6,250,000, effective starting FY 2023 pending award timing, from the U.S. Department of Justice, Office of Community Oriented Policing Services, FY 2022 COPS Hiring Program (ALN 16.710) for the hire of up to fifty entry-level police officers; and further AUTHORIZING the Finance Director to deposit the grant funds into Law Enforcement Grant Fund 368, Project Account No. 22COPS, effective starting FY 2023 pending award timing and recruit class start date.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)
[Ordinance](#)
7. [202201249](#) ORDINANCE submitted by John P. Curp, Interim City Manager, on 5/25/2022, AUTHORIZING the City Manager to apply for, accept, and appropriate a grant in an amount up to \$60,000, effective FY 2023 pending award timing, from the Ohio Department of Public Safety, Office of Criminal Justice Services, FY 2022 Violence Against Women Act Grant Program (ALN 16.588) to support two domestic violence advocates from Women Helping Women for the Domestic Violence Law Enforcement Advocate Program; and AUTHORIZING the Finance Director to deposit the grant funds into Law Enforcement Grant Fund 368, Project Account No. 22VAWA, effective FY 2023 pending award timing.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)
[Ordinance](#)

8. [202201252](#) ORDINANCE (EMERGENCY) submitted by John P. Curp, Interim City Manager, on 5/25/2022, AUTHORIZING the City Manager to execute a Property Sale, Funding, and Development Agreement with Total Property care, LLC for the sale of City-owned real property located at 3584 Alaska Avenue and adjoining property on Harvey Avenue in the Avondale neighborhood of Cincinnati, in connection with the development of a residential subdivision consisting of 18 buildable lots for the construction of 18 single-family homes and a street that will be dedicated for use by the general public.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)
[Ordinance](#)
[Attachment](#)
9. [202201256](#) ORDINANCE (EMERGENCY) submitted by John P. Curp, Interim City Manager, on 5/25/2022, AUTHORIZING the City Manager to execute a Lease and Operating Agreement with Great Parks of Hamilton County pursuant to which Great parks of Hamilton County will lease and operate the City-owned shared-use path known as Lunken Trail in Linwood and the East End.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)
[Ordinance](#)
[Attachment](#)
10. [202201159](#) ORDINANCE submitted by John P. Curp, Interim City Manager, on 5/11/2022, APPROVING AND AUTHORIZING the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement with EK Brown Properties LLC, thereby authorizing a 12-year tax exemption for 100% of the value of improvements made to real property located at 810 Plum Street in the Central Business District of Cincinnati, in connection with the remodeling of an existing building into approximately 3,600 square feet of residential space consisting of 5 residential rental units at a total construction cost of approximately \$522,898.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)
[Ordinance](#)
[Exhibit A](#)

11. [202201161](#) ORDINANCE submitted by John P. Curp, Interim City Manager, on 5/11/2022, APPROVING AND AUTHORIZING the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement with 123 E. McMicken Avenue, LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 123 E. McMicken Ave in Over-the-Rhine, in connection with the remodeling of an existing building into approximately 1,530 square feet of commercial space at a total remodeling cost of approximately \$272,488.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Attachment](#)

ADJOURNMENT

May 25, 2022

TO: Mayor and Members of City Council 202201232
FROM: John P. Curp, Interim City Manager
SUBJECT: **EMERGENCY ORDINANCE—Special Assessment for City Urban Forest Maintenance District**

Attached hereto, is an emergency ordinance captioned:

DETERMINING to proceed with a special assessment for the Urban Forestry Program for the calendar year 2023, for the control of blight and disease of shade trees and for planting, maintaining, trimming, and removing shade trees in the public right-of-way in the City of Cincinnati's Urban Forestry Maintenance District.

The Urban Forestry assessment must be enacted by City Council every year to assure funding for street tree maintenance and planting. An ordinance must be approved by City Council to proceed with the street tree program in accordance with the resolution of necessity previously passed by City Council.

March 30, 2022, the Council of the City of Cincinnati passed Resolution 42-2022 pursuant to Ohio Revised Code (O.R.C.) declaring the necessity of assessing \$0.31 per front foot for the control of blight and disease of shade trees within the public right-of-way. No objections were filed to the special assessment pursuant to O.R.C. Section 727.15. During the notification period Forestry addressed seven assessment inquiries, identifying and correcting the front footage assessment for three property parcels based upon feedback from the Department of Transportation and Engineering.

This transmittal is the second step of a three-step process to establish the special urban forestry assessment for the City of Cincinnati for 2023.

The Administration recommends the adoption of this emergency ordinance.

cc: John E. Neyer, Interim Director of Parks
C. Courtney, R. Hunt, C. Sherman

Attachment I – Emergency Ordinance

EMERGENCY

KKF

- 2022

DETERMINING to proceed with a special assessment for the Urban Forestry Program for the calendar year 2023, for the control of blight and disease of shade trees and for planting, maintaining, trimming, and removing shade trees in the public right-of-way in the City of Cincinnati's Urban Forestry Maintenance District.

WHEREAS, on March 30, 2022, Council passed Resolution No. 42-2022 pursuant to Ohio Revised Code ("O.R.C.") Section 727.12, declaring the necessity of continuing the Urban Forestry Program for the control of blight and disease of shade trees and for planting, maintaining, trimming, and removing shade trees in the public right-of-way in the City's Urban Forestry Maintenance District, for the calendar year 2023; and

WHEREAS, under Resolution 42-2022, Council also authorized the assessment of properties within the Urban Forestry Maintenance District at the rate of \$0.31 per front foot, and the estimated assessments were prepared and placed on file in the Office of the Clerk of Council; and

WHEREAS, no objections were filed to the special assessment pursuant to O.R.C. Section 727.15; now, therefore,

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

Section 1. That the Council of the City of Cincinnati is determined to proceed with the Urban Forestry Program for the control of blight and disease of shade trees within the public right-of-way and for planting, maintaining, trimming, and removing shade trees along the streets of the City of Cincinnati's Urban Forestry Maintenance District for the year 2023 as set out and approved in accordance with the provisions of Resolution No. 42-2022.

Section 2. That the estimated assessments, as prepared and filed in the Office of the Clerk of Council, are hereby approved and adopted.

Section 3. That no claim for damages has been filed pursuant to O.R.C. Section 727.18.

Section 4. 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 determine the need to proceed with the assessment before Council passes the levying ordinance required by statute.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

May 25, 2022

TO: Mayor and Members of City Council 202201233
FROM: John P. Curp, Interim City Manager
SUBJECT: **ORDINANCE—Special Assessment for City Urban Forest Maintenance District**

Attached is an ordinance captioned:

LEVYING a special assessment for the Urban Forestry Program for the calendar year 2023, for control of blight and disease of shade trees and for planting, maintaining, trimming, and removing shade trees within the public right-of-way in the City of Cincinnati's Urban Forestry Maintenance District.

The Urban Forestry assessment must be enacted by City Council every year to assure funding for street tree maintenance and planting. An ordinance must be approved by City Council to proceed with the street tree program in accordance with the resolution of necessity previously passed by City Council.

On March 30, 2022, the Council of the City of Cincinnati passed Resolution 42-2022 pursuant to Ohio Revised Code (O.R.C.) Section 727.12 declaring the necessity of assessing \$0.31 per front foot for the control of blight and disease of shade trees within the public right-of-way. This ordinance is the third and final step in the process to establish the special urban forestry assessment for the City of Cincinnati for 2022.

The Administration recommends the adoption of this ordinance.

Cc: John E. Neyer, Interim Director of Parks
C. Courtney, R. Hunt, C. Sherman

Attachment I – Ordinance

LEVYING a special assessment for the Urban Forestry Program for the calendar year 2023, for control of blight and disease of shade trees and for planting, maintaining, trimming, and removing shade trees within the public right-of-way in the City of Cincinnati's Urban Forestry Maintenance District.

WHEREAS, on March 30, 2022, Council passed Resolution No. 42-2022 pursuant to Ohio Revised Code Section 727.12, declaring the necessity of continuing the Urban Forestry Program for the control of blight and disease of shade trees and for planting, maintaining, trimming, and removing shade trees in the public right-of-way in the City's Urban Forestry Maintenance District, for the calendar year 2023; and

WHEREAS, under Resolution 42-2022, Council also authorized the assessment of properties within the Urban Forestry Maintenance District at the rate of \$0.31 per front foot, and the estimated assessments were prepared and placed on file in the Office of the Clerk of Council; and

WHEREAS, notice of the passage of the resolution was published in a newspaper of general circulation as required by law, and notice by certified mail has been completed to the property owners for whom the assessment amount exceeds \$500.00; and

WHEREAS, there are no outstanding objections to the estimated assessments; and

WHEREAS, on _____, 2022, Council passed Ordinance No. _____-2022 determining to proceed with the special assessment; and

WHEREAS, Council has determined that the actual cost of the Urban Forestry Program does not exceed the estimated cost for the Program for the year 2023; now, therefore,

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

Section 1. That there is hereby levied, in accordance with Ohio Revised Code Chapter 727, an assessment of \$0.31 per front foot upon the property abutting the public right-of-way and streets within the Urban Forestry Maintenance District, which includes all territory within, and coextensive with, the City's boundaries, for the portion of the cost and expense of said shade tree program for the Urban Forestry Maintenance District for the year 2023.

Section 2. That it is hereby determined that said assessments do not exceed the special benefits resulting from said Urban Forestry Program and do not exceed any statutory limitations.

Section 3. That the special assessment against each lot and parcel of land shall be payable in one annual installment to the Treasurer of Hamilton County, Ohio at the same time and in the same manner as real property taxes, due and payable in December 2022, are paid.

Section 4. That the City Treasurer and the Clerk of Council are hereby directed to certify said assessments to the Auditor of Hamilton County, Ohio to be placed by the Auditor on the Tax List and collected in the same manner as real property taxes are collected for December 2022, as provided by law.

Section 5. That said assessments, when collected, shall be placed into a fund for the purpose of paying the cost and expense of said Urban Forestry Program and shall be paid out upon proper vouchers in payment of such cost and expense.

Section 6. That the following costs shall be paid out of a fund provided to pay the City's portion of the cost and expense of said shade tree program: the cost of street intersections, any uncollectible assessments on property owned by the federal government or the State of Ohio, assessments on property owned by the City of Cincinnati, and any portion of the cost not specifically assessed.

Section 7. That the Clerk of Council is hereby directed to cause notice of this ordinance to be published once in a newspaper of general circulation within the City of Cincinnati.

Section 8. That this ordinance shall take effect and be in force from and after the earliest time allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

Date: May 25, 2022
202201241

To: Mayor and Members of City Council
From: John P. Curp, Interim City Manager
Subject: ORDINANCE – GRANT OF EASEMENT – BROOKFIELD AVENUE

Attached is an ordinance captioned as follows:

AUTHORIZING the City Manager to execute a Grant of Easement in favor of Daniel K. Epstein, Trustee of the D.K. Epstein Revocable Trust, dated March 7, 2019, pursuant to which the City of Cincinnati will grant an encroachment easement upon a portion of Brookfield Avenue in Mt. Lookout.

Daniel K. Epstein (“Grantee”) owns the property located at 1208 Hidden Wood Place in the Mt. Lookout neighborhood and has requested an easement from the City for a raised patio retaining wall, depicted in Attachment I, to encroach upon portions the Brookfield Avenue public right-of-way.

The City has determined that granting the easement to Grantee is not averse to the City’s retained interest in the public right-of-way.

The fair market value of the easement is approximately \$200, which Grantee has agreed to pay.

The City Planning Commission approved the easements at its meeting on May 6, 2022.

The Administration recommends passage of the attached ordinance.

Attachment I – Grant of Encroachment Easements

cc: John S. Brazina, Director, Transportation and Engineering

AUTHORIZING the City Manager to execute a *Grant of Easement* in favor of Daniel K. Epstein, Trustee of the D.K. Epstein Revocable Trust, dated March 7, 2019, pursuant to which the City of Cincinnati will grant an encroachment easement upon a portion of Brookfield Avenue in Mt. Lookout.

WHEREAS, Daniel K. Epstein as Trustee of the D.K. Epstein Revocable Trust, dated March 7, 2019 (“Grantee”), holds title to certain real property located at 1208 Hidden Wood Place in Mt. Lookout; and

WHEREAS, the City of Cincinnati owns the adjoining Brookfield Avenue public right-of-way (the “Property”), which Property is under the management of the City’s Department of Transportation and Engineering (“DOTE”); and

WHEREAS, Grantee has requested an easement from the City for an encroachment upon a portion of the Property, namely, a raised patio retaining wall as more particularly depicted and described in the *Grant of Easement* attached to this ordinance as Attachment A and incorporated herein by reference; and

WHEREAS, the City Manager, in consultation with DOTE, has determined (i) that granting the easement to Grantee is not adverse to the City’s retained interest in the Property and (ii) that granting the easement will not have an adverse effect on the usability or accessibility of any existing transportation facilities located within the public right-of-way; and

WHEREAS, pursuant to Cincinnati Municipal Code Sec. 331-5, the City Council may authorize the encumbrance of City-owned 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’s Real Estate Services Division has determined by an appraisal that the fair market value of the easement is approximately \$200, which Grantee has agreed to pay; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the easement at its meeting on May 6, 2022; 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 *Grant of Easement* in favor of Daniel K. Epstein, Trustee of the D.K. Epstein Revocable Trust, dated March 7, 2019

(“Grantee”), title holder of the property located at 1208 Hidden Wood Place in Mt. Lookout, in substantially the form attached to this ordinance as Attachment A and incorporated herein by reference, pursuant to which the City of Cincinnati will grant to Grantee an easement for an encroachment upon a portion of the Brookfield Avenue public right-of-way (the “Property”).

Section 2. That granting the easement to Grantee (i) is not adverse to the City’s retained interest in the Property and (ii) will not have an adverse effect on the usability or accessibility of any existing transportation facilities located within the public right-of-way.

Section 3. That it is in the best interest of the City to grant the easement without competitive bidding because, as a practical matter, no one other than Grantee, an adjoining property owner, would have any use for the easement.

Section 4. That the fair market value of the easement, as determined by a professional appraisal by the City’s Real Estate Services Division, is approximately \$200, which Grantee has agreed to pay.

Section 5. That the proceeds from the *Grant of Easement* 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 *Grant of Easement*, and that the City’s Finance Director is hereby authorized to deposit amounts in excess thereof, if any, into Miscellaneous Permanent Improvement Fund 757.

Section 6. That the City’s Finance Director is authorized to transfer and appropriate such excess funds from Miscellaneous Permanent Improvement Fund 757 into Capital Improvement Program Project Account No. 980x233xYY2306, “Street Improvements,” in which “YY” represents the last two digits of the fiscal year in which the closing occurs and the proceeds are received, referencing the latter fiscal year if the events occur in different fiscal years.

Section 7. That the City Manager and other City officials are authorized to take all necessary and proper actions to carry out the provisions of this ordinance and to fulfill the terms of the *Grant of Easement*, including, without limitation, executing any and all ancillary agreements, plats, and other real estate documents.

Section 8. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF EASEMENT

(Retaining wall upon a portion of Brookfield Avenue)

This Grant of Easement is made as of the Effective Date, as defined on the signature page hereof by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in favor of **Daniel K. Epstein, Trustee of the D.K. Epstein Revocable Trust, dated March 7, 2019**, the tax-mailing address of which is 1208 Hidden Wood Place, Cincinnati, Ohio 45208 ("**Grantee**").

Recitals:

A. By virtue of a Deed recorded in Official Record 14062, Page 1345 Hamilton County, Ohio Recorder's Office, Grantee owns the real property located at 1208 Hidden Wood Place, Cincinnati, Ohio, as more particularly described on Exhibit A – (Legal Description – Benefitted Property) and depicted on Exhibit B – (Plat of Survey) hereto (the "**Benefitted Property**").

B. The City owns the adjoining Brookfield Avenue public right-of-way, which is under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

C. Grantee has requested an encroachment easement from the City for an improvement that encroaches upon a portion of the Brookfield Avenue right-of-way (namely, a raised patio retaining wall, the "**Improvement**").

D. The City Manager, in consultation with DOT, has determined (i) that the easement will not have an adverse effect on the City's retained interest in the public right-of-way, and (ii) that granting the easement will not have an adverse effect on the usability or accessibility of any existing public right-of-way facilities.

E. The City's Real Estate Services Division has determined that the fair market value of the easements, as determined by appraisal, is \$200 which has been deposited with the Real Estate Services Division.

F. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the easements at its meeting on May 6, 2022.

G. Cincinnati City Council approved the easements by Ordinance No. ____-2022, passed on _____, 2022.

NOW THEREFORE, the parties do hereby agree as follows:

1. Grant of Encroachment Easement. The City does hereby grant to Grantee, on the terms and conditions set forth herein, as an appurtenance to and for the benefit of the Benefitted Property, a non-exclusive encroachment easement for the maintenance, repair, replacement, and removal of the Improvement that encroaches on, over, across, and under a portion of the Brookfield Avenue public right-of-way, as depicted on Exhibit B and described on Exhibit C (Legal Description – Encroachment Easement) hereto (the “**Encroachment Easement**”). Grantee shall not make any structural changes, alterations, or modifications to the Improvement without the City’s prior written consent. Notwithstanding anything herein to the contrary, the Encroachment Easement shall automatically terminate upon (i) the complete demolition of the Improvement; (ii) any permanent alteration of the Improvement that entails the elimination of the Improvement within the Encroachment Easement area such that the Encroachment Easement would be rendered unnecessary; or (iii) upon written notice from the City if the City determines that it needs the Encroachment Easement area or any portion thereof for a municipal purpose, including, without limitation to the implementation of Americans with Disabilities Act (“**ADA**”) regulations compliance or accessibility standards; (iv) or upon written notice from the City if the City determines that the Improvement is creating a public safety issue, such as noncompliance with ADA accessibility regulations, contributing to adverse impacts on the usability or accessibility of any public right-of-way facilities.

2. Maintenance and Repairs. Grantee, at no cost to the City, shall at all times maintain the Improvement in a continuous state of good and safe condition and repair. Grantee acknowledges that there may be existing easements, utility lines and related facilities in the vicinity of the Encroachment Easement area (“**Third Party Utility Lines**”). In connection with Grantee’s activities within the Encroachment Easement area, Grantee shall not interfere with the access of any relevant utility company to maintain and repair the Third-Party Utilities Lines, and shall, at Grantee’s expense, promptly repair any and all damage to the Third Party Utility Lines caused by Grantee, its agents, employees or contractors. Any relocation of Third-Party Utility Lines necessitated by Grantee’s activities shall be handled entirely at Grantee’s expense. All work undertaken by Grantee hereunder shall be in compliance with all applicable codes, laws, and other governmental standards, policies, guidelines and requirements.

3. Insurance; Indemnification. At all times during which Grantee is undertaking construction activities within the Encroachment Easement area, and in addition to whatever other insurance and bond requirements as the City may from time to time require, Grantee shall maintain a policy of Commercial General Liability insurance, with an insurance company reasonably acceptable to the City and naming the City as an additional insured, in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, or in such greater amount as the City may from time to time require. Grantee shall furnish to the City a certificate of insurance evidencing such insurance upon the City’s request and, in any event, prior to undertaking any construction activities within the Encroachment Easement area. Grantee hereby waives all claims and rights of recovery against the City, and on behalf of Grantee’s insurers, rights of subrogation, in connection with any damage to the Improvement, no matter how caused. Grantee shall defend (with counsel reasonably acceptable to the City), indemnify, and hold the City harmless from and against any and all claims, actions, losses, costs (including without limitation reasonable attorneys fees), liability and damages suffered or incurred by, or asserted against, the City in connection with the construction, maintenance, repair or other matters associated with the Improvement.

4. Covenants Running with the Land. The provisions hereof shall run with the land and shall inure to the benefit of the City and be binding upon Grantee and its successors-in-interest with respect to the Benefitted Property.

5. Coordinated Report Conditions (CR #92-2020). The following additional conditions shall apply:

(a) DOT:

(b) Duke Energy: Duke Energy land services has an underground gas main that must be available to be accessed at all times.

(c) Cincinnati Bell Telephone: Cincinnati Bell has underground facilities at this location that 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 of the easement shall be handled entirely at Grantee's expense.

6. Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A – *Legal Description - Benefitted Property*
Exhibit B – *Site Survey – Survey Plat*

Executed by the parties on the dates set forth below of acknowledgement indicated below.

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

Approved by:

John S. Brazina, Director
Department of Transportation and Engineering

Approved as to Form by:

Assistant City Solicitor

Acknowledged and Accepted:

**Daniel K. Epstein, Trustee of the D.K. Epstein Revocable Trust,
dated March 7, 2019**

By: _____

Printed name: _____

Title: _____

Date: _____, 2022

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

EXHIBIT A

to Grant of Encroachment Easement

LEGAL DESCRIPTION - BENEFITTED PROPERTY

Property Address: 1208 Hidden Wood Place, Cincinnati, Ohio 45208

Auditor's Parcel No.: 043-0004-0001-00 (-1, -2, -124 Cons.)

SITUATE IN THE CITY OF CINCINNATI, HAMILTON COUNTY, OHIO AND BEING KNOWN, NUMBERED AND DESIGNATED AS LOT NOS. 68 AND 69 OF KILGOUR'S THIRD SUBDIVISION OF MT. LOOKOUT AS RECORDED IN PLAT BOOK 5, PAGE 16 OF THE PLAT RECORDS IN THE OFFICE OF THE RECORDER OF SAID COUNTY.

ALSO, THE FOLLOWING DESCRIBED REAL ESTATE:

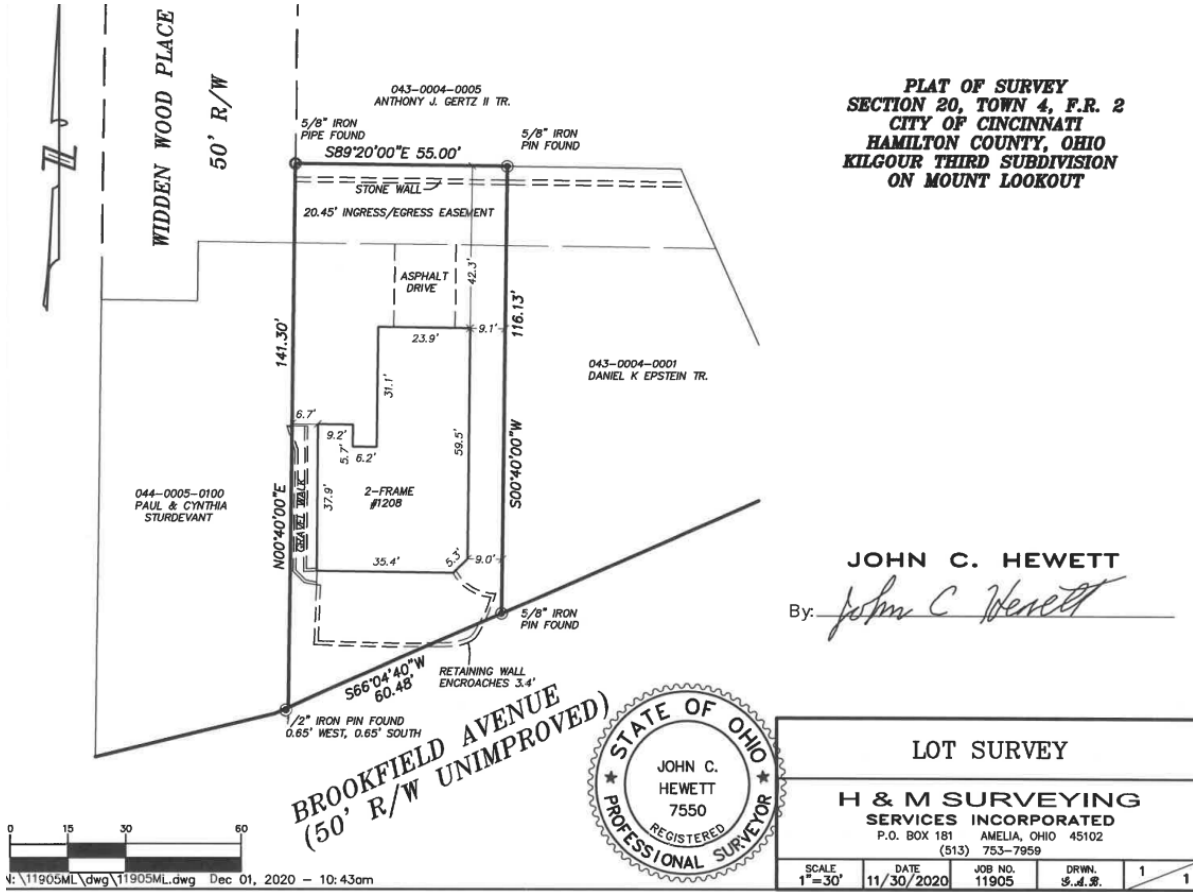
SITUATE IN SECTION 20, TOWN 4, FRACTIONAL RANGE 2, CITY OF CINCINNATI, COUNTY OF HAMILTON, STATE OF OHIO AND BEING THE WESTERN MOST FIVE FEET OF LOT 70 OF KILGOUR'S THIRD SUBDIVISION OF MT. LOOKOUT, PLAT BOOK 5, PAGE 16, HAMILTON COUNTY RECORDER'S OFFICE, THE EASTERN LINE OF WHICH FIVE FOOT STRIP BEARS S. 0 DEG. 40' W, 116.13 FEET FROM THE SOUTHEASTERLY LINE OF SAID LOT 70 TO THE NORTH LINE OF SAID LOT 70, CONTAINING 586.38 SQUARE FEET MORE OR LESS.

THERE ARE EXCEPTED FROM THE WARRANTY COVENANTS SET FORTH HEREIN, MATTERS OF ZONING, CONDITIONS AND RESTRICTIONS, AND EASEMENTS OF RECORD.

EXHIBIT B

to Grant of Encroachment Easement

Survey Plat



May 25, 2022

To: Mayor and Members of City Council
From: John P. Curp, Interim City Manager
Subject: **Emergency Ordinance – Streetcar VTICA Acceptance**

Attached is an Emergency Ordinance captioned:

AUTHORIZING the City Manager to accept donations in an amount of up to \$705,100 from CinciVTICA, LLC for the purpose of supporting the operations and maintenance of the Cincinnati streetcar; **AUTHORIZING** the Director of Finance to deposit the donations into Streetcar Operations Fund revenue account no. 455x8645; and further **AUTHORIZING** the transfer of service payments received in lieu of taxes for streetcar operations, in accordance with agreements with third-party developers, from Urban Redevelopment Tax Increment Equivalent II Fund 763 to Streetcar Operations Fund 455 for the purpose of operating and maintaining the City’s streetcar system.

This Emergency Ordinance authorizes the City Manager to accept a donation in an amount of up to \$705,100 from CinciVTICA, LLC for the purpose of supporting the operations and maintenance of the Cincinnati streetcar. The Finance Director will be authorized to deposit the donated funds into the Streetcar Operations Fund. Additionally, any service payments received by the City in lieu of taxes for streetcar operations are authorized to be transferred from Urban Redevelopment Tax Increment Equivalent II Fund 763 to Streetcar Operations Fund 455 for the purpose of operating and maintaining the City’s streetcar system.

To help fund streetcar operations, the City identified certain non-City funding sources to potentially boost the amount of total funding available to the City for the operations and maintenance of the Streetcar. On November 19, 2014, the City Council passed a motion supporting the creation of a tax incentive contribution policy in certain neighborhoods that would incentivize applicants for real property tax abatements to enter into a Voluntary Tax Incentive Contribution Agreement (“VTICA”) to voluntarily contribute a portion of their abated tax savings to the Streetcar. Previously, the City and the Southwest Ohio Regional Transit Authority (SORTA) cooperated with Downtown Cincinnati Inc. (operating for this purpose as CinciVTICA, LLC) to facilitate the collection of VTICA payments by CinciVTICA and the application of such payments to the streetcar with those payments going directly to SORTA. With the termination of SORTA’s role in management and operation of the streetcar, this Emergency Ordinance will allow the City to receive donated funds that will cover the VTICA payments collected from July 1, 2021 until June 30, 2022.

Streetcar operations are in accordance with the “Connect” goal to “[d]evelop an efficient multi-modal transportation system that supports neighborhood livability” as well as the strategies to “[e]xpand options for non-automotive travel” and “[p]lan, design, and implement a safe and sustainable transportation system,” as described on pages 129-138 of Plan Cincinnati (2012).

The reason for the emergency is the immediate need for the City to accept the donations, which will cover streetcar costs incurred by the City.

The Administration recommends passage of this Emergency Ordinance.

cc: Andrew M. Dudas, Budget Director
Karen Alder, Finance Director



Attachment



EMERGENCY

City of Cincinnati

An Ordinance No. _____

CFG

AWB

-2022

AUTHORIZING the City Manager to accept donations in an amount of up to \$705,100 from CincinnatiVTICA, LLC, for the purpose of supporting the operations and maintenance of the Cincinnati streetcar; **AUTHORIZING** the Director of Finance to deposit the donations into Streetcar Operations Fund revenue account no. 455x8645; and further **AUTHORIZING** the transfer of service payments received in lieu of taxes for streetcar operations, in accordance with agreements with third-party developers, from Urban Redevelopment Tax Increment Equivalent II Fund 763 to Streetcar Operations Fund 455 for the purpose of operating and maintaining the City's streetcar system.

WHEREAS, the City of Cincinnati constructed a modern streetcar project in downtown Cincinnati (the "Streetcar"), which began passenger service in September 2016; and

WHEREAS, the City has identified certain non-City funding sources potentially available to boost the amount of total funding available to the City for the operations and maintenance of the Streetcar; and

WHEREAS, on November 19, 2014, Council passed a motion supporting the creation of a tax incentive contribution policy in certain neighborhoods that would incentivize applicants for real property tax abatements to enter into a Voluntary Tax Incentive Contribution Agreement ("VTICA") to voluntarily contribute a portion of their abated tax savings to the Streetcar; and

WHEREAS, the City is not a party to VTICA commitments and payments made thereunder, which are managed and collected by a third party; and

WHEREAS, the City and the Southwest Ohio Regional Transit Authority ("SORTA") cooperated with Downtown Cincinnati Inc. (operating for this purpose as CincinnatiVTICA, LLC., hereinafter "CincinnatiVTICA") to facilitate the collection of VTICA payments by CincinnatiVTICA and the application of such payments to the Streetcar; and

WHEREAS, the City and SORTA agreed to terminate SORTA's role in management and operation of the Streetcar effective January 1, 2020, and the City now directly operates and manages the Streetcar; and

WHEREAS, CincinnatiVTICA therefore wishes to donate to the City the proceeds of the VTICA payments that have been collected from July 1, 2021 until June 30, 2022 to ensure that the funds will be used for operation and maintenance of the Streetcar; and

WHEREAS, streetcar operations are in accordance with the "Connect" goal to "[d]evelop an efficient multi-modal transportation system that supports neighborhood livability" as well as the strategies to "[e]xpand options for non-automotive travel" and "[p]lan, design, and implement

a safe and sustainable transportation system,” as described on pages 129-138 of Plan Cincinnati (2012); 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 accept donations in an amount of up to \$705,100 from CincinnatiVTICA, LLC for the purpose of operating and maintaining the City’s streetcar system.

Section 2. That the Director of Finance is hereby authorized to deposit the donations into Streetcar Operations Fund revenue account no. 455x8645.

Section 3. That the Director of Finance is hereby authorized to transfer service payments received in lieu of taxes for streetcar operations, in accordance with agreements with third-party developers, from Urban Redevelopment Tax Increment Equivalent II Fund 763 to Streetcar Operations Fund 455 for the purpose of operating and maintaining the City’s streetcar system.

Section 4. That the proper City officials are hereby authorized to do all things necessary and proper to carry out the provisions of Sections 1 through 3 hereof.

Section 5. 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 for the City to accept the donations, which will cover streetcar costs incurred by the City.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

May 25, 2022
202201247

To: Mayor and Members of City Council

From: John P. Curp, Interim City Manager

Subject: **Ordinance – Police: FY 2022 American Rescue Plan Act (ARPA) Law Enforcement Violence Reduction & Staffing Grant**

Attached is an Ordinance captioned:

AUTHORIZING the City Manager to apply for, accept, and appropriate a grant in the amount of up to \$393,598, effective in FY 2023 pending award timing, from the Ohio Department of Public Safety, Office of Criminal Justice Services, FY 2022 American Rescue Plan Act Law Enforcement Violence Reduction & Staffing Grant (ALN 21.027) for the purpose of covering costs for overtime, researchers, and equipment to assist with dynamic investigations of emerging violent crime hot spots and prolific offender networks; and **AUTHORIZING** the Finance Director to deposit the grant funds into Law Enforcement Grant Fund 368, Project Account No. 22ARPA, effective in FY 2023 pending award timing.

This Ordinance would authorize the City Manager to apply for, accept, and appropriate a grant in an amount of up to \$393,598, effective in FY 2023 pending award timing, from the Ohio Department of Public Safety (ODPS), Office of Criminal Justice Services (OCJS), FY 2022 American Rescue Plan Act Law Enforcement Violence Reduction & Staffing Grant (ALN 21.027) for the purpose of covering costs for overtime, researchers, and equipment to assist with dynamic investigations of emerging violent crime hot spots and prolific offender networks. This Ordinance would also authorize the Finance Director to deposit the grant funds into Law Enforcement Grant Fund 368, Project Account No. 22ARPA, effective in FY 2023 pending award timing.

The grant requires no matching funds. There are no new FTE associated with this grant.

As the grant application deadline was April 29, 2022, CPD has already applied for this grant. Should this Ordinance not receive approval from the City Council, the grant funding will not be accepted.

This Ordinance is in accordance with the “Live” goal to “[c]reate a more livable community,” as described on page 156 of Plan Cincinnati (2012).

The Administration recommends passage of this Ordinance.

cc: Andrew Dudas, Budget Director
Karen Alder, Finance Director

Attachment



AUTHORIZING the City Manager to apply for, accept, and appropriate a grant in the amount of up to \$393,598, effective in FY 2023 pending award timing, from the Ohio Department of Public Safety, Office of Criminal Justice Services, FY 2022 American Rescue Plan Act Law Enforcement Violence Reduction & Staffing Grant (ALN 21.027) for the purpose of covering costs for overtime, researchers, and equipment to assist with dynamic investigations of emerging violent crime hot spots and prolific offender networks; and **AUTHORIZING** the Finance Director to deposit the grant funds into Law Enforcement Grant Fund 368, Project Account No. 22ARPA, effective in FY 2023 pending award timing.

WHEREAS, there is a grant available in the amount of up to \$393,598 from the State of Ohio, Department of Public Safety, Office of Criminal Justice Services to address the increase in violent crime in Cincinnati since the pandemic; and

WHEREAS, the City has a need for funds to cover costs for overtime, researchers, and equipment to assist with dynamic investigations of emerging violent crime hot spots and prolific offender networks; and

WHEREAS, the Administration has already applied for the grant but will not accept any funds without approval of Council; and

WHEREAS, no matching funds or new FTEs are associated with this grant; and

WHEREAS, this ordinance is in accordance with the “Live” goal to “[c]reate a more livable community,” as described on page 156 of Plan Cincinnati (2012); 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 apply for, accept, and appropriate a grant in the amount of up to \$393,598, effective in FY2023 pending award timing, from the Ohio Department of Public Safety, Office of Criminal Justice Services, FY 2022 American Rescue Plan Act Law Enforcement Violence Reduction & Staffing Grant (ALN 21.027) for the purpose of covering costs for overtime, researchers, and equipment to assist with dynamic investigations of emerging violent crime hot spots and prolific offender networks.

Section 2. That the Finance Director is hereby authorized to deposit the grant funds into Law Enforcement Grant Fund 368, Project Account No. 22ARPA, effective in FY 2023 pending award timing.

Section 3. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of the grant and Sections 1 and 2 herein.

Section 4. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

May 25, 2022

To: Mayor and Members of City Council 202201248
From: John P. Curp, Interim City Manager
Subject: **Ordinance – Police: FY 2022 COPS Hiring Grant**

Attached is an Ordinance captioned:

AUTHORIZING the City Manager to apply for, accept, and appropriate a grant of up to \$6,250,000, effective starting FY 2023 pending award timing, from the U.S. Department of Justice, Office of Community Oriented Policing Services, FY 2022 COPS Hiring Program (ALN 16.710) for the hire of up to fifty entry-level police officers; and further **AUTHORIZING** the Finance Director to deposit the grant funds into Law Enforcement Grant Fund 368, Project Account No. 22COPS, effective starting FY 2023 pending award timing and recruit class start date.

This Ordinance would authorize the City Manager to apply for, accept, and appropriate a grant of up to \$6,250,000, effective starting FY 2023 pending award timing, from the U.S. Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS), FY 2022 COPS Hiring Program (ALN 16.710) for the hire of up to 50 entry-level police officers. This Emergency Ordinance would also authorize the Finance Director to deposit the grant funds into Law Enforcement Grant Fund 368, Project Account No. 22COPS, effective starting FY 2023 pending award timing and recruit class start date.

As a condition of the award, the Cincinnati Police Department (CPD) will retain all grant funded positions for a minimum of 12 months beyond the 36 month per position funding period.

The grant application deadline is June 16, 2022. Should this Ordinance not be approved, the grant funds will not be accepted.

This grant would create up to 50 additional FTEs and requires a local match requirement of up to \$4,487,550, which is variable depending on exact award and the local match percentage amount.

The grant is in accordance with the “Live” goal to “[c]reate a more livable community” as described on page 156 of Plan Cincinnati (2012).

The Administration recommends passage of this Ordinance.

cc: Andrew M. Dudas, Budget Director
Karen Alder, Finance Director



Attachment

AUTHORIZING the City Manager to apply for, accept, and appropriate a grant of up to \$6,250,000, effective starting FY 2023 pending award timing, from the U.S. Department of Justice, Office of Community Oriented Policing Services, FY 2022 COPS Hiring Program (ALN 16.710) for the hire of up to fifty entry-level police officers; and further **AUTHORIZING** the Finance Director to deposit the grant funds into Law Enforcement Grant Fund 368, Project Account No. 22COPS, effective starting FY 2023 pending award timing and recruit class start date.

WHEREAS, a grant of up to \$6,250,000 is available from the U.S. Department of Justice, Office of Community Oriented Policing Services (“COPS”), FY 2022 COPS Hiring Program (ALN 16.710) for the purpose of hiring up to fifty entry-level police officers within the Cincinnati Police Department (“CPD”); and

WHEREAS, an additional fifty FTEs will result from this grant; and

WHEREAS, the COPS Hiring Program grant requires matching funds of up to \$4,487,550 depending upon the exact amount of the grant award and the percentage of local match, which will be provided by CPD’s General Fund Operating Budget; and

WHEREAS, CPD must retain all police officer positions for a minimum of twelve months following the thirty-six month federal funding period per position; and

WHEREAS, the grant application deadline is June 16, 2022, but no funds will be accepted without approval of City Council; and

WHEREAS, the grant is in accordance with the “Live” goal to “[c]reate a more livable community” as described on page 156 of Plan Cincinnati (2012); 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 apply for, accept, and appropriate a grant of up to \$6,250,000, effective FY 2023 pending award timing, from the U.S. Department of Justice, Office of Community Oriented Policing Services, FY 2022 COPS Hiring Program (ALN 16.710) for the hire of up to fifty entry-level police officers.

Section 2. That the Director of Finance is hereby authorized to receive and deposit the grant funds into the Law Enforcement Grant Fund 368, Project Account No. 22COPS, effective FY 2023 pending award timing and recruit class start date.

Section 3. That the required local match of up to \$4,487,550 will be funded from the Cincinnati Police Department's General Fund Operating Budget.

Section 4. That the proper City officials are hereby authorized to do all things necessary and proper to carry out the terms of Sections 1 through 3 herein.

Section 5. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

May 25, 2022

To: Mayor and Members of City Council 202201249

From: John P. Curp, Interim City Manager

Subject: **Ordinance – Police: FY 2022 Violence Against Woman Act (VAWA) Grant Program**

Attached is an Ordinance captioned:

AUTHORIZING the City Manager to apply for, accept, and appropriate a grant in an amount up to \$60,000, effective FY 2023 pending award timing, from the Ohio Department of Public Safety, Office of Criminal Justice Services, FY 2022 Violence Against Women Act Grant Program (ALN 16.588) to support two domestic violence advocates from Women Helping Women for the Domestic Violence Law Enforcement Advocate Program; and **AUTHORIZING** the Finance Director to deposit the grant funds into Law Enforcement Grant Fund 368, Project Account No. 22VAWA, effective FY 2023 pending award timing.

This Ordinance would authorize the City Manager to apply for, accept, and appropriate a grant in an amount up to \$60,000, effective FY 2023 pending award timing, from the Ohio Department of Public Safety (ODPS), Office of Criminal Justice Services (OCJS), FY 2022 Violence Against Women Act (VAWA) Grant Program (ALN 16.588) to support two domestic violence advocates from Women Helping Women (WHW) for the Domestic Violence Law Enforcement Advocate Program (DVLEAP). This Ordinance would also authorize the Finance Director to deposit the grant funds into Law Enforcement Grant Fund 368, Project Account No. 22VAWA, effective FY 2023 pending award timing.

The DVLEAP is a collaborative project between the Cincinnati Police Department (CPD) and WHW, which provides crisis intervention services for victims of domestic violence throughout the police investigation and court process.

The grant application deadline is June 2, 2022. No funds will be accepted without approval of the City Council.

The grant requires matching funds of \$20,000 provided by WHW for total project cost of \$80,000. Although WHW receives the funding, the CPD serves as the implementing agency. This grant would not create any additional FTEs.

This grant is in accordance with the “Live” goal to “[c]reate a more livable community” as described on page 156 of Plan Cincinnati (2012).

The Administration recommends passage of this Ordinance.

cc: Andrew Dudas, Budget Director
Karen Alder, Finance Director



Attachment

AUTHORIZING the City Manager to apply for, accept, and appropriate a grant in an amount up to \$60,000, effective FY 2023 pending award timing, from the Ohio Department of Public Safety, Office of Criminal Justice Services, FY 2022 Violence Against Women Act Grant Program (ALN 16.588) to support two domestic violence advocates from Women Helping Women for the Domestic Violence Law Enforcement Advocate Program; and **AUTHORIZING** the Finance Director to deposit the grant funds into Law Enforcement Grant Fund 368, Project Account No. 22VAWA, effective FY 2023 pending award timing.

WHEREAS, Women Helping Women (“WHW”) provides crisis intervention services for victims of domestic violence throughout the police investigation and court process; and

WHEREAS, the Domestic Violence Law Enforcement Advocate Program (“DVLEAP”) is a collaboration between the Cincinnati Police Department and WHW; and

WHEREAS, a grant of up to \$60,000 is available from the Ohio Department of Public Safety, Office of Criminal Justice Services, FY 2022 Violence Against Women Act Grant Program, which will be used to provide funding for the DVLEAP by supporting two domestic violence advocates from WHW; and

WHEREAS, the grant requires matching funds of \$20,000, to be provided by WHW; and

WHEREAS, there are no additional FTEs associated with this grant; and

WHEREAS, the grant application deadline is June 2, 2022, but no funds will be accepted without approval of City Council; and

WHEREAS, the grant is in accordance with the “Live” goal to “[c]reate a more livable community” as set forth on page 156 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the City Manager is authorized to apply for, accept, and appropriate a grant of up to \$60,000, effective FY 2023 pending award timing, from the Ohio Department of Public Safety, Office of Criminal Justice Services, FY 2022 Violence Against Women Act Grant Program, to support two domestic violence advocates from Women Helping Women.

Section 2. That the Finance Director is authorized to deposit the grant funds into Law Enforcement Grant Fund 368, Project Account No. 22VAWA, effective FY 2023 pending award timing.

Section 3. That the proper City officials are hereby authorized to do all things necessary and proper to comply with the terms of Sections 1 and 2 hereof.

Section 4. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

May 25, 2022

To: Members of City Council 202201252
From: John P. Curp, Interim City Manager
Subject: **Ordinance – Authorizing a Property Sale, Funding, and Development Agreement with Total Property Care, LLC**

Attached is an Emergency Ordinance captioned:

AUTHORIZING the City Manager to execute a *Property Sale, Funding, and Development Agreement* with Total Property care, LLC for the sale of City-owned real property located at 3584 Alaska Avenue and adjoining property on Harvey Avenue in the Avondale neighborhood of Cincinnati, in connection with the development of a residential subdivision consisting of 18 buildable lots for the construction of 18 single-family homes and a street that will be dedicated for use by the general public.

BACKGROUND/CURRENT CONDITIONS

The City owns certain real property located at 3584 Alaska Avenue and adjoining property on Harvey Avenue in the Avondale neighborhood of Cincinnati. The 3.786-acre site is currently composed of four (4) vacant City-owned parcels.

A Request for Proposal was issued in 2018, with a single proposal received by Total Property care, LLC dba Titan Real Estate Group, LTD (“Developer”). Initially the City elected to not make an award due to concerns with some elements of the initial proposal. Following the RFP, DCED worked with the developer to review the City’s policy goals for the site as outlined by the City and neighborhood stakeholders but was also logistically and financially feasible for the Developer.

DEVELOPER INFORMATION

Titan is serving as the main developer providing all development, site work, and general contracting services. Titan is a women-owned development company that has a wealth of experience in residential and commercial development throughout the Greater Cincinnati area. The Avondale Development Corporation is serving primarily as Titan’s development partner to engage the community throughout the development process.

PROJECT DESCRIPTION

The Developer desires to (i) develop the Property into a residential subdivision consisting of 18 buildable lots for the construction of up to 18 single-family homes; and (ii) construct

a street that will be open to the general public, connecting Harvey Avenue and Alaska Avenue.

The Project will be split into two phases. Phase I will consist of the development of up to 8 newly constructed single-family homes. Phase II will consist of the development of up to 10 newly constructed single-family homes. At completion, the homes will consist of 3 to 4 bedrooms with an average of 1,305 to 2,978 square feet of living space. All residential units will be market rate.

Total project cost, including public improvements, hard construction costs, soft costs, and acquisition costs, is estimated to be approximately \$6.9 million.

The Department of City Planning and Engagement held a Community Engagement Meeting on June 3, 2021. For more information, please visit: [Alaska Avenue in Avondale - City Planning \(cincinnati-oh.gov\)](https://www.cincinnati-oh.gov/cityplanning/)

City Planning Commission approved the City's sale of the Property to Developer at its meeting on January 21, 2022.

The proposed project is consistent with *Plan Cincinnati* (2012) within the Guiding Geographic Principle to "Focus revitalization on existing centers of activity" (p. 86) and the Live Initiative Area's Goal to "Provide a full spectrum of housing options and improve housing quality and affordability" (p. 164).

PROPOSED INCENTIVE

DCED is recommending the sale of the Property to Developer for less than fair market value; namely, for \$1.00 to facilitate the Project. This is below the appraised value of the Property, which is \$206,000 but the City anticipates that it will receive economic and non-economic benefits that equal or exceed the fair market value of the Property because the Project will create additional homeownership units in the Avondale neighborhood and a street to be dedicated for use by the general public. Additionally, DCED will provide additional support for the Project by providing a forgivable loan in an amount not to exceed \$1,000,000 to assist in financing the public improvements. DCED awarded the loan through the 2019 Notice of Funding Availability process.

PROJECT TEAM & TIMELINE

The project team (listed below) will make themselves available at the request of the councilmember(s).

- Assistant City Manager: William Weber
- DCED Director: Markiea L. Carter
- Project Attorney: Samantha Brandenburg

The anticipated council timeline is as follows:

- May 31, 2022: Budget and Finance
- June 1, 2022: City Council for Final Approval

RECOMMENDATION

The Administration recommends approval of this Emergency Ordinance. This Ordinance is deemed an Emergency so that general contractor pricing can be retained and work can begin as soon as possible amidst rising construction costs.

Copy: Markiea L. Carter, Director, Department of Community & Economic Development

Attachment: A. Property location, photograph, and site plan



Property Location and Photograph

EXISTING PROPERTY
 PARCELS: 11300220048, 11300220050, 11300220063, 11300220116
 3.79 ACRES TOTAL AREA BY GIS
 0.71 ACRES IN HILLSIDE OVERLAY
 0.56 ACRES IN RIGHT OF WAY
 2.66 ACRES IN LOTS
 0.54 ACRES IN OPEN SPACE
 18 DWELLING UNITS
 8.7 DWELLING UNITS PER ACRE
 MIN LOT AREA = 2,000 S.F.
 MIN LOT WIDTH = 20'
 MIN FRONT YARD = 20'
 MIN REAR YARD = 20'
 0.54 ACRES BUILDING AREA
 0.16 ACRES DRIVEWAY AREA

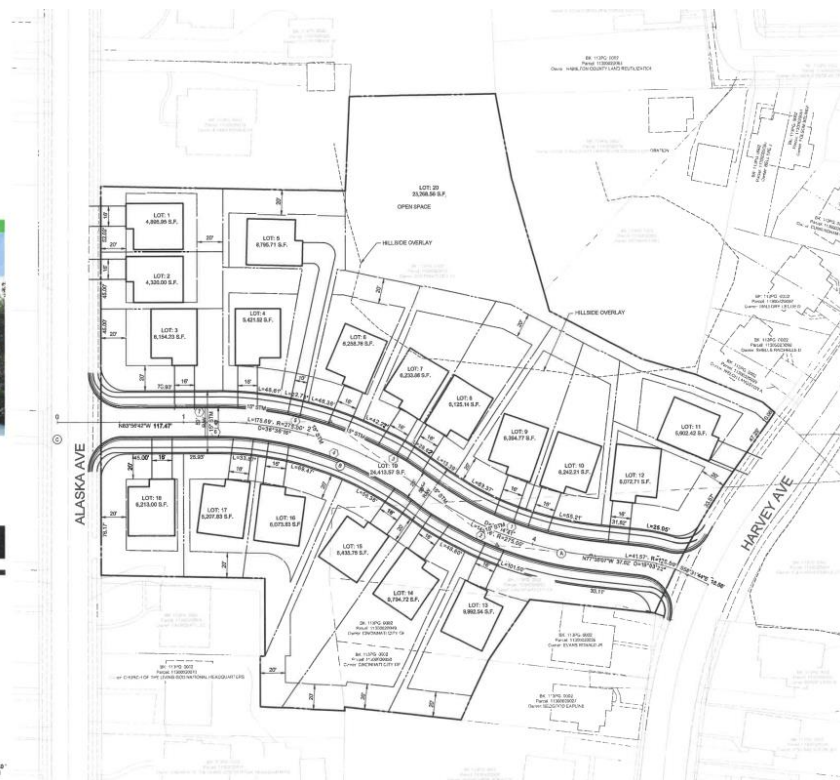


THE REMBRANT
 Open Concept Living • 4 Bedrooms • 2.5 Baths • Finished Basement • 2 Car Garage

FOR MORE INFORMATION CONTACT TITAN DEVELOPMENT
 Titan Development, LLC
 1015 28th Street, Suite 100
 Anchorage, Alaska 99503
 www.titandev.com



NOTE:
 ALL INFORMATION SHOWN ON THESE DRAWINGS IS BASED ON AVAILABLE GIS
 INFORMATION. ACTUAL SURVEY HAS NOT BEEN PERFORMED



Site Plan

EMERGENCY

City of Cincinnati

ZDS

AWB

An Ordinance No. _____

- 2022

AUTHORIZING the City Manager to execute a *Property Sale, Funding, and Development Agreement* with Total Property Care, LLC for the sale of City-owned real property located at 3584 Alaska Avenue and adjoining property on Harvey Avenue in the Avondale neighborhood of Cincinnati, in connection with the development of a residential subdivision consisting of 18 buildable lots for the construction of 18 single-family homes and a street that will be dedicated for use by the general public.

WHEREAS, the City owns certain real property located at 3584 Alaska Avenue and adjoining property on Harvey Avenue in the Avondale neighborhood, as more particularly described and depicted in the *Property Sale, Funding, and Development Agreement* (the "Agreement") attached to this ordinance as Attachment A (the "Property"), which Property is under the management of the City's Department of Community and Economic Development ("DCED"); and

WHEREAS, Total Property Care, LLC ("Developer"), submitted a development proposal in response to a Request for Proposals issued by the City, which proposal the City Manager, in consultation with DCED, determined to be the most advantageous to the City, and pursuant to which Developer desires to (i) develop the Property into a residential subdivision consisting of 18 buildable lots for the construction of 18 single-family homes at an estimated total hard construction cost of approximately \$5,022,500; and (ii) construct a street that will be open to the general public, connecting Harvey Avenue and Alaska Avenue at an estimated total hard construction cost of approximately \$1,380,000, all as more particularly described in the Agreement (collectively, the "Project"); and

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

WHEREAS, the City's Real Estate Services Division has determined, by appraisal, that the fair market value of the Property is approximately \$206,000, however, to facilitate the Project, the City desires to sell the Property to Developer for less than fair market value; namely, for \$1.00 because the City anticipates that it will receive economic and non-economic benefits that equal or exceed the fair market value of the Property because the Project will create additional housing units in the Avondale neighborhood and a street to be dedicated for use by the general public; and

WHEREAS, in order to facilitate the redevelopment of the Property to a productive use and the creation of additional housing in the Avondale neighborhood, the City, upon the recommendation of DCED, desires to provide additional support for the Project by providing a

forgivable loan to Developer in an amount not to exceed \$1,000,000, on the terms and conditions set forth in the Agreement; and

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

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

WHEREAS, the City has determined that: (i) the Property is not needed for municipal purposes; (ii) the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents; and (iii) the City's sale of the Property to Developer to construct the Project will create, among other things, additional housing in Cincinnati, and is consistent with the City's objective of creating good quality housing options within the Avondale neighborhood, thereby contributing to the social and economic viability and stability of the neighborhood; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Property at its meeting on January 21, 2022; 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, Funding, and Development Agreement* with Total Property Care, LLC ("Developer"), in substantially the form attached to this ordinance as Attachment A, pursuant to which the City will sell to Developer certain real property located at 3584 Alaska Avenue and adjoining property on Harvey Avenue in the Avondale neighborhood of Cincinnati, as more particularly described on Attachment A (the "Property"), for Developer to (a) develop a residential subdivision containing 18 buildable lots for the construction of 18 single-family homes, and (b) construct a street that will be dedicated for use by the general public, connective Harvey Avenue and Alaska Avenue (collectively, the "Project").

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

Section 3. That the City solicited and reviewed development proposals for development of the Property through an open and public process and determined and selected Developer's development proposal as being the most suitable and advantageous to the City.

Section 4. That the fair market value of the Property, as determined by appraisal by the City's Real Estate Services Division, is approximately \$206,000; however, the City is justified in selling the Property to Developer for less than fair market value; namely, for \$1.00, because the City anticipates that it will receive economic and non-economic benefits from the Project that equal or exceed the fair market value of the Property because the Project will create additional housing in the Avondale neighborhood and a street that will be dedicated for use by the general public.

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

Section 6. That the City Manager and other City officials are hereby authorized to take all necessary and proper actions to carry out the provisions of this ordinance and the Agreement, including, without limitation, executing any and all ancillary agreements, deeds, plats, terminations, releases, and other documents.

Section 7. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to expedite the City's sale of the Property to Developer, so that Developer can move forward with the Project without delay, which will result in the stimulation of economic growth and additional

housing units in the Avondale neighborhood, enabling the Property to be put to its highest and best use, for the economic benefit of the City, at the earliest possible time.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

Contract No. _____

**PROPERTY SALE, FUNDING, AND
DEVELOPMENT AGREEMENT**

between the

CITY OF CINCINNATI

and

**TOTAL PROPERTY CARE, LLC
d/b/a
TITAN REAL ESTATE GROUP, LTD**

Project Name: Alaska Commons

**(sale of City-owned real property at 3584 Alaska Avenue and adjoining property on Harvey Avenue
and loan of City capital funds in an amount not to exceed \$1,000,000
for development of up to 18 single-family homes
and corresponding public infrastructure in support thereof)**

Dated: _____, 2022

PROPERTY SALE, FUNDING, AND DEVELOPMENT AGREEMENT

This Property Sale, Funding, and Development Agreement (this “**Agreement**”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”), and **TOTAL PROPERTY CARE, LLC, d/b/a TITAN REAL ESTATE GROUP, LTD**, a Kentucky limited liability company, the address of which is 10226 Waterford Court, Covington, Kentucky 41015 (“**Developer**”).

Recitals:

A. The City owns certain real property located at 3584 Alaska Avenue and adjoining property on Harvey Avenue in the Avondale neighborhood of Cincinnati, which property is more particularly described on Exhibit A-1 (Legal Description) hereto and depicted on Exhibit A-2 (Site Plan) hereto (the “**Property**”), and which is under the management and control of the City’s Department of Community and Economic Development (“**DCED**”).

B. Pursuant to a Request for Proposals issued by the City, Developer submitted a development proposal, which was determined to be the most advantageous to the City, and pursuant to which Developer has proposed to (i) purchase and consolidate the Property, and (ii) develop the Property into a residential subdivision containing 18 buildable lots (each, a “**Lot**”) for the construction of 18 single-family homes (each, a “**Home**”), all as more particularly described on Exhibit B (Statement of Work, Budget, and Sources of Funds) hereto (the “**Subdivision**”, and the “**Private Project**”, as applicable), at an estimated total hard construction cost of approximately \$5,022,500. Developer currently anticipates completing the Private Project in two phases:

- i. Developer’s design and construction of 8 Homes on the Property, and more particularly on the Lots identified as 1-5 and 16-18 on Exhibit A-2 (the “**Phase I Private Improvements**” and the “**Phase I Private Property**”, as applicable); and
- ii. Developer’s design and construction of up to 10 Homes on the Property, and more particularly on the Lots identified as 6-15 on Exhibit A-2 (the “**Phase II Private Improvements**” and the “**Phase II Property**”, as applicable).

C. In addition to and in support of the Private Project, Developer intends to construct a street that will be open to the general public, connecting Harvey Avenue and Alaska Avenue, as depicted on Exhibit A-2 (the “**Dedication Property**”, and together with the Phase I Private Property, the “**Phase I Property**”), in accordance with plans and specifications that will be reviewed and approved by the City’s Department of Transportation and Engineering (“**DOT**”), at an estimated total hard construction cost of approximately \$1,380,000 (the public street and associated public sidewalks and/or other public improvements (including, without limitation, any infrastructure in support of the Subdivision required by Greater Cincinnati Water Works (“**GCWW**”), Stormwater Management Utility (“**SMU**”), the Metropolitan Sewer District of Greater Cincinnati (“**MSD**”), or any other public utility) being referred to collectively herein as the “**Public Improvements**,” and together with the Private Project, the “**Project**”), as further described on Exhibit B.

D. Developer has committed to (i) commence on-site construction of (a) the Public Improvements no later than 9 months from the Closing (as defined below), (b) the Phase I Private Improvements no later than 12 months from the Closing (the “**Phase I Commencement Date**”), and (c) the Phase II Private Improvements no later than July 1, 2025 (the “**Phase II Commencement Date**”); and (ii) complete construction of (a) the Public Improvements no later than July 1, 2023, (b) the Phase I Private Improvements no later than June 3, 2025 (the “**Phase I Completion Date**”), and (c) the Phase II Private Improvements no later than 60 months from the actual date Developer commences construction of the Phase II Private Improvements.

E. The City's Real Estate Services Division has determined, by professional appraisal, that the fair market value of the Property is approximately \$206,000; however, to facilitate the Project and in consideration of Developer's construction of the Public Improvements, and upon recommendation of DCED, the City desires to provide support for the Project by (i) selling the Property to Developer for less than fair market value; namely, for \$1.00; and (ii) providing a forgivable loan to Developer in an amount not to exceed \$1,000,000 (the "Loan") on the terms and conditions set forth in this Agreement, for the purpose of facilitating the redevelopment of the Property to a productive use, which will create additional housing in the Avondale neighborhood.

F. 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.

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 has determined that (i) the Property is not needed for a municipal purpose; (ii) upon the recommendation of DCED, the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents; (iii) the Project is in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements; (iv) the Property poses a financial liability to the City because the City must continue to incur expenses in maintaining it; and (v) it is in the best interest of the City to eliminate competitive bidding in connection with the City's sale of the Property because DCED has identified Developer's development proposal as being the most suitable and advantageous to the City.

I. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's sale of the Property to Developer at its meeting on January 21, 2022.

J. Cincinnati City Council approved the City's sale of the Property to Developer by Ordinance No. []-2022, passed on [], 2022.

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

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

2. **Closing and Conditions to Closing.**

(A) **Conditions.** The Closing shall not occur unless and until each of the following conditions including any and all other conditions as may be identified in the City's Coordinated Report No. 12-2021 (collectively, the "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 Conditions would be more appropriately handled at Closing or post-Closing, the City

may, if appropriate, include such Conditions in the Deed (as defined below) to Developer or handle such Conditions post-Closing:

- (i) *Title and Survey*: Developer shall have approved the title to the Property and, if obtained by Developer, an ALTA property survey of the Property;
- (ii) *Geotechnical and Environmental Condition*: Developer shall be satisfied that the geotechnical and environmental condition of the Phase I Property is acceptable for development of the Public improvements and the Phase I Private Improvements (collectively, the "**Phase I Project**");
- (iii) *Developer Inspections*: Developer shall have determined from any inspections and investigations made pursuant to this Section 2, including marketing studies, traffic studies, feasibility studies, and any other studies and investigations related to the Property or the Project that Developer may elect to conduct or have conducted, that the Phase I Property and the conditions and circumstances surrounding the Property are suitable for development, construction, and use of the Phase I Project in an economically feasible manner;
- (iv) *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 Phase I Project;
- (v) *Scope and Budget*: Developer shall have provided to the City a detailed and updated scope and budget for the Phase I Project;
- (vi) *Plats and Legal Descriptions*: Developer shall conduct all necessary surveying work and prepare a consolidation plat and legal description for the Property, which shall consolidate all City-owned parcels comprising the Property. Developer shall conduct all necessary surveying work and prepare a cut-up plat and legal description of the 18 buildable lots comprising the Subdivision;
- (vii) *Final Budget and Construction Contract*: Developer shall have obtained and delivered to the City final construction bids and a final budget for construction of the Phase I Project and an executed copy of Developer's construction contract with Developer's general contractor for the Phase I Project;
- (viii) *Zoning Approvals*: Developer shall have secured all zoning approvals necessary to construct the Project;
- (ix) *Construction Schedule*: Developer shall have provided the proposed construction schedule for the Phase I Project;
- (x) *Final Plans*: Developer shall have submitted its final plans for the Phase I Project to DCED;
- (xi) *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 Phase I Project; has made no false or misleading claims to the City regarding the Project; and is otherwise prepared, able, and ready to complete the Phase I Project in accordance with the requirements of this Agreement;
- (xii) *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; and

(xiii) *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 (A) shall be performed and obtained, as the case may be, at no cost to the City.

(B) Developer's Right of Entry. Prior to Closing, Developer may enter the Property during reasonable business hours to conduct tests and inspections related to the Project, *provided that* Developer must provide DCED at least 24 hours' notice prior to entering the Property. Developer shall promptly repair any damage to the Property resulting from its inspections and Developer shall hold the City harmless from any loss or expense arising out of Developer's activities on the Property. Entry shall be at the sole risk of Developer.

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

(D) Right to Terminate. If prior to Closing, either party determines, after exercising reasonable good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period of time, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all of the Conditions have not been satisfied to the satisfaction of both parties or waived in writing and for that reason the Closing has not occurred as of July 1, 2022, the City, in its sole and absolute discretion, may terminate this Agreement and all rights and obligations of the parties hereunder by giving written notice thereof to Developer.

(E) Closing Date. Subject to the terms and conditions of this Agreement, the purchase of the Property by Developer and the sale and conveyance of the Property by the City to Developer (the "**Closing**") shall take place on July 1, 2022, or such earlier or later date upon which the parties mutually agree.

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

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

(H) Environmental Indemnity. As a material inducement to the City to enter into this Agreement, Developer does hereby agree that, with respect to any environmental condition on or otherwise affecting the Property that exists at or prior to the time of the City's execution of this Agreement (herein, a "**Pre-existing Environmental Condition**"), and regardless of whether or not such Pre-existing Environmental Condition is described in any environmental assessment or any other environmental report that may have been previously furnished by Developer to the City or otherwise obtained by the City, Developer shall (i) at no expense to the City, promptly take all steps necessary to remediate such Pre-existing Environmental Condition, within a reasonable time after discovery, to the satisfaction of the City's Office of Environment and Sustainability, and (ii) defend, indemnify, and hold the City harmless from and against any and all actions, suits, claims, losses, costs (including, without limitation, reasonable attorneys' fees), demands, judgments, liability, and damages suffered or incurred by or asserted against the City as a result of or arising from any such Pre-existing Environmental Condition. Developer's remediation and indemnity obligations under this paragraph shall survive the completion of the Project.

3. City Financial Assistance.

(A) Amount of Loan. Subject to the terms and conditions of this Agreement, the City agrees to lend the Loan to Developer, in an amount not to exceed \$1,000,000. The proceeds of the Loan (the "**Funds**") shall be used solely to pay for hard construction costs associated with the Public Improvements itemized on Exhibit B and for no other purpose. Notwithstanding anything herein to the contrary, under no circumstances shall the City be obligated to make disbursements of Funds if any portion of the Public Improvements does not meet the standards and requirements of DOTE. For the avoidance of doubt, Developer shall not use any portion of the Funds to pay for 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.

(B) Terms of Loan. The Loan shall be repaid in accordance with the terms and conditions of a promissory note evidencing such Loan in the form attached as Exhibit D (*Form of Promissory Note*) hereto (the "**Note**"). The Note shall be executed by Developer and delivered to the City at Closing. As described in the Note, the Loan may be forgiven in whole or in part upon the satisfaction of certain conditions for forgiveness described therein. If Developer fails to timely complete any 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.

(C) Security. Prior to the disbursement of any Funds for the Public Improvements, Developer shall grant the City a mortgage on the Property substantially in the form of Exhibit E (*Form of Mortgage*) hereto (the "**Mortgage**"), as security for the Loan. Developer shall execute the Mortgage at Closing 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. The Mortgage shall be released only after the repayment and/or forgiveness of the Loan in accordance with the Note and upon Developer's written request. Following Developer's completion of construction of a Home, as evidenced by a certificate of occupancy, and provided that Developer is not in default under this Agreement, upon Developer's request, the City will execute a partial release of the Mortgage as it relates to the Lot upon which such Home is built. Developer shall be responsible for recording the release(s) in the Hamilton County Recorder's Office, and all costs and expenses associated with the recording thereof.

(D) Subordination. The City hereby agrees that the Mortgage shall be subordinate to any mortgage lien executed by Developer at the Closing in favor of Developer's senior source of construction financing required for completion of the Project, in an amount not to exceed \$2,525,854.

(E) Disbursement of Funds. The Funds shall be disbursed in accordance with Exhibit F (Disbursement of Funds) hereto.

4. Commencement and Completion of Project; Re-Conveyance of the Property to City upon Failure to Timely Commence or Complete Construction.

(A) Commencement and Completion of Construction. Following Closing, Developer shall (i) (a) apply for and receive the required building permits from the City's Department of Buildings and Inspections ("B&I") for construction of the Project, and (b) commence on-site construction of the applicable portion of the Project in accordance with the City-approved plans (collectively, "**Construction Commencement**") no later than the applicable construction Commencement Date, unless such date is extended in writing by the City, such extension to be provided in the City's sole and absolute discretion; and (ii) complete construction of the applicable portion of the Project (as evidenced by a certificate of occupancy for the Project) in accordance with the City-approved plans and specifications and all other City approvals (the "**Construction Completion**") no later than the applicable construction Completion Date, unless such date is extended in writing by the City, such extension to be provided in the City's sole and absolute discretion.

(B) Repurchase Options. As memorialized in the Deed, if (i) Construction Commencement for the Phase I Private Improvements or the Phase II Private Improvements has not occurred by the applicable construction Commencement Dates, (ii) Construction Completion for the Phase I Private Improvements has not occurred on or before the Phase I Completion Date, or (iii) Developer decides not to proceed with the Phase II Private Improvements (each a "**Failure**"), then the City shall have the option, in the City's sole and absolute discretion, to (x) in the case of a Failure to meet the Phase I Commencement Date or the Phase I Completion Date, repurchase the Property for the Purchase Price; or (y) in the case of a Failure to meet the Phase II Commencement Date or a Failure under clause (iii) above, repurchase the Phase II Property (each a "**Repurchase Option**"). In the event the City exercises a Repurchase Option, then Developer shall re-convey the applicable portion of the Property by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing, exercisable by giving written notice thereof to Developer at any time after the occurrence of a Failure, *provided that* in the event of a Failure to Commence Construction by the Phase I or Phase II Commencement Date, as applicable, the City shall send such notice of its intent to repurchase the Property prior to the date of actual Construction Commencement as to the applicable portion of the Project. At such time as the City no longer has the right to exercise a Repurchase Option, and after written request by Developer, the City shall execute and deliver to Developer a recordable release of the applicable Repurchase Option. As it relates to the Repurchase Option for Construction Commencement of the Phase I Private Improvements, following Developer's completion of construction of a Home as part of the Phase I Private Improvements, as evidenced by a certificate of occupancy, and provided that Developer is not in default under this Agreement, upon Developer's request, the City will execute a partial release of that Repurchase Option as it relates to the Lot upon which such Home is built. Developer shall be responsible for recording the release(s) in the Hamilton County Recorder's Office, and all costs and expenses associated with the recording thereof.

(C) Repurchase Option Closing. If the City elects to exercise a Repurchase Option, the re-conveyance shall take place on the date specified in the City's notice of election (not to exceed 6 months after the date of the City's notice). At the closing on such re-conveyance of the Property from Developer to the City: (i) Developer shall re-convey marketable title to the Property to the City or its designee, by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of Closing, and 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 Property), (ii) real estate taxes and assessments shall be prorated in accordance with local custom, and (iii) Developer shall pay any and all closing costs associated therewith such that the City shall not be required to come up with any funds at the closing for such re-conveyance.

(D) Plans and Specifications. Developer shall submit its final plans and specifications for the Project to DCED and DOTE and receive approval of the same from the City. Following the City's approval, Developer shall design and construct the Project in accordance with those City-approved plans and specifications that are consistent with Exhibit B, including, without limitation, Developer's proposed site plan for driveway locations, parking, and other ancillary improvements. Once the City has approved Developer's plans and specifications, Developer shall not make any material changes thereto without the City's prior written consent.

(E) Surety Bond. Prior to commencing construction of the Public Improvements, Developer shall provide the City with payment and performance bonds from its general contractor and/or prime subcontractors in the aggregate amount required to be paid under the construction contract(s) for the construction of the Public Improvements. The form of the surety bonds shall in all respects be satisfactory to the City and shall entitle Developer and the City to enforce the surety bonds directly against the issuers thereof in the event the work covered by the bonds is not satisfactorily completed in a timely manner as required under this Agreement.

(F) Dedication and Acceptance of Public Improvements. The parties acknowledge that Developer intends to dedicate the Public Improvements for public use, and intends for the City to accept the Public Improvements (subject to all approvals as required by DOTE and City Planning Commission, and subject to the passage by City Council of an ordinance to accept the dedication). Developer shall prepare all survey plats, legal descriptions, and other documents as may be required by the City and the Hamilton County Auditor and Recorder in connection with such dedication and acceptance, all at no cost to the City.

(G) 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.

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

(I) Inspection of Work. During construction at the Property, 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 work 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.

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

(K) 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.

(L) 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.

5. Insurance; Indemnity.

(A) Insurance. Throughout 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/\$2,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of 100% of the value of the improvements to be constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Developer's construction lenders, and (v) such other insurance as may be reasonably required by the City's Division of Risk Management. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least 30 days' prior written notice to the City. Within 10 days following execution of this Agreement, 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. Developer hereby waives all claims and rights of recovery, and on behalf of Developer's insurers, rights of subrogation, against the City, its employees, agents, contractors, and subcontractors with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Developer, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors, or subcontractors; it being the agreement of the parties that Developer shall at all times protect against such loss or damage by maintaining adequate insurance. Developer shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

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

6. Casualty; Eminent Domain. If the Project or the Property is damaged or destroyed by fire or other casualty during construction, or if any portion of the Property is taken by exercise of eminent domain (federal, state, or local), Developer shall repair and restore the Property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which the Property was in immediately prior to such occurrence. To the extent the City's participation is required, the City and Developer shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the proceeds are insufficient to fully repair and restore the Property, the City shall not be required to make up the deficiency. Developer shall handle all construction

in accordance with the applicable requirements set forth herein, including, without limitation, obtaining the City's approval of the plans and specifications for the improvements if they deviate from the original City-approved plans. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the Project or the Property is being repaired or restored.

7. Default; Remedies.

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

(i) the failure of Developer to perform or observe any obligation, duty, or responsibility under this Agreement or any other agreement to which Developer and the City are parties, and failure by Developer to correct such failure within 30 days after Developer's receipt of written notice thereof from the City (the "Cure Period"); *provided, however,* that if the nature of the default is such that it cannot reasonably be cured during the Cure Period, Developer shall not be in default under this Agreement so long as Developer commences to cure the default within the Cure 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. 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, 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 dissolution of Developer, the filing of any bankruptcy or insolvency proceedings by or against Developer, the making by Developer of an assignment for the benefit of creditors, the appointment of a receiver (temporary or permanent) for Developer, or the attachment of, levy upon, or seizure by legal process of any of the property of Developer; or

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

(B) Remedies. Upon the occurrence of an event of default under this Agreement that is not cured or corrected within the Cure Period, the City shall be entitled to: (i) if the default occurs prior to Closing, terminate this Agreement by giving Developer written notice thereof, (ii) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such event of default, all at the expense of Developer, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including, without limitation, pursuing an action for specific performance. Developer shall be liable for all costs and damages, including, without limitation, attorneys' fees, suffered or incurred by the City as a result of a default 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.

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

To the City:

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

To Developer:

Total Property Care, LLC
10226 Waterford Court
Covington, Kentucky 41015

Cincinnati, Ohio 45202

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

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 a Kentucky limited liability company, duly organized and validly existing under the laws of the State of Kentucky, is authorized to transact business in the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws relevant to the transactions contemplated by this Agreement.

(ii) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has by proper action been duly authorized, executed, and delivered by 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 Developer, or its parents, subsidiaries, or affiliates, at law or in equity or before or by any governmental authority that, if determined adversely, would impair the financial condition of such entity or its ability to perform its obligations with respect to the matters contemplated herein.

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

(vi) The statements made 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) **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, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (collectively,

"Records and Reports"). All Records and Reports compiled by Developer and furnished to the City shall be in such form as the City may from time to time require. Developer shall retain all Records and Reports for a period of 3 years after the completion of the Project.

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

11. General Provisions.

(A) Assignment. Developer shall not assign its rights or obligations under this Agreement without the prior written consent of the City, such consent not to be unreasonably withheld; and *provided*, that the City may require the execution of an amendment hereto or other clerical documentation to effect such assignment or substitution of parties. Any attempt by Developer to assign its rights or obligations under this Agreement without the City's consent shall, at the City's option, render this Agreement null and void.

(B) Entire Agreement. This Agreement (including the exhibits hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations, or agreements, written or oral, between them respecting the subject matter hereof.

(C) Amendments and Waivers. This Agreement may be amended, waived, or otherwise modified 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 Third Party Beneficiaries. No third party beneficiary rights are intended to be created by this Agreement.

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

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

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

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

(M) 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.

(N) 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.

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

12. Coordinated Report Conditions. Developer shall abide by the additional conditions identified in the City's Coordinated Report No. 12-2021, including, without limitation, the following:

(A) Department of Public Services: Developer shall address the issues regarding the large, landscaped island in the proposed site plan with the City's Department of Public Services.

(B) MSD:

(i) A 30' wide minimum permanent sewer easement will be necessary for existing 12", 15", and portion of the 18" combined/sanitary sewers. The final width may need to be adjusted pending submission of the MSD Request for Availability for Sewer Services ("RASS") and preliminary design for the Project. The permanent sewer easements will be necessary for access, operations, and maintenance to the existing combined/sanitary sewers and manholes. Note, an additional, 3' on either side of the permanent easement will be required, along with other MSD easement restrictions, as outlined per MSD Rules and Regulations Section 207. No structure can interfere with the access to the public sewer or can exert loading upon a public sewer per MSD Rules and Regulations Section 206. A change in existing topography or proposed site plan submittal may necessitate a revision to the minimum width requirement.

(ii) A permanent sewer easement exists for the remaining sections of the existing 18" combined sewer that were recently replaced. The existing permanent easement width does not need to be revised with the information provided in the Coordinated Report, but may need to be adjusted pending the submission of the RASS and the preliminary design for the project; the addition of the MSD easement restrictions stated in (i) will need to be incorporated.

(iii) As noted, with CPRE210016, a RASS will be required for the Project, which will determine the availability of a sewer and outline any additional MSD Project requirements that could impact a construction schedule if not considered early in project conceptual planning. Such considerations may include the need to obtain any MSD tap permits, easements mentioned above, Ohio EPA Permit to Install, utilization of licensed and bonded sewer tappers with MSD, sewer inspection scheduling, project on-site separation of flow requirements, MSD Excavations/Fill permitting and bonding

need for a grease interception system, and/or a reminder for the Project to coordinate with SMU for their specific additional detailed storm water, storm water detention, erosion and sediment control, and flood plain requirements. At minimum the current storm water volume provided with the existing on-site storm water basin will need to be available and most likely relocated based on the current concept plans provided in this Coordinated Report.

(iv) The RASS may require an Excavation/Fill permit and bond which will be necessary for any predesign, construction, construction traffic, earthwork, or any other construction activity over existing sewers, including site preparation activities such as demolition of buildings in which existing sewers are located. Additional requirements will be established by MSD Excavation/Fill permit depending on the final project plan. No additional loading may be exerted on the MSD sewers as the result of proposed structures and geotechnical/structural design calculations will be required for MSD review.

(v) Developer shall address the issues regarding the large, landscaped island in the proposed site plan with MSD, as MSD access may be restricted by the island and any trees planted within it.

(C) SMU: Developer shall address the proposed storm sewer design with SMU, which may require a trunk line with spurs, not inlets in series, to be designed for the Project.

(D) GCWW:

(i) Developer shall submit a GCWW Preliminary Application and a concept plan for the extension of the public water main in the proposed street. Developer's engineer shall prepare a survey of existing conditions, indicating all existing water mains and related appurtenances in the Property, and prepare engineering drawings for GCWW's review and approval. GCWW plan review fees will be charged.

(ii) There are three active water service branches for the Property. GCWW records indicate that the branch material within the Property is lead. In accordance with Cincinnati Municipal Code Chapter 401 Division M, the lead service lines must be replaced with copper service lines.

(iii) Developer's contractor must perform all necessary water main abandonment and water main replacement work. Developer's contractor must submit a letter of intent and contractor's bond for the work to be performed, and a GCWW inspector must be present during all phases of water main abandonment work and water main installation. GCWW inspections fees will be charged.

(iv) Developer's contractor shall contact GCWW at least 2 full business days prior to the start of any work in the Property so the location of public water mains and related appurtenances can be marked in the field. Any damage done to any public water main or related appurtenance shall be repaired entirely at Developer's expense.

(E) Cincinnati Bell: The existing underground telephone 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 of this condition, will be handled entirely at Developer's expense.

(F) B&I:

(i) A Major Subdivision and Subdivision Improvement Plan must be approved by the City Planning Commission.

(ii) Developer shall obtain all required zoning variances and Hillside Regulation approvals necessary for the Project to occur.

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

- Exhibit A-1 – *Legal Description*
- Exhibit A-2 – *Site Plan*
- Exhibit B – *Statement of Work and Budget*
- Exhibit C – *Form of Quitclaim Deed*
- Exhibit D – *Form of Promissory Note*
- Exhibit E – *Form of Mortgage*
- Exhibit F – *Disbursement of Funds*
- Exhibit G – *Additional Requirements*

[SIGNATURES ON FOLLOWING PAGE]

This Agreement is executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

CITY OF CINCINNATI,
an Ohio municipal corporation

By: _____
John P. Curp, Interim City Manager

Date: _____, 2022

TOTAL PROPERTY CARE, LLC,
a Kentucky limited liability company

By: _____

Name: _____

Title: _____

Date: _____, 2022

Authorized by resolution dated _____.

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A-1
to Property Sale, Funding, and Development Agreement

Legal Description

PARCEL 1:

Auditor's Parcel No.: 113-0002-0016-00

Situated in Section 9, Town 3, F.R. 2, Miami Purchase, City Of Cincinnati, County Of Hamilton, State of Ohio, being Lots 22, 23, 24 and part of lots 25 and 26 of A.E. Burkhardt's Subdivision, a plat of which is found in Plat Book 12, Page 15, of the Hamilton County Records and also part of Lot 1 of the lands of John Mears, a plat of which is found in Plat Book 1, Page 291 of the Hamilton County Records and being more particularly described as follows:

Beginning at an iron pin in the Easterly line of Alaska Avenue, a 50 foot street (said iron pin being the Northwest corner of Lot 22 of A.E. Burkhardt's Subdivision);

Thence, leaving said Easterly line of Alaska Avenue, South 86 deg. 06' East, 192.61 feet to a point;

Thence North 4 deg. 57' East, 75.06 feet to an iron pin;

Thence South 88 deg. 18' East, 116.77 feet to an iron pin;

Thence South 5 deg. 24' East, 65.95 feet to an iron pin;

Thence South 20 deg. 48' East, 105.30 feet to an iron pin;

Thence South 49 deg. 03' East, 85.00 feet to an iron pin;

Thence South 74 deg. 18' East, 43.00 feet to an iron pin;

Thence South 64 deg. 33' East, 56.00 feet to an old iron pin;

Thence South 46 deg. 18' East, 12.63 feet to an old iron pin in the Westerly line of Harvey Avenue (a 60 foot street), South 38 deg. 25' 20" West, 63.20 feet to an iron pin;

Thence, leaving said Westerly line of Harvey Avenue, North 87 deg. 12' 20" West, 313.01 feet to a point;

Thence South 4 deg. 57' West, 80.58 feet to an iron pin;

Thence South 3 deg. 59' East, 103.56 feet to a point;

Thence North 86 deg. 05' West, 66.44 feet to a point;

Thence North 2 deg. 34' East, 40.25 feet to an iron pin;

Thence South 86 deg. 05' East, 4.00 feet to an iron pin;

Thence North 2 deg. 34' East, 61.95 feet to a point;

Thence North 86 deg. 05' West, 129.00 feet to an iron pin in the Easterly line of Alaska Avenue;

Thence, with said Easterly line of Alaska Avenue, North 2 deg. 34' East, 309.05 feet to an iron pin and the place of beginning for this description.

Containing 2.892 acres, more or less.

PARCEL 2:

Auditor's Parcel No.: 113-0002-0083-00

Situate in Section 9, Township 3, Fractional Range 2, Miami Purchase, and more particularly described as follows:

Beginning at a point in the East line of Lot 25 of A.E. Burkhardt's subdivision recorded in Plat Book 12, Page 15, Hamilton County, Ohio Records, 8.63 feet Southwardly from the Northeast corner of said lot, said beginning point being the Southwest corner of a tract of land conveyed by Charles E. Hofer to Elizabeth Rodgers by deed recorded in Deed Book 887, Page 561, Hamilton County, Ohio Records;

Thence North 3 deg. 43' East, along the East line of Lots 25 and 24 of said Burkhardt's Subdivision, 80.58 feet;

Thence South 88 deg. 3' East, 309.92 feet;

Thence Southwardly along a curve deflecting to the left with a radius of 430 feet, a distance of 118.25 feet and being the Westerly line of the tract conveyed by Jerome Apseloff to the City of Cincinnati for street purposes as recorded in Deed Book 1870, Page 246, of the Hamilton County, Ohio Records;

Thence North 82 deg. 28' West, 258.09 feet, more or less, to the point of beginning.

PARCEL 3:

Auditor's Parcel Nos.: 113-0002-0049-00 and 113-0002-0050-00

All that lot of land in the City of Cincinnati, Hamilton County, Ohio, situated in Section 9, Town 3, Fractional Range 2, Miami Purchase, described as follows:

Beginning at a point in the East line of Lot 25 of A.E. Burkhardt's Subdivision as recorded in Plat Book 12, Page 15, Hamilton County, Ohio Records, 8.63 feet Southwardly from the Northeast corner of said lot;

Thence Southwardly along the East line of lots 25 and 26 of said Burkhardt's Subdivision, 102.60 feet;

Thence Eastwardly on a line at right angles to Rosedale Place, 92.20 feet to a point, 143 feet West of the West lone of Rosedale Place;

Thence Northeastwardly 53.14 feet to a point 125 feet West, measured at right angles to the West line of Rosedale Place;

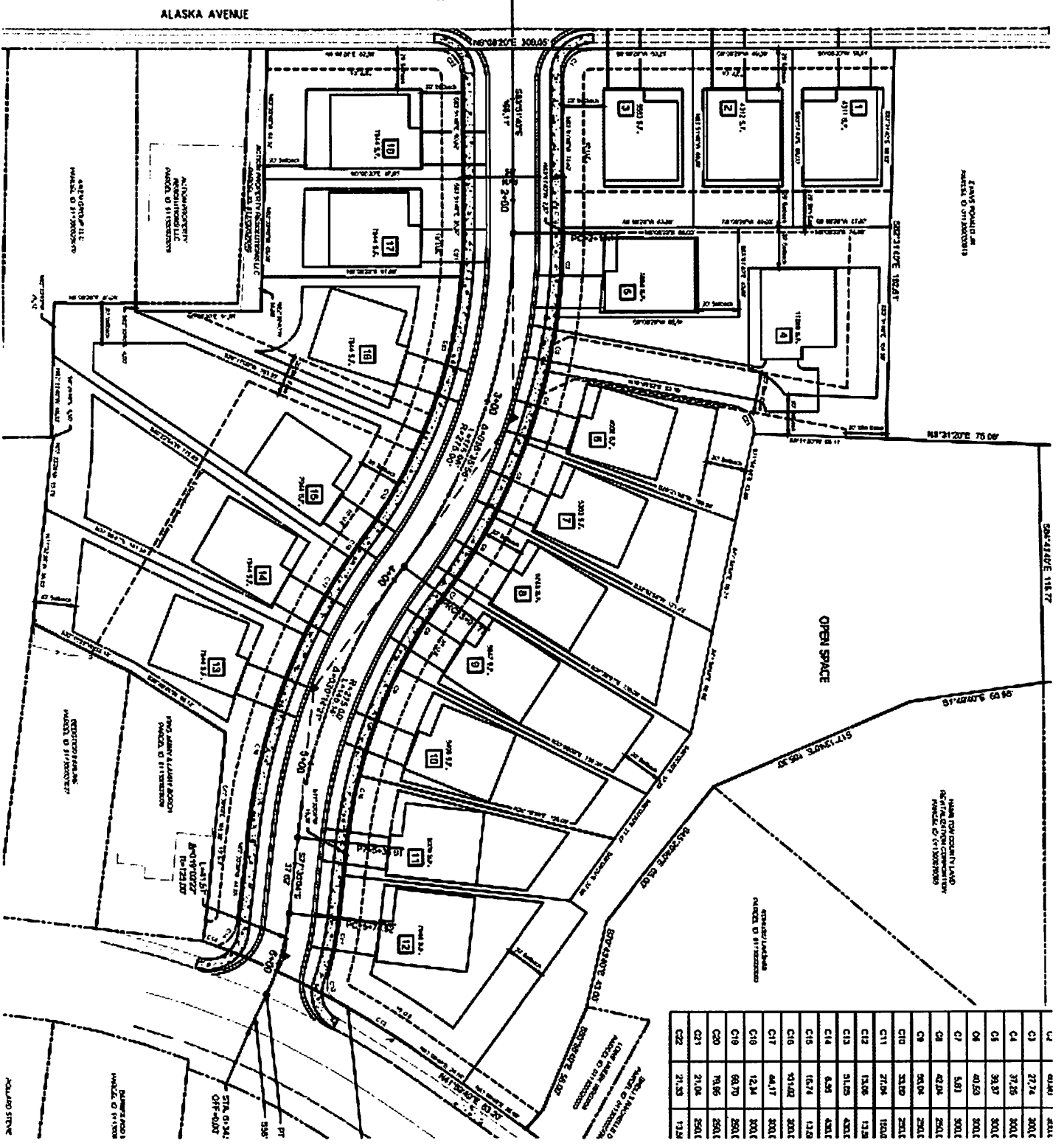
Thence Northeastwardly 55.90 feet to a point 100 feet West, measure at right angles to the West line of Rosedale Place;

Thence Westwardly along a line at right angles to Rosedale Place, 158 feet to the place beginning.

Exhibit A-2
to Property Sale, Funding, and Development Agreement

Site Plan

SEE ATTACHED



LOT	AREA	AREA
C3	2774	3001
C4	3728	3001
C5	3837	3001
C6	4059	3001
C7	5831	3001
C8	4204	2901
C9	3804	2901
C10	3329	2901
C11	2784	1900
C12	1308	125
C13	1129	4301
C14	826	4301
C15	1674	125
C16	9142	3001
C17	4417	3001
C18	1234	3001
C19	6979	2901
C20	1906	2901
C21	2104	2901
C22	2133	125

Exhibit B
to Property Sale, Funding, and Development Agreement

Statement of Work, Budget, and Sources of Funds

I. Statement of Work:

Developer plans to undertake the Project to deliver new housing options in the Avondale neighborhood. At completion, the Project will create up to 18 newly-constructed detached single-family Homes along a newly constructed public road dedicated for use by the general public.

A. Description of Private Project. The Private Project will be split into two phases due to the soil conditions found at the Property after performing soil boring tests. The Phase I Private Improvements will consist of the development of up to 8 newly-constructed single-family Homes. Once the first 8 Homes are complete as part of the first phase, Developer and the City will together determine the total amount of Homes that can be built in the second phase. The sale of the Homes built as part of the Phase I Private Improvements will determine how much the market can absorb to cover the additional development costs for the construction of the Homes in the Phase II Private Improvements. If the market cannot bear the additional development costs, then the City shall have the ability to exercise its Repurchase Option or allow Developer to market the remainder of the Property for sale to another builder, as approved by the City, in the City's sole and absolute discretion, to complete the Phase II Private Improvements. However, if the market can bear the additional costs, Developer plans to commence the Phase II Private Improvements and build up to 10 additional Homes.

B. Description of Public Improvements. Developer will construct a new public roadway between Alaska Avenue and Harvey Avenue and all associated public utilities and sidewalks. Developer will be required to:

1. Provide permits and performance bond for the cost of the work and excavation and site work including roadway grading.
2. Demolish/remove existing water services on Alaska Avenue, storm sewers in the right-of-way Harvey Avenue, and 12" storm sewers within the Property.
3. Provide sedimentation controls onsite including a silt fence, inlet filters, and a construction entrance.
4. Pave and install curbs and gutters for the new street include a 3-ply paving specification with layers of 5" and 3" with a 2" wear course of asphaltic concrete to City standards. Concrete curbs are Type P-4. Crosswalk lines, centerline striping, stop signs, and stop bars are also included.
5. Install a public sanitary sewer including a 12" main line running from Harvey Avenue to Alaska Avenue. 4 manholes will be constructed with the new sanitary sewer along with wyes and 6" laterals for the 18 residential lots.
6. Install approximately 560 L.F. of 8" water main per GCWW standards, a fire hydrant assembly, mainline valves, connecting to existing, and the tap-in and inspection fees. Developer shall provide 3/4" water services for all 18 Lots ending at a meter located at the right-of-way line.
7. Install electric and lighting for electric service and streetlights. Developer will establish an agreement with Duke Energy to install streetlights in the public right-of-way. The final agreement is subject to establishing the final layout of the lighting.

Any changes to the plans and specifications of the Public Improvements provided and approved by the City shall, upon the City's approval, be reflected in a final plan set, which will be kept on file in the offices of DOTE.

II. **Budget:**

	City Funds	Non-City Funds	Total
Public Improvements	\$1,000,000	\$380,000	\$1,380,000
Hard Construction Costs (for the Homes)	-	\$5,022,500	\$5,022,500
Soft Costs	-	\$513,820	\$513,820
Acquisition Costs	-	\$1	\$1
Developer Fee	-	-	-
		TOTAL	\$6,916,321

III. **Sources of Funds:**

Sources	
Spring Valley Bank	\$2,500,000
Developer Equity	\$2,984,321
Cincinnati Children's	\$432,000
City of Cincinnati Capital Loan	\$1,000,000
TOTAL	\$6,916,321

Exhibit C
to Property Sale, Funding, and Development Agreement

Form of Quitclaim Deed

SEE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE ONLY]

Property: 3584 Alaska Ave and adjoining property on Harvey Avenue

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), for valuable consideration, hereby grants and conveys to **TOTAL PROPERTY CARE, LLC**, a Kentucky limited liability company, the tax-mailing address of which is _____ ("**Grantee**"), all of the City's right, title, and interest in and to the real property described on Exhibit A (*Legal Description of Property*) hereto (the "**Property**").

Property Address: 3584 Alaska Avenue and adjoining property on Harvey Avenue
Cincinnati, Ohio 45229

Auditor's Parcel Nos: 113-0002-0016-00; 113-0002-0083-00; 113-0002-0050-00; 113-0002-0049-00

THIS TRANSFER IS SUBJECT TO, AND THE CITY HEREBY RESERVES, THE FOLLOWING EASEMENTS, COVENANTS, AND RESTRICTIONS.

(A) Permanent Sewer Easement in Favor of the City of Cincinnati. The City hereby reserves and creates a permanent utility easement over a 30-foot wide area of the Property as more particularly described on Exhibit B (*Legal Description – Easement Area*) hereto, and more particularly depicted on Exhibit C (*Plat – Easement Area*) hereto (the "**Sewer Easement Area**"), for the operation, maintenance, repair, reconstruction, removal, or replacement of existing sanitary sewer lines, facilities, equipment, and all appurtenances located within the Sewer Easement Area, including the right to enter upon and reenter upon the Property to access the Sewer Easement Area.

No structure of any kind which can interfere with access to said public sewers shall be placed in or upon the Sewer Easement Area, excepting items such as recreational surfaces, paved areas for parking lots, driveways, or other surfaces used for ingress and egress, plants, trees, shrubbery, fences, landscaping, or other similar items, being natural or artificial. Any of the aforesaid surfaces, paved areas, plants, trees, shrubbery, fences, landscaping, or other similar items which may be placed upon the Sewer Easement Area shall be so placed at the sole expense of Grantee, its successor, or assigns, and the City, its successors, or assigns shall not be responsible to Grantee, its successors or assigns, for the condition, damage to, or replacement of any such aforesaid items, or any other items placed upon the Sewer Easement Area, resulting from the existence or use of the Sewer Easement Area by Grantee, its successors or assigns.

If the City determines that improvements placed within the Sewer Easement Area interfere with the City's easement rights, the City may remove such improvements at the property owner's expense.

Under no circumstances shall the City or its contractors be liable for any damage to improvements placed within the Sewer Easement Area.

Any structure constructed on the Property after the date of acknowledgment herein shall be kept not less than 3 feet outside the Sewer Easement line nearest the site of the proposed structure.

Any deviation from the aforesaid restrictions shall be petitioned to the City by written request. Each such request shall be considered on an individual basis.

[subject to possible creation of utility easements in favor of Cincinnati for its existing facilities if no existing easements are in place]

(B) Re-conveyance to City upon Failure to Timely Commence or Complete Construction. The City and Grantee are parties to a *Property Sale, Funding, and Development Agreement* dated _____, 20__ (the "**Agreement**"), pursuant to which Grantee is required to redevelop the Property. If (i) Grantee fails to commence construction of the Phase I Private Improvements on or before the Phase I Commencement Date (as defined in the Agreement) in accordance with the Agreement, (ii) Grantee fails to complete construction of the Phase I Private Improvements on or before the Phase I Completion Date (as defined in the Agreement) in accordance with the Agreement, (iii) fails to commence construction of the Phase II Private Improvements on or before the Phase II Commencement Date (as defined in the Agreement) in accordance with the Agreement, or (iv) Grantee decides not to proceed with the Phase II Private Improvements, Grantee shall re-convey the Property, or the applicable portion thereof, to the City as described in the Agreement. At such time as the City no longer has the right to reacquire the Property under the Agreement, the City, at Grantee's request, shall execute and deliver to Grantee a release of such rights for recording in the Hamilton County, Ohio Recorder's Office. Until such time as the Property has been reconveyed to the City or the City has released or waived its rights to reacquire the Property thereunder, Grantee shall not sell or otherwise transfer title to the Property or any portion thereof without the prior written consent of the City.

All of the easements, covenants, and restrictions above shall "run with the land" and be binding upon Grantee and its successors-in-interest with respect to the Property.

This conveyance was authorized by Ordinance No. ____-2022, passed by Cincinnati City Council on _____, 2022.

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

[Signature Page Follows]

Executed on _____, 2022.

CITY OF CINCINNATI

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022, by _____ the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

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

Accepted and Agreed to by:
Total Property Care LLC

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

- Exhibits:
Exhibit A – Legal Description of Property
Exhibit B – Legal Description – Sewer Easement
Exhibit C – Easement Plat

Exhibit A
to Quitclaim Deed

Legal Description of Property

[to be attached to execution version]

Exhibit B
to Quitclaim Deed

Legal Description – Sewer Easement

[to be attached to execution version]

Exhibit C
to Quitclaim Deed

Easement Plat

[to be attached to execution version]

Exhibit D
to Property Sale, Funding, and Development Agreement

Form of Promissory Note

SEE ATTACHED

PROMISSORY NOTE
(secured by mortgage on real estate)

\$1,000,000.00

Cincinnati, Ohio
_____, 2022

FOR VALUE RECEIVED, the undersigned, **TOTAL PROPERTY CARE LLC d/b/a TITAN REAL ESTATE GROUP, LTD**, a Kentucky limited liability company, the address of which is _____ ("**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 Promissory Note (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 One Million Dollars (\$1,000,000.00), or so much thereof as is disbursed by the City to Borrower under that certain *Property Sale, Funding, and Development Agreement* by and between Borrower and the City, dated _____, 2022 (the "**Agreement**"), together with interest thereon and upon the following terms and conditions (the "**Loan**"). The date on which the City disburses the Loan proceeds or any portion thereof to Borrower pursuant to the terms of the Agreement is referred to herein as the "**Loan Disbursement Date**." Capitalized terms used herein but not defined herein, if any, shall have the meanings ascribed to them in the Agreement.

This Note is secured by a mortgage on the property located at 3584 Alaska Avenue and adjoining property along Harvey Avenue, Cincinnati, Ohio 45229, as further described in the Agreement (the "**Property**" and the "**Mortgage**", as applicable). Pursuant to the terms of the Agreement, Borrower is required to (i) construct and dedicate to public use certain Public Improvements under the supervision of the City's Department of Transportation and Engineering; and (ii) develop the Property into 18 buildable lots (each, a "**Lot**") for the construction of 18 single-family homes (each, a "**Home**") as part of the Private Project, all as more particularly described in the Agreement. Developer anticipates completing the Private Project over two phases, with the Phase I Private Improvements consisting of the first 8 Homes, and the Phase II Private Improvements consisting of up to 10 additional Homes.

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

- (a) Amount: The principal and amount of the Loan evidenced by this Note is One Million Dollars (\$1,000,000.00).
- (b) Term: The term of the Loan (the "**Term**") shall be 5 years, beginning on the Loan Disbursement Date, and ending on the 5-year anniversary thereof (the "**Maturity Date**").
- (c) Interest Rate: 0.00% per annum.
- (d) Payments:
 - (i) Deferment. Borrower shall not be required to make payments under this Note during the period between the Loan Disbursement Date and the 60-month anniversary thereof (the "**Deferment Period**").
 - (ii) Forgiveness. The Loan shall be forgiven in the following manner:
 - (A) If and when Borrower completes the Public Improvements within the Deferment Period and in accordance with the terms of the Agreement, and provided that Borrower is not in default of its obligations under this Note or the Agreement, the City shall forgive 50% of the outstanding principal amount of the Loan.
 - (B) Provided that Borrower is not in default of its obligations under this Note or the Agreement, the City shall forgive 1/8th of the remaining outstanding

principal amount of the Loan upon the completion of each Home constructed on the Property as part of the Phase I Private Improvements, and as evidenced by the issuance of a certificate of occupancy within the Deferment Period. At Developer's request, the City shall execute a partial release from the Mortgage for each of the first 7 Lots as the respective Homes on such Lots are completed, and upon completion of the 8th Home, and at Developer's request, the City shall release the remaining Property from the Mortgage.

(iii) Balloon Payment. If the Loan is not fully forgiven as described in paragraph (ii) above prior to the end of the Deferment Period, then on the Maturity Date, Borrower shall pay a balloon payment equal to all unpaid and unforgiven principal and other charges outstanding on the Loan.

(e) Prepayment: Borrower may prepay the Loan and accrued interest at any time, without penalty.

(f) 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.

(g) 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 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 Note holder may designate in writing from time to time.

4. Default. Upon any default under the Agreement or default in the payment of interest, 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.

5. 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, and 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. Presentment, notice of dishonor, protest, and notice of protest are hereby waived.

Executed by Borrower on the date first above written.

BORROWER:

TOTAL PROPERTY CARE LLC

By: _____

Printed name: _____

Title: _____

Approved as to Form:

Assistant City Solicitor

cc: Karen L. Alder, City Finance Director

Exhibit E
to Property Sale, Funding, and Development Agreement

Form of Mortgage

SEE ATTACHED

[SPACE ABOVE FOR RECORDER'S OFFICE]

MORTGAGE

THIS MORTGAGE ("**Mortgage**") is given on _____, 2022, by **TOTAL PROPERTY CARE LLC d/b/a TITAN REAL ESTATE GROUP, LTD**, a Kentucky limited liability company, with offices at _____ ("**Borrower**"). This Mortgage is given to the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Room 214, Cincinnati, Ohio 45202 (the "**City**"). Borrower owes the City the principal sum of \$1,000,000.00, or so much thereof as is disbursed by the City to Borrower pursuant to that certain *Property Sale, Funding, and Development Agreement* dated _____, 2022, between the parties (as the same may hereafter be amended, restated, or replaced from time to time, the "**Agreement**") and by Borrower's promissory note in said amount in favor of the City and executed in relation to the Agreement (as the same may hereafter be amended, restated, or replaced from time to time, the "**Note**"). This Mortgage secures to the City the repayment of the debt evidenced by the Note, the performance by Borrower of all of Borrower's other obligations under the Agreement, and the payment of all other sums, with interest, advanced by the City under this Mortgage. Capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Agreement.

For this purpose, Borrower does hereby grant with mortgage covenants to the City certain real property, consisting of the property described on Exhibit A (Legal Description) 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**"). Pursuant to the Agreement, the City intends to disburse up to \$1,000,000.00 for use by Borrower in paying construction-related costs and other eligible costs under the Agreement associated with the Public Improvements.

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

Property Address: 3584 Alaska Avenue, Cincinnati, Ohio 45229 and other vacant property on Alaska and Harvey Avenue

Auditor's parcels: 113-0002-0016-00; 113-0002-0049-00; 113-0002-0050-00; 113-0002-0083-00

Prior Instruments: OR 13448, Page 02958, Hamilton County, Ohio Records.

Borrower and the City covenant and agree as follows:

1. Payments. Borrower shall promptly pay when due any and all amounts that may become due and payable under the Agreement and the Note, all in accordance with the terms thereof.

2. 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, the City may, at its option, pay such amounts pursuant to paragraph 5 hereof. Borrower shall promptly discharge any lien that has priority over this Mortgage unless the City has consented in writing to the superiority of such lien.

3. Property Insurance. Borrower shall maintain adequate property insurance on any and all improvements now existing or hereafter erected on the Property. All insurance policies and renewals shall include a standard mortgagee clause in favor of the City. If Borrower fails to maintain insurance as required hereunder, the City may, at its option, obtain such insurance pursuant to paragraph 5 hereof. Unless the City 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. If the restoration or repair is not economically feasible, the insurance proceeds shall be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to Borrower.

4. Maintenance of the Property. Borrower shall maintain the Property in good condition and repair and otherwise in accordance with the terms of the Agreement.

5. Protection of the City'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 the City's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), the City may do and pay for whatever is necessary to protect the value of the Property and the City's rights in the Property. The City's actions may include paying any sums secured by a lien which has priority over this Mortgage, appearing in court, paying reasonable attorneys' fees and entering onto the Property to make repairs. Any amounts disbursed by the City under this paragraph shall become additional debt of Borrower secured by this Mortgage. These amounts shall bear interest, at the rate of ten percent per annum, from the date of disbursement and shall be payable, with interest, upon notice from the City to Borrower requesting payment.

6. Successors and Assigns Bound; Governing Law. The covenants and agreements of this Mortgage shall bind and benefit the successors and assigns of the City and Borrower, subject to the provisions of paragraph 8 hereof. This Mortgage shall be governed by the laws of the City of Cincinnati and State of Ohio.

7. 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 the City. Any notice to the City shall be given by first class mail to the City's address stated herein or any other address the City designates by notice to Borrower.

8. Transfer of the Property. If Borrower sells or transfers the Property to anyone without the City's prior written consent, the City may, at its option, require immediate payment in full of all sums secured by this Mortgage.

9. Acceleration; Remedies. If Borrower fails to complete its construction obligations or any other obligations with respect to the Property as and when required under the Agreement, the Note, or this Mortgage, the City may declare all amounts disbursed by the City with respect to the Property to be immediately due and payable and may foreclose this Mortgage. Unless prohibited by law, Borrower

shall pay to the City any and all sums, including expenses and reasonable attorneys' fees, that the City 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 Note, the Agreement, or this Mortgage; to foreclose this Mortgage; or to prove the amount of or to recover any indebtedness hereby secured. 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 or Agreement, or available at law or in equity.

10. Advances to Protect Security. This Mortgage shall secure the unpaid balance of any advances made by the City 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 the City is authorized by this Mortgage to pay on Borrower's behalf.

11. Maximum Principal Amount. This Mortgage shall secure the payment of any and all amounts advanced from time to time by the City to Borrower under the Note, the Agreement, or this Mortgage, and under any other promissory notes or other documents signed by Borrower and stating that such advances are secured hereby. The City shall not be obligated to make any additional advances unless the City 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 \$1,000,000.00, exclusive of interest thereon and unpaid balances of advances made by the City under this Mortgage.

[Signature page follows]

This Mortgage is executed by Borrower on the date first set above.

TOTAL PROPERTY CARE LLC

By: _____
Printed Name: _____
Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____ of Total Property Care LLC, d/b/a Titan Real Estate Group, Ltd., a Kentucky limited liability company, on behalf of the company. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

Approved as to Form

Assistant City Solicitor

This instrument prepared by:
Samantha Brandenburg, Esq.
City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, Ohio 45202

Exhibits:
Exhibit A – Legal Description

Exhibit A
to Mortgage

Legal Description

[to be attached to execution version]

Exhibit F
to Property Sale, 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) Developer shall have delivered to the City the Mortgage and the Note;

(ii) Developer has provided the City with evidence of insurance required under this Agreement;

(iii) Developer has provided the City with evidence that it has obtained all licenses, permits, governmental approvals, and the like necessary for the construction work;

(iv) Developer has provided the City with evidence that it has secured all other funds necessary to complete the Phase I Project;

(v) Construction has commenced and is proceeding in accordance with the City-approved plans and specifications, budget, and construction schedule;

(vi) Developer has provided the City with such other documents, reports, and information relating to the Project as the City has reasonably requested, including, without limitation, the due diligence materials; and

(vii) Developer is not in default under this Agreement.

(B) Disbursement of Funds. Provided all of the requirements for disbursement of the Funds shall have been satisfied, the City shall disburse the Funds to Developer. The City shall disburse the Funds on a reimbursement basis and pro-rata with all other construction loan funds being utilized by Developer for the Public Improvements (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, including the Public Improvements. 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 30 days following completion of construction of the Public Improvements to the satisfaction of DOTE.

(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 Public Improvements 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 Public Improvements, under this Agreement as determined by the City in its sole discretion. For the avoidance of doubt, Developer may, following the completion of the Public Improvements, 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 Property Sale, 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 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 10 days following Developer and/or its general contractor's meet and confer activity, Developer shall provide to the City, in writing, a summary of Developer and/or its general contractor's meet and confer activity.

(ii) Contracts and Subcontracts; Competitive Bidding.

(a) Applicability. This clause (ii) is applicable to "construction contracts" under Cincinnati Municipal Code Chapter 321. Municipal Code Chapter 321 defines "construction" as "any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by

Federal or Ohio statutes to be more than four thousand dollars and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority,” and “contract” as “all written agreements of the City of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction.”

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

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

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

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

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

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

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

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

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

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

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

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

(F) Small Business Enterprise Program.¹

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

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

(1) Including qualified SBEs on solicitation lists.

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

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.

(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 DDCEd, to include language specifically requiring compliance with the Americans With Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, the "**ADA**"), and imposing certain minimum accessibility standards on City-subsidized projects regardless of whether there are arguably exceptions or reductions in accessibility standards available under the ADA or State law.

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

(O) Electric Vehicle Charging Stations in Garages.

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

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

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

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

TO BE ATTACHED

Contract No. _____

**PROPERTY SALE, FUNDING, AND
DEVELOPMENT AGREEMENT**

between the

CITY OF CINCINNATI

and

**TOTAL PROPERTY CARE, LLC
d/b/a
TITAN REAL ESTATE GROUP, LTD**

Project Name: Alaska Commons

(sale of City-owned real property at 3584 Alaska Avenue and adjoining property on Harvey Avenue
and loan of City capital funds in an amount not to exceed \$1,000,000
for development of up to 18 single-family homes
and corresponding public infrastructure in support thereof)

Dated: _____, 2022

PROPERTY SALE, FUNDING, AND DEVELOPMENT AGREEMENT

This Property Sale, Funding, and Development Agreement (this “**Agreement**”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”), and **TOTAL PROPERTY CARE, LLC, d/b/a TITAN REAL ESTATE GROUP, LTD**, a Kentucky limited liability company, the address of which is 10226 Waterford Court, Covington, Kentucky 41015 (“**Developer**”).

Recitals:

A. The City owns certain real property located at 3584 Alaska Avenue and adjoining property on Harvey Avenue in the Avondale neighborhood of Cincinnati, which property is more particularly described on Exhibit A-1 (Legal Description) hereto and depicted on Exhibit A-2 (Site Plan) hereto (the “**Property**”), and which is under the management and control of the City’s Department of Community and Economic Development (“**DCED**”).

B. Pursuant to a Request for Proposals issued by the City, Developer submitted a development proposal, which was determined to be the most advantageous to the City, and pursuant to which Developer has proposed to (i) purchase and consolidate the Property, and (ii) develop the Property into a residential subdivision containing 18 buildable lots (each, a “**Lot**”) for the construction of 18 single-family homes (each, a “**Home**”), all as more particularly described on Exhibit B (Statement of Work, Budget, and Sources of Funds) hereto (the “**Subdivision**”, and the “**Private Project**”, as applicable), at an estimated total hard construction cost of approximately \$5,022,500. Developer currently anticipates completing the Private Project in two phases:

- i. Developer’s design and construction of 8 Homes on the Property, and more particularly on the Lots identified as 1-5 and 16-18 on Exhibit A-2 (the “**Phase I Private Improvements**” and the “**Phase I Private Property**”, as applicable); and
- ii. Developer’s design and construction of up to 10 Homes on the Property, and more particularly on the Lots identified as 6-15 on Exhibit A-2 (the “**Phase II Private Improvements**” and the “**Phase II Property**”, as applicable).

C. In addition to and in support of the Private Project, Developer intends to construct a street that will be open to the general public, connecting Harvey Avenue and Alaska Avenue, as depicted on Exhibit A-2 (the “**Dedication Property**”, and together with the Phase I Private Property, the “**Phase I Property**”), in accordance with plans and specifications that will be reviewed and approved by the City’s Department of Transportation and Engineering (“**DOT**”), at an estimated total hard construction cost of approximately \$1,380,000 (the public street and associated public sidewalks and/or other public improvements (including, without limitation, any infrastructure in support of the Subdivision required by Greater Cincinnati Water Works (“**GCWW**”), Stormwater Management Utility (“**SMU**”), the Metropolitan Sewer District of Greater Cincinnati (“**MSD**”), or any other public utility) being referred to collectively herein as the “**Public Improvements**,” and together with the Private Project, the “**Project**”), as further described on Exhibit B.

D. Developer has committed to (i) commence on-site construction of (a) the Public Improvements no later than 9 months from the Closing (as defined below), (b) the Phase I Private Improvements no later than 12 months from the Closing (the “**Phase I Commencement Date**”), and (c) the Phase II Private Improvements no later than July 1, 2025 (the “**Phase II Commencement Date**”); and (ii) complete construction of (a) the Public Improvements no later than July 1, 2023, (b) the Phase I Private Improvements no later than June 3, 2025 (the “**Phase I Completion Date**”), and (c) the Phase II Private Improvements no later than 60 months from the actual date Developer commences construction of the Phase II Private Improvements.

E. The City's Real Estate Services Division has determined, by professional appraisal, that the fair market value of the Property is approximately \$206,000; however, to facilitate the Project and in consideration of Developer's construction of the Public Improvements, and upon recommendation of DCED, the City desires to provide support for the Project by (i) selling the Property to Developer for less than fair market value; namely, for \$1.00; and (ii) providing a forgivable loan to Developer in an amount not to exceed \$1,000,000 (the "Loan") on the terms and conditions set forth in this Agreement, for the purpose of facilitating the redevelopment of the Property to a productive use, which will create additional housing in the Avondale neighborhood.

F. 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.

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 has determined that (i) the Property is not needed for a municipal purpose; (ii) upon the recommendation of DCED, the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents; (iii) the Project is in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements; (iv) the Property poses a financial liability to the City because the City must continue to incur expenses in maintaining it; and (v) it is in the best interest of the City to eliminate competitive bidding in connection with the City's sale of the Property because DCED has identified Developer's development proposal as being the most suitable and advantageous to the City.

I. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's sale of the Property to Developer at its meeting on January 21, 2022.

J. Cincinnati City Council approved the City's sale of the Property to Developer by Ordinance No. [_____] -2022, passed on [_____] , 2022.

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

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

2. **Closing and Conditions to Closing.**

(A) **Conditions.** The Closing shall not occur unless and until each of the following conditions including any and all other conditions as may be identified in the City's Coordinated Report No. 12-2021 (collectively, the "**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 Conditions would be more appropriately handled at Closing or post-Closing, the City

may, if appropriate, include such Conditions in the Deed (as defined below) to Developer or handle such Conditions post-Closing:

- (i) *Title and Survey*: Developer shall have approved the title to the Property and, if obtained by Developer, an ALTA property survey of the Property;
- (ii) *Geotechnical and Environmental Condition*: Developer shall be satisfied that the geotechnical and environmental condition of the Phase I Property is acceptable for development of the Public Improvements and the Phase I Private Improvements (collectively, the “**Phase I Project**”);
- (iii) *Developer Inspections*: Developer shall have determined from any inspections and investigations made pursuant to this Section 2, including marketing studies, traffic studies, feasibility studies, and any other studies and investigations related to the Property or the Project that Developer may elect to conduct or have conducted, that the Phase I Property and the conditions and circumstances surrounding the Property are suitable for development, construction, and use of the Phase I Project in an economically feasible manner;
- (iv) *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 Phase I Project;
- (v) *Scope and Budget*: Developer shall have provided to the City a detailed and updated scope and budget for the Phase I Project;
- (vi) *Plats and Legal Descriptions*: Developer shall conduct all necessary surveying work and prepare a consolidation plat and legal description for the Property, which shall consolidate all City-owned parcels comprising the Property. Developer shall conduct all necessary surveying work and prepare a cut-up plat and legal description of the 18 buildable lots comprising the Subdivision;
- (vii) *Final Budget and Construction Contract*: Developer shall have obtained and delivered to the City final construction bids and a final budget for construction of the Phase I Project and an executed copy of Developer’s construction contract with Developer’s general contractor for the Phase I Project;
- (viii) *Zoning Approvals*: Developer shall have secured all zoning approvals necessary to construct the Project;
- (ix) *Construction Schedule*: Developer shall have provided the proposed construction schedule for the Phase I Project;
- (x) *Final Plans*: Developer shall have submitted its final plans for the Phase I Project to DCED;
- (xi) *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 Phase I Project; has made no false or misleading claims to the City regarding the Project; and is otherwise prepared, able, and ready to complete the Phase I Project in accordance with the requirements of this Agreement;
- (xii) *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; and

(xiii) *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 (A) shall be performed and obtained, as the case may be, at no cost to the City.

(B) Developer's Right of Entry. Prior to Closing, Developer may enter the Property during reasonable business hours to conduct tests and inspections related to the Project, *provided that* Developer must provide DCED at least 24 hours' notice prior to entering the Property. Developer shall promptly repair any damage to the Property resulting from its inspections and Developer shall hold the City harmless from any loss or expense arising out of Developer's activities on the Property. Entry shall be at the sole risk of Developer.

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

(D) Right to Terminate. If prior to Closing, either party determines, after exercising reasonable good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period of time, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all of the Conditions have not been satisfied to the satisfaction of both parties or waived in writing and for that reason the Closing has not occurred as of July 1, 2022, the City, in its sole and absolute discretion, may terminate this Agreement and all rights and obligations of the parties hereunder by giving written notice thereof to Developer.

(E) Closing Date. Subject to the terms and conditions of this Agreement, the purchase of the Property by Developer and the sale and conveyance of the Property by the City to Developer (the "**Closing**") shall take place on July 1, 2022, or such earlier or later date upon which the parties mutually agree.

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

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

(H) Environmental Indemnity. As a material inducement to the City to enter into this Agreement, Developer does hereby agree that, with respect to any environmental condition on or otherwise affecting the Property that exists at or prior to the time of the City's execution of this Agreement (herein, a "**Pre-existing Environmental Condition**"), and regardless of whether or not such Pre-existing Environmental Condition is described in any environmental assessment or any other environmental report that may have been previously furnished by Developer to the City or otherwise obtained by the City, Developer shall (i) at no expense to the City, promptly take all steps necessary to remediate such Pre-existing Environmental Condition, within a reasonable time after discovery, to the satisfaction of the City's Office of Environment and Sustainability, and (ii) defend, indemnify, and hold the City harmless from and against any and all actions, suits, claims, losses, costs (including, without limitation, reasonable attorneys' fees), demands, judgments, liability, and damages suffered or incurred by or asserted against the City as a result of or arising from any such Pre-existing Environmental Condition. Developer's remediation and indemnity obligations under this paragraph shall survive the completion of the Project.

3. City Financial Assistance.

(A) Amount of Loan. Subject to the terms and conditions of this Agreement, the City agrees to lend the Loan to Developer, in an amount not to exceed \$1,000,000. The proceeds of the Loan (the "**Funds**") shall be used solely to pay for hard construction costs associated with the Public Improvements itemized on Exhibit B and for no other purpose. Notwithstanding anything herein to the contrary, under no circumstances shall the City be obligated to make disbursements of Funds if any portion of the Public Improvements does not meet the standards and requirements of DOTE. For the avoidance of doubt, Developer shall not use any portion of the Funds to pay for 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.

(B) Terms of Loan. The Loan shall be repaid in accordance with the terms and conditions of a promissory note evidencing such Loan in the form attached as Exhibit D (*Form of Promissory Note*) hereto (the "**Note**"). The Note shall be executed by Developer and delivered to the City at Closing. As described in the Note, the Loan may be forgiven in whole or in part upon the satisfaction of certain conditions for forgiveness described therein. If Developer fails to timely complete any 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.

(C) Security. Prior to the disbursement of any Funds for the Public Improvements, Developer shall grant the City a mortgage on the Property substantially in the form of Exhibit E (*Form of Mortgage*) hereto (the "**Mortgage**"), as security for the Loan. Developer shall execute the Mortgage at Closing 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. The Mortgage shall be released only after the repayment and/or forgiveness of the Loan in accordance with the Note and upon Developer's written request. Following Developer's completion of construction of a Home, as evidenced by a certificate of occupancy, and provided that Developer is not in default under this Agreement, upon Developer's request, the City will execute a partial release of the Mortgage as it relates to the Lot upon which such Home is built. Developer shall be responsible for recording the release(s) in the Hamilton County Recorder's Office, and all costs and expenses associated with the recording thereof.

(D) Subordination. The City hereby agrees that the Mortgage shall be subordinate to any mortgage lien executed by Developer at the Closing in favor of Developer's senior source of construction financing required for completion of the Project, in an amount not to exceed \$2,525,854.

(E) Disbursement of Funds. The Funds shall be disbursed in accordance with Exhibit F (Disbursement of Funds) hereto.

4. Commencement and Completion of Project; Re-Conveyance of the Property to City upon Failure to Timely Commence or Complete Construction.

(A) Commencement and Completion of Construction. Following Closing, Developer shall (i) (a) apply for and receive the required building permits from the City's Department of Buildings and Inspections ("**B&I**") for construction of the Project, and (b) commence on-site construction of the applicable portion of the Project in accordance with the City-approved plans (collectively, "**Construction Commencement**") no later than the applicable construction Commencement Date, unless such date is extended in writing by the City, such extension to be provided in the City's sole and absolute discretion; and (ii) complete construction of the applicable portion of the Project (as evidenced by a certificate of occupancy for the Project) in accordance with the City-approved plans and specifications and all other City approvals (the "**Construction Completion**") no later than the applicable construction Completion Date, unless such date is extended in writing by the City, such extension to be provided in the City's sole and absolute discretion.

(B) Repurchase Options. As memorialized in the Deed, if (i) Construction Commencement for the Phase I Private Improvements or the Phase II Private Improvements has not occurred by the applicable construction Commencement Dates, (ii) Construction Completion for the Phase I Private Improvements has not occurred on or before the Phase I Completion Date, or (iii) Developer decides not to proceed with the Phase II Private Improvements (each a "**Failure**"), then the City shall have the option, in the City's sole and absolute discretion, to (x) in the case of a Failure to meet the Phase I Commencement Date or the Phase I Completion Date, repurchase the Property for the Purchase Price; or (y) in the case of a Failure to meet the Phase II Commencement Date or a Failure under clause (iii) above, repurchase the Phase II Property (each a "**Repurchase Option**"). In the event the City exercises a Repurchase Option, then Developer shall re-convey the applicable portion of the Property by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing, exercisable by giving written notice thereof to Developer at any time after the occurrence of a Failure, *provided that* in the event of a Failure to Commence Construction by the Phase I or Phase II Commencement Date, as applicable, the City shall send such notice of its intent to repurchase the Property prior to the date of actual Construction Commencement as to the applicable portion of the Project. At such time as the City no longer has the right to exercise a Repurchase Option, and after written request by Developer, the City shall execute and deliver to Developer a recordable release of the applicable Repurchase Option. As it relates to the Repurchase Option for Construction Commencement of the Phase I Private Improvements, following Developer's completion of construction of a Home as part of the Phase I Private Improvements, as evidenced by a certificate of occupancy, and provided that Developer is not in default under this Agreement, upon Developer's request, the City will execute a partial release of that Repurchase Option as it relates to the Lot upon which such Home is built. Developer shall be responsible for recording the release(s) in the Hamilton County Recorder's Office, and all costs and expenses associated with the recording thereof.

(C) Repurchase Option Closing. If the City elects to exercise a Repurchase Option, the re-conveyance shall take place on the date specified in the City's notice of election (not to exceed 6 months after the date of the City's notice). At the closing on such re-conveyance of the Property from Developer to the City: (i) Developer shall re-convey marketable title to the Property to the City or its designee, by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of Closing, and 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 Property), (ii) real estate taxes and assessments shall be prorated in accordance with local custom, and (iii) Developer shall pay any and all closing costs associated therewith such that the City shall not be required to come up with any funds at the closing for such re-conveyance.

(D) Plans and Specifications. Developer shall submit its final plans and specifications for the Project to DCED and DOTE and receive approval of the same from the City. Following the City's approval, Developer shall design and construct the Project in accordance with those City-approved plans and specifications that are consistent with Exhibit B, including, without limitation, Developer's proposed site plan for driveway locations, parking, and other ancillary improvements. Once the City has approved Developer's plans and specifications, Developer shall not make any material changes thereto without the City's prior written consent.

(E) Surety Bond. Prior to commencing construction of the Public Improvements, Developer shall provide the City with payment and performance bonds from its general contractor and/or prime subcontractors in the aggregate amount required to be paid under the construction contract(s) for the construction of the Public Improvements. The form of the surety bonds shall in all respects be satisfactory to the City and shall entitle Developer and the City to enforce the surety bonds directly against the issuers thereof in the event the work covered by the bonds is not satisfactorily completed in a timely manner as required under this Agreement.

(F) Dedication and Acceptance of Public Improvements. The parties acknowledge that Developer intends to dedicate the Public Improvements for public use, and intends for the City to accept the Public Improvements (subject to all approvals as required by DOTE and City Planning Commission, and subject to the passage by City Council of an ordinance to accept the dedication). Developer shall prepare all survey plats, legal descriptions, and other documents as may be required by the City and the Hamilton County Auditor and Recorder in connection with such dedication and acceptance, all at no cost to the City.

(G) 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.

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

(I) Inspection of Work. During construction at the Property, 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 work 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.

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

(K) 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.

(L) 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.

5. Insurance; Indemnity.

(A) Insurance. Throughout 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/\$2,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of 100% of the value of the improvements to be constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Developer's construction lenders, and (v) such other insurance as may be reasonably required by the City's Division of Risk Management. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least 30 days' prior written notice to the City. Within 10 days following execution of this Agreement, 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. Developer hereby waives all claims and rights of recovery, and on behalf of Developer's insurers, rights of subrogation, against the City, its employees, agents, contractors, and subcontractors with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Developer, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors, or subcontractors; it being the agreement of the parties that Developer shall at all times protect against such loss or damage by maintaining adequate insurance. Developer shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

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

6. Casualty; Eminent Domain. If the Project or the Property is damaged or destroyed by fire or other casualty during construction, or if any portion of the Property is taken by exercise of eminent domain (federal, state, or local), Developer shall repair and restore the Property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which the Property was in immediately prior to such occurrence. To the extent the City's participation is required, the City and Developer shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the proceeds are insufficient to fully repair and restore the Property, the City shall not be required to make up the deficiency. Developer shall handle all construction

in accordance with the applicable requirements set forth herein, including, without limitation, obtaining the City's approval of the plans and specifications for the improvements if they deviate from the original City-approved plans. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the Project or the Property is being repaired or restored.

7. Default; Remedies.

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

(i) the failure of Developer to perform or observe any obligation, duty, or responsibility under this Agreement or any other agreement to which Developer and the City are parties, and failure by Developer to correct such failure within 30 days after Developer's receipt of written notice thereof from the City (the "**Cure Period**"); *provided, however*, that if the nature of the default is such that it cannot reasonably be cured during the Cure Period, Developer shall not be in default under this Agreement so long as Developer commences to cure the default within the Cure 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. 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, 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 dissolution of Developer, the filing of any bankruptcy or insolvency proceedings by or against Developer, the making by Developer of an assignment for the benefit of creditors, the appointment of a receiver (temporary or permanent) for Developer, or the attachment of, levy upon, or seizure by legal process of any of the property of Developer; or

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

(B) Remedies. Upon the occurrence of an event of default under this Agreement that is not cured or corrected within the Cure Period, the City shall be entitled to: (i) if the default occurs prior to Closing, terminate this Agreement by giving Developer written notice thereof, (ii) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such event of default, all at the expense of Developer, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including, without limitation, pursuing an action for specific performance. Developer shall be liable for all costs and damages, including, without limitation, attorneys' fees, suffered or incurred by the City as a result of a default 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.

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

To the City:

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

To Developer:

Total Property Care, LLC
10226 Waterford Court
Covington, Kentucky 41015

Cincinnati, Ohio 45202

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

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 a Kentucky limited liability company, duly organized and validly existing under the laws of the State of Kentucky, is authorized to transact business in the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws relevant to the transactions contemplated by this Agreement.

(ii) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has by proper action been duly authorized, executed, and delivered by 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 Developer, or its parents, subsidiaries, or affiliates, at law or in equity or before or by any governmental authority that, if determined adversely, would impair the financial condition of such entity or its ability to perform its obligations with respect to the matters contemplated herein.

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

(vi) The statements made 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) 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, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (collectively,

“Records and Reports”). All Records and Reports compiled by Developer and furnished to the City shall be in such form as the City may from time to time require. Developer shall retain all Records and Reports for a period of 3 years after the completion of the Project.

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

11. General Provisions.

(A) Assignment. Developer shall not assign its rights or obligations under this Agreement without the prior written consent of the City, such consent not to be unreasonably withheld; and *provided*, that the City may require the execution of an amendment hereto or other clerical documentation to effect such assignment or substitution of parties. Any attempt by Developer to assign its rights or obligations under this Agreement without the City’s consent shall, at the City’s option, render this Agreement null and void.

(B) Entire Agreement. This Agreement (including the exhibits hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations, or agreements, written or oral, between them respecting the subject matter hereof.

(C) Amendments and Waivers. This Agreement may be amended, waived, or otherwise modified 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 Third Party Beneficiaries. No third party beneficiary rights are intended to be created by this Agreement.

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

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

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

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

(M) 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.

(N) 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.

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

12. Coordinated Report Conditions. Developer shall abide by the additional conditions identified in the City's Coordinated Report No. 12-2021, including, without limitation, the following:

(A) Department of Public Services: Developer shall address the issues regarding the large, landscaped island in the proposed site plan with the City's Department of Public Services.

(B) MSD:

(i) A 30' wide minimum permanent sewer easement will be necessary for existing 12", 15", and portion of the 18" combined/sanitary sewers. The final width may need to be adjusted pending submission of the MSD Request for Availability for Sewer Services ("RASS") and preliminary design for the Project. The permanent sewer easements will be necessary for access, operations, and maintenance to the existing combined/sanitary sewers and manholes. Note, an additional, 3' on either side of the permanent easement will be required, along with other MSD easement restrictions, as outlined per MSD Rules and Regulations Section 207. No structure can interfere with the access to the public sewer or can exert loading upon a public sewer per MSD Rules and Regulations Section 206. A change in existing topography or proposed site plan submittal may necessitate a revision to the minimum width requirement.

(ii) A permanent sewer easement exists for the remaining sections of the existing 18" combined sewer that were recently replaced. The existing permanent easement width does not need to be revised with the information provided in the Coordinated Report, but may need to be adjusted pending the submission of the RASS and the preliminary design for the project; the addition of the MSD easement restrictions stated in (i) will need to be incorporated.

(iii) As noted, with CPRE210016, a RASS will be required for the Project, which will determine the availability of a sewer and outline any additional MSD Project requirements that could impact a construction schedule if not considered early in project conceptual planning. Such considerations may include the need to obtain any MSD tap permits, easements mentioned above, Ohio EPA Permit to Install, utilization of licensed and bonded sewer tappers with MSD, sewer inspection scheduling, project on-site separation of flow requirements, MSD Excavations/Fill permitting and bonding

need for a grease interception system, and/or a reminder for the Project to coordinate with SMU for their specific additional detailed storm water, storm water detention, erosion and sediment control, and flood plain requirements. At minimum the current storm water volume provided with the existing on-site storm water basin will need to be available and most likely relocated based on the current concept plans provided in this Coordinated Report.

(iv) The RASS may require an Excavation/Fill permit and bond which will be necessary for any predesign, construction, construction traffic, earthwork, or any other construction activity over existing sewers, including site preparation activities such as demolition of buildings in which existing sewers are located. Additional requirements will be established by MSD Excavation/Fill permit depending on the final project plan. No additional loading may be exerted on the MSD sewers as the result of proposed structures and geotechnical/structural design calculations will be required for MSD review.

(v) Developer shall address the issues regarding the large, landscaped island in the proposed site plan with MSD, as MSD access may be restricted by the island and any trees planted within it.

(C) SMU: Developer shall address the proposed storm sewer design with SMU, which may require a trunk line with spurs, not inlets in series, to be designed for the Project.

(D) GCWW:

(i) Developer shall submit a GCWW Preliminary Application and a concept plan for the extension of the public water main in the proposed street. Developer's engineer shall prepare a survey of existing conditions, indicating all existing water mains and related appurtenances in the Property, and prepare engineering drawings for GCWW's review and approval. GCWW plan review fees will be charged.

(ii) There are three active water service branches for the Property. GCWW records indicate that the branch material within the Property is lead. In accordance with Cincinnati Municipal Code Chapter 401 Division M, the lead service lines must be replaced with copper service lines.

(iii) Developer's contractor must perform all necessary water main abandonment and water main replacement work. Developer's contractor must submit a letter of intent and contractor's bond for the work to be performed, and a GCWW inspector must be present during all phases of water main abandonment work and water main installation. GCWW inspections fees will be charged.

(iv) Developer's contractor shall contact GCWW at least 2 full business days prior to the start of any work in the Property so the location of public water mains and related appurtenances can be marked in the field. Any damage done to any public water main or related appurtenance shall be repaired entirely at Developer's expense.

(E) Cincinnati Bell: The existing underground telephone 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 of this condition, will be handled entirely at Developer's expense.

(F) B&I:

(i) A Major Subdivision and Subdivision Improvement Plan must be approved by the City Planning Commission.

(ii) Developer shall obtain all required zoning variances and Hillside Regulation approvals necessary for the Project to occur.

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

Exhibit A-1 – *Legal Description*
Exhibit A-2 – *Site Plan*
Exhibit B – *Statement of Work and Budget*
Exhibit C – *Form of Quitclaim Deed*
Exhibit D – *Form of Promissory Note*
Exhibit E – *Form of Mortgage*
Exhibit F – *Disbursement of Funds*
Exhibit G – *Additional Requirements*

[SIGNATURES ON FOLLOWING PAGE]

This Agreement is executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

CITY OF CINCINNATI,
an Ohio municipal corporation

By: _____
John P. Curp, Interim City Manager

Date: _____, 2022

TOTAL PROPERTY CARE, LLC,
a Kentucky limited liability company

By: _____

Name: _____

Title: _____

Date: _____, 2022

Authorized by resolution dated _____.

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A-1
to Property Sale, Funding, and Development Agreement

Legal Description

PARCEL 1:

Auditor's Parcel No.: 113-0002-0016-00

Situated in Section 9, Town 3, F.R. 2, Miami Purchase, City Of Cincinnati, County Of Hamilton, State of Ohio, being Lots 22, 23, 24 and part of lots 25 and 26 of A.E. Burkhardt's Subdivision, a plat of which is found in Plat Book 12, Page 15, of the Hamilton County Records and also part of Lot 1 of the lands of John Mears, a plat of which is found in Plat Book 1, Page 291 of the Hamilton County Records and being more particularly described as follows:

Beginning at an iron pin in the Easterly line of Alaska Avenue, a 50 foot street (said iron pin being the Northwest corner of Lot 22 of A.E. Burkhardt's Subdivision);

Thence, leaving said Easterly line of Alaska Avenue, South 86 deg. 06' East, 192.61 feet to a point;

Thence North 4 deg. 57' East, 75.06 feet to an iron pin;

Thence South 88 deg. 18' East, 116.77 feet to an iron pin;

Thence South 5 deg. 24' East, 65.95 feet to an iron pin;

Thence South 20 deg. 48' East, 105.30 feet to an iron pin;

Thence South 49 deg. 03' East, 85.00 feet to an iron pin;

Thence South 74 deg. 18' East, 43.00 feet to an iron pin;

Thence South 64 deg. 33' East, 56.00 feet to an old iron pin;

Thence South 46 deg. 18' East, 12.63 feet to an old iron pin in the Westerly line of Harvey Avenue (a 60 foot street), South 38 deg. 25' 20" West, 63.20 feet to an iron pin;

Thence, leaving said Westerly line of Harvey Avenue, North 87 deg. 12' 20" West, 313.01 feet to a point;

Thence South 4 deg. 57' West, 80.58 feet to an iron pin;

Thence South 3 deg. 59' East, 103.56 feet to a point;

Thence North 86 deg. 05' West, 66.44 feet to a point;

Thence North 2 deg. 34' East, 40.25 feet to an iron pin;

Thence South 86 deg. 05' East, 4.00 feet to an iron pin;

Thence North 2 deg. 34' East, 61.95 feet to a point;

Thence North 86 deg. 05' West, 129.00 feet to an iron pin in the Easterly line of Alaska Avenue;

Thence, with said Easterly line of Alaska Avenue, North 2 deg. 34' East, 309.05 feet to an iron pin and the place of beginning for this description.

Containing 2.892 acres, more or less.

PARCEL 2:

Auditor's Parcel No.: 113-0002-0083-00

Situate in Section 9, Township 3, Fractional Range 2, Miami Purchase, and more particularly described as follows:

Beginning at a point in the East line of Lot 25 of A.E. Burkhardt's subdivision recorded in Plat Book 12, Page 15, Hamilton County, Ohio Records, 8.63 feet Southwardly from the Northeast corner of said lot, said beginning point being the Southwest corner of a tract of land conveyed by Charles E. Hofer to Elizabeth Rodgers by deed recorded in Deed Book 887, Page 561, Hamilton County, Ohio Records;

Thence North 3 deg. 43' East, along the East line of Lots 25 and 24 of said Burkhardt's Subdivision, 80.58 feet;

Thence South 88 deg. 3' East, 309.92 feet;

Thence Southwardly along a curve deflecting to the left with a radius of 430 feet, a distance of 118.25 feet and being the Westerly line of the tract conveyed by Jerome Apseloff to the City of Cincinnati for street purposes as recorded in Deed Book 1870, Page 246, of the Hamilton County, Ohio Records;

Thence North 82 deg. 28' West, 258.09 feet, more or less, to the point of beginning.

PARCEL 3:

Auditor's Parcel Nos.: 113-0002-0049-00 and 113-0002-0050-00

All that lot of land in the City of Cincinnati, Hamilton County, Ohio, situated in Section 9, Town 3, Fractional Range 2, Miami Purchase, described as follows:

Beginning at a point in the East line of Lot 25 of A.E. Burkhardt's Subdivision as recorded in Plat Book 12, Page 15, Hamilton County, Ohio Records, 8.63 feet Southwardly from the Northeast corner of said lot;

Thence Southwardly along the East line of lots 25 and 26 of said Burkhardt's Subdivision, 102.60 feet;

Thence Eastwardly on a line at right angles to Rosedale Place, 92.20 feet to a point, 143 feet West of the West lone of Rosedale Place;

Thence Northeastwardly 53.14 feet to a point 125 feet West, measured at right angles to the West line of Rosedale Place;

Thence Northeastwardly 55.90 feet to a point 100 feet West, measure at right angles to the West line of Rosedale Place;

Thence Westwardly along a line at right angles to Rosedale Place, 158 feet to the place beginning.

Exhibit A-2
to Property Sale, Funding, and Development Agreement

Site Plan

SEE ATTACHED

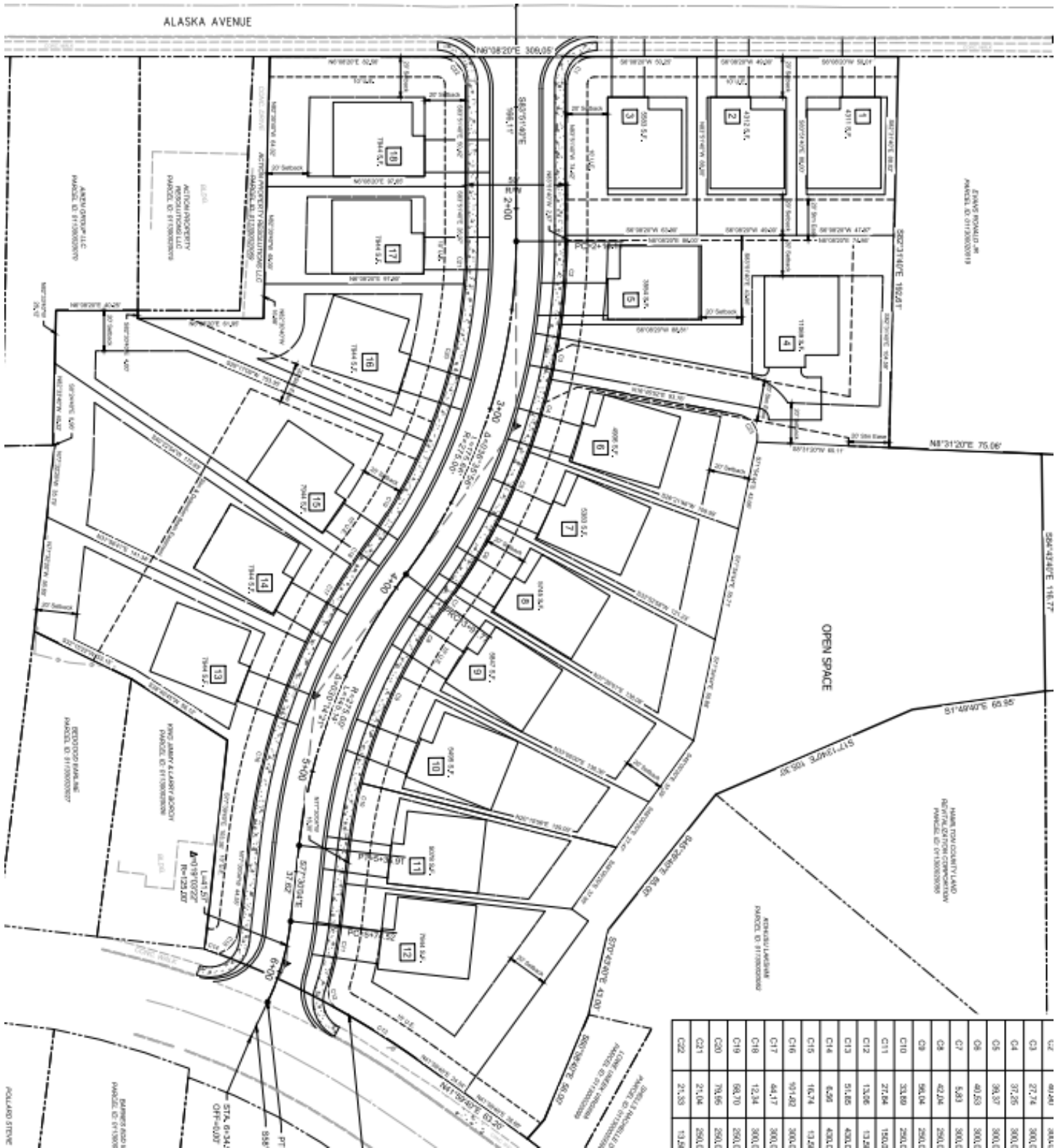


Exhibit B
to Property Sale, Funding, and Development Agreement

Statement of Work, Budget, and Sources of Funds

I. Statement of Work:

Developer plans to undertake the Project to deliver new housing options in the Avondale neighborhood. At completion, the Project will create up to 18 newly-constructed detached single-family Homes along a newly constructed public road dedicated for use by the general public.

A. Description of Private Project. The Private Project will be split into two phases due to the soil conditions found at the Property after performing soil boring tests. The Phase I Private Improvements will consist of the development of up to 8 newly-constructed single-family Homes. Once the first 8 Homes are complete as part of the first phase, Developer and the City will together determine the total amount of Homes that can be built in the second phase. The sale of the Homes built as part of the Phase I Private Improvements will determine how much the market can absorb to cover the additional development costs for the construction of the Homes in the Phase II Private Improvements. If the market cannot bear the additional development costs, then the City shall have the ability to exercise its Repurchase Option or allow Developer to market the remainder of the Property for sale to another builder, as approved by the City, in the City's sole and absolute discretion, to complete the Phase II Private Improvements. However, if the market can bear the additional costs, Developer plans to commence the Phase II Private Improvements and build up to 10 additional Homes.

B. Description of Public Improvements. Developer will construct a new public roadway between Alaska Avenue and Harvey Avenue and all associated public utilities and sidewalks. Developer will be required to:

1. Provide permits and performance bond for the cost of the work and excavation and site work including roadway grading.
2. Demolish/remove existing water services on Alaska Avenue, storm sewers in the right-of-way Harvey Avenue, and 12" storm sewers within the Property.
3. Provide sedimentation controls onsite including a silt fence, inlet filters, and a construction entrance.
4. Pave and install curbs and gutters for the new street include a 3-ply paving specification with layers of 5" and 3" with a 2" wear course of asphaltic concrete to City standards. Concrete curbs are Type P-4. Crosswalk lines, centerline striping, stop signs, and stop bars are also included.
5. Install a public sanitary sewer including a 12" main line running from Harvey Avenue to Alaska Avenue. 4 manholes will be constructed with the new sanitary sewer along with wyes and 6" laterals for the 18 residential lots.
6. Install approximately 560 L.F. of 8" water main per GCWW standards, a fire hydrant assembly, mainline valves, connecting to existing, and the tap-in and inspection fees. Developer shall provide 3/4" water services for all 18 Lots ending at a meter located at the right-of-way line.
7. Install electric and lighting for electric service and streetlights. Developer will establish an agreement with Duke Energy to install streetlights in the public right-of-way. The final agreement is subject to establishing the final layout of the lighting.

Any changes to the plans and specifications of the Public Improvements provided and approved by the City shall, upon the City's approval, be reflected in a final plan set, which will be kept on file in the offices of DOTE.

II. Budget:

	City Funds	Non-City Funds	Total
Public Improvements	\$1,000,000	\$380,000	\$1,380,000
Hard Construction Costs (for the Homes)	-	\$5,022,500	\$5,022,500
Soft Costs	-	\$513,820	\$513,820
Acquisition Costs	-	\$1	\$1
Developer Fee	-	-	-
		TOTAL	\$6,916,321

III. Sources of Funds:

Sources	
Spring Valley Bank	\$2,500,000
Developer Equity	\$2,984,321
Cincinnati Children's	\$432,000
City of Cincinnati Capital Loan	\$1,000,000
TOTAL	\$6,916,321

Exhibit C
to Property Sale, Funding, and Development Agreement

Form of Quitclaim Deed

SEE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE ONLY]

Property: 3584 Alaska Ave and adjoining property on Harvey Avenue

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), for valuable consideration, hereby grants and conveys to **TOTAL PROPERTY CARE, LLC**, a Kentucky limited liability company, the tax-mailing address of which is _____ ("**Grantee**"), all of the City's right, title, and interest in and to the real property described on Exhibit A (*Legal Description of Property*) hereto (the "**Property**").

Property Address: 3584 Alaska Avenue and adjoining property on Harvey Avenue
Cincinnati, Ohio 45229

Auditor's Parcel Nos: 113-0002-0016-00; 113-0002-0083-00; 113-0002-0050-00; 113-0002-0049-00

THIS TRANSFER IS SUBJECT TO, AND THE CITY HEREBY RESERVES, THE FOLLOWING EASEMENTS, COVENANTS, AND RESTRICTIONS.

(A) Permanent Sewer Easement in Favor of the City of Cincinnati. The City hereby reserves and creates a permanent utility easement over a 30-foot wide area of the Property as more particularly described on Exhibit B (*Legal Description – Easement Area*) hereto, and more particularly depicted on Exhibit C (*Plat – Easement Area*) hereto (the "**Sewer Easement Area**"), for the operation, maintenance, repair, reconstruction, removal, or replacement of existing sanitary sewer lines, facilities, equipment, and all appurtenances located within the Sewer Easement Area, including the right to enter upon and reenter upon the Property to access the Sewer Easement Area.

No structure of any kind which can interfere with access to said public sewers shall be placed in or upon the Sewer Easement Area, excepting items such as recreational surfaces, paved areas for parking lots, driveways, or other surfaces used for ingress and egress, plants, trees, shrubbery, fences, landscaping, or other similar items, being natural or artificial. Any of the aforesaid surfaces, paved areas, plants, trees, shrubbery, fences, landscaping, or other similar items which may be placed upon the Sewer Easement Area shall be so placed at the sole expense of Grantee, its successor, or assigns, and the City, its successors, or assigns shall not be responsible to Grantee, its successors or assigns, for the condition, damage to, or replacement of any such aforesaid items, or any other items placed upon the Sewer Easement Area, resulting from the existence or use of the Sewer Easement Area by Grantee, its successors or assigns.

If the City determines that improvements placed within the Sewer Easement Area interfere with the City's easement rights, the City may remove such improvements at the property owner's expense.

Under no circumstances shall the City or its contractors be liable for any damage to improvements placed within the Sewer Easement Area.

Any structure constructed on the Property after the date of acknowledgment herein shall be kept not less than 3 feet outside the Sewer Easement line nearest the site of the proposed structure.

Any deviation from the aforesaid restrictions shall be petitioned to the City by written request. Each such request shall be considered on an individual basis.

[subject to possible creation of utility easements in favor of Cincinnati for its existing facilities if no existing easements are in place]

(B) Re-conveyance to City upon Failure to Timely Commence or Complete Construction. The City and Grantee are parties to a *Property Sale, Funding, and Development Agreement* dated _____, 20__ (the "**Agreement**"), pursuant to which Grantee is required to redevelop the Property. If (i) Grantee fails to commence construction of the Phase I Private Improvements on or before the Phase I Commencement Date (as defined in the Agreement) in accordance with the Agreement, (ii) Grantee fails to complete construction of the Phase I Private Improvements on or before the Phase I Completion Date (as defined in the Agreement) in accordance with the Agreement, (iii) fails to commence construction of the Phase II Private Improvements on or before the Phase II Commencement Date (as defined in the Agreement) in accordance with the Agreement, or (iv) Grantee decides not to proceed with the Phase II Private Improvements, Grantee shall re-convey the Property, or the applicable portion thereof, to the City as described in the Agreement. At such time as the City no longer has the right to reacquire the Property under the Agreement, the City, at Grantee's request, shall execute and deliver to Grantee a release of such rights for recording in the Hamilton County, Ohio Recorder's Office. Until such time as the Property has been reconveyed to the City or the City has released or waived its rights to reacquire the Property thereunder, Grantee shall not sell or otherwise transfer title to the Property or any portion thereof without the prior written consent of the City.

All of the easements, covenants, and restrictions above shall "run with the land" and be binding upon Grantee and its successors-in-interest with respect to the Property.

This conveyance was authorized by Ordinance No. ____-2022, passed by Cincinnati City Council on _____, 2022.

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

[Signature Page Follows]

Executed on _____, 2022.

CITY OF CINCINNATI

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022, by _____ the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

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

Accepted and Agreed to by:
Total Property Care LLC

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

- Exhibits:
Exhibit A – Legal Description of Property
Exhibit B – Legal Description – Sewer Easement
Exhibit C – Easement Plat

Exhibit A
to Quitclaim Deed

Legal Description of Property

[to be attached to execution version]

Exhibit B
to Quitclaim Deed

Legal Description – Sewer Easement

[to be attached to execution version]

Exhibit C
to Quitclaim Deed

Easement Plat

[to be attached to execution version]

Exhibit D
to Property Sale, Funding, and Development Agreement
Form of Promissory Note

SEE ATTACHED

PROMISSORY NOTE
(secured by mortgage on real estate)

\$1,000,000.00

Cincinnati, Ohio
_____, 2022

FOR VALUE RECEIVED, the undersigned, **TOTAL PROPERTY CARE LLC d/b/a TITAN REAL ESTATE GROUP, LTD**, a Kentucky limited liability company, the address of which is _____ (“**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 Promissory Note (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 One Million Dollars (\$1,000,000.00), or so much thereof as is disbursed by the City to Borrower under that certain *Property Sale, Funding, and Development Agreement* by and between Borrower and the City, dated _____, 2022 (the “**Agreement**”), together with interest thereon and upon the following terms and conditions (the “**Loan**”). The date on which the City disburses the Loan proceeds or any portion thereof to Borrower pursuant to the terms of the Agreement is referred to herein as the “**Loan Disbursement Date**.” Capitalized terms used herein but not defined herein, if any, shall have the meanings ascribed to them in the Agreement.

This Note is secured by a mortgage on the property located at 3584 Alaska Avenue and adjoining property along Harvey Avenue, Cincinnati, Ohio 45229, as further described in the Agreement (the “**Property**” and the “**Mortgage**”, as applicable). Pursuant to the terms of the Agreement, Borrower is required to (i) construct and dedicate to public use certain Public Improvements under the supervision of the City’s Department of Transportation and Engineering; and (ii) develop the Property into 18 buildable lots (each, a “**Lot**”) for the construction of 18 single-family homes (each, a “**Home**”) as part of the Private Project, all as more particularly described in the Agreement. Developer anticipates completing the Private Project over two phases, with the Phase I Private Improvements consisting of the first 8 Homes, and the Phase II Private Improvements consisting of up to 10 additional Homes.

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

- (a) Amount: The principal and amount of the Loan evidenced by this Note is One Million Dollars (\$1,000,000.00).
- (b) Term: The term of the Loan (the “**Term**”) shall be 5 years, beginning on the Loan Disbursement Date, and ending on the 5-year anniversary thereof (the “**Maturity Date**”).
- (c) Interest Rate: 0.00% per annum.
- (d) Payments:
 - (i) Deferment. Borrower shall not be required to make payments under this Note during the period between the Loan Disbursement Date and the 60-month anniversary thereof (the “**Deferment Period**”).
 - (ii) Forgiveness. The Loan shall be forgiven in the following manner:
 - (A) If and when Borrower completes the Public Improvements within the Deferment Period and in accordance with the terms of the Agreement, and provided that Borrower is not in default of its obligations under this Note or the Agreement, the City shall forgive 50% of the outstanding principal amount of the Loan.
 - (B) Provided that Borrower is not in default of its obligations under this Note or the Agreement, the City shall forgive 1/8th of the remaining outstanding

principal amount of the Loan upon the completion of each Home constructed on the Property as part of the Phase I Private Improvements, and as evidenced by the issuance of a certificate of occupancy within the Deferment Period. At Developer's request, the City shall execute a partial release from the Mortgage for each of the first 7 Lots as the respective Homes on such Lots are completed, and upon completion of the 8th Home, and at Developer's request, the City shall release the remaining Property from the Mortgage.

(iii) Balloon Payment. If the Loan is not fully forgiven as described in paragraph (ii) above prior to the end of the Deferment Period, then on the Maturity Date, Borrower shall pay a balloon payment equal to all unpaid and unforgiven principal and other charges outstanding on the Loan.

(e) Prepayment: Borrower may prepay the Loan and accrued interest at any time, without penalty.

(f) 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.

(g) 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 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 Note holder may designate in writing from time to time.

4. **Default**. Upon any default under the Agreement or default in the payment of interest, 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.

5. **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, and 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. Presentment, notice of dishonor, protest, and notice of protest are hereby waived.

Executed by Borrower on the date first above written.

BORROWER:

TOTAL PROPERTY CARE LLC

By: _____

Printed name: _____

Title: _____

Approved as to Form:

Assistant City Solicitor

cc: Karen L. Alder, City Finance Director

Exhibit E
to Property Sale, Funding, and Development Agreement

Form of Mortgage

SEE ATTACHED

[SPACE ABOVE FOR RECORDER'S OFFICE]

MORTGAGE

THIS MORTGAGE ("**Mortgage**") is given on _____, 2022, by **TOTAL PROPERTY CARE LLC d/b/a TITAN REAL ESTATE GROUP, LTD**, a Kentucky limited liability company, with offices at _____ ("**Borrower**"). This Mortgage is given to the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Room 214, Cincinnati, Ohio 45202 (the "**City**"). Borrower owes the City the principal sum of \$1,000,000.00, or so much thereof as is disbursed by the City to Borrower pursuant to that certain *Property Sale, Funding, and Development Agreement* dated _____, 2022, between the parties (as the same may hereafter be amended, restated, or replaced from time to time, the "**Agreement**") and by Borrower's promissory note in said amount in favor of the City and executed in relation to the Agreement (as the same may hereafter be amended, restated, or replaced from time to time, the "**Note**"). This Mortgage secures to the City the repayment of the debt evidenced by the Note, the performance by Borrower of all of Borrower's other obligations under the Agreement, and the payment of all other sums, with interest, advanced by the City under this Mortgage. Capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Agreement.

For this purpose, Borrower does hereby grant with mortgage covenants to the City certain real property, consisting of the property described on Exhibit A (Legal Description) 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**"). Pursuant to the Agreement, the City intends to disburse up to \$1,000,000.00 for use by Borrower in paying construction-related costs and other eligible costs under the Agreement associated with the Public Improvements.

Borrower covenants that Borrower is lawfully seised of the Property hereby conveyed and has the right to mortgage, grant, and convey the Property, and that the Property is unencumbered, except for easements and restrictions of record.

Property Address: 3584 Alaska Avenue, Cincinnati, Ohio 45229 and other vacant property on Alaska and Harvey Avenue

Auditor's parcels: 113-0002-0016-00; 113-0002-0049-00; 113-0002-0050-00; 113-0002-0083-00

Prior Instruments: OR 13448, Page 02958, Hamilton County, Ohio Records.

Borrower and the City covenant and agree as follows:

1. Payments. Borrower shall promptly pay when due any and all amounts that may become due and payable under the Agreement and the Note, all in accordance with the terms thereof.

2. 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, the City may, at its option, pay such amounts pursuant to paragraph 5 hereof. Borrower shall promptly discharge any lien that has priority over this Mortgage unless the City has consented in writing to the superiority of such lien.

3. Property Insurance. Borrower shall maintain adequate property insurance on any and all improvements now existing or hereafter erected on the Property. All insurance policies and renewals shall include a standard mortgagee clause in favor of the City. If Borrower fails to maintain insurance as required hereunder, the City may, at its option, obtain such insurance pursuant to paragraph 5 hereof. Unless the City 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. If the restoration or repair is not economically feasible, the insurance proceeds shall be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to Borrower.

4. Maintenance of the Property. Borrower shall maintain the Property in good condition and repair and otherwise in accordance with the terms of the Agreement.

5. Protection of the City'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 the City's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), the City may do and pay for whatever is necessary to protect the value of the Property and the City's rights in the Property. The City's actions may include paying any sums secured by a lien which has priority over this Mortgage, appearing in court, paying reasonable attorneys' fees and entering onto the Property to make repairs. Any amounts disbursed by the City under this paragraph shall become additional debt of Borrower secured by this Mortgage. These amounts shall bear interest, at the rate of ten percent per annum, from the date of disbursement and shall be payable, with interest, upon notice from the City to Borrower requesting payment.

6. Successors and Assigns Bound; Governing Law. The covenants and agreements of this Mortgage shall bind and benefit the successors and assigns of the City and Borrower, subject to the provisions of paragraph 8 hereof. This Mortgage shall be governed by the laws of the City of Cincinnati and State of Ohio.

7. 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 the City. Any notice to the City shall be given by first class mail to the City's address stated herein or any other address the City designates by notice to Borrower.

8. Transfer of the Property. If Borrower sells or transfers the Property to anyone without the City's prior written consent, the City may, at its option, require immediate payment in full of all sums secured by this Mortgage.

9. Acceleration; Remedies. If Borrower fails to complete its construction obligations or any other obligations with respect to the Property as and when required under the Agreement, the Note, or this Mortgage, the City may declare all amounts disbursed by the City with respect to the Property to be immediately due and payable and may foreclose this Mortgage. Unless prohibited by law, Borrower

shall pay to the City any and all sums, including expenses and reasonable attorneys' fees, that the City 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 Note, the Agreement, or this Mortgage; to foreclose this Mortgage; or to prove the amount of or to recover any indebtedness hereby secured. 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 or Agreement, or available at law or in equity.

10. Advances to Protect Security. This Mortgage shall secure the unpaid balance of any advances made by the City 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 the City is authorized by this Mortgage to pay on Borrower's behalf.

11. Maximum Principal Amount. This Mortgage shall secure the payment of any and all amounts advanced from time to time by the City to Borrower under the Note, the Agreement, or this Mortgage, and under any other promissory notes or other documents signed by Borrower and stating that such advances are secured hereby. The City shall not be obligated to make any additional advances unless the City 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 \$1,000,000.00, exclusive of interest thereon and unpaid balances of advances made by the City under this Mortgage.

[Signature page follows]

This Mortgage is executed by Borrower on the date first set above.

TOTAL PROPERTY CARE LLC

By: _____
Printed Name: _____
Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____ of Total Property Care LLC, d/b/a Titan Real Estate Group, Ltd., a Kentucky limited liability company, on behalf of the company. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

Approved as to Form

Assistant City Solicitor

This instrument prepared by:
Samantha Brandenburg, Esq.
City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, Ohio 45202

Exhibits:
Exhibit A – *Legal Description*

Exhibit A
to Mortgage

Legal Description

[to be attached to execution version]

Exhibit F
to Property Sale, 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) Developer shall have delivered to the City the Mortgage and the Note;

(ii) Developer has provided the City with evidence of insurance required under this Agreement;

(iii) Developer has provided the City with evidence that it has obtained all licenses, permits, governmental approvals, and the like necessary for the construction work;

(iv) Developer has provided the City with evidence that it has secured all other funds necessary to complete the Phase I Project;

(v) Construction has commenced and is proceeding in accordance with the City-approved plans and specifications, budget, and construction schedule;

(vi) Developer has provided the City with such other documents, reports, and information relating to the Project as the City has reasonably requested, including, without limitation, the due diligence materials; and

(vii) Developer is not in default under this Agreement.

(B) Disbursement of Funds. Provided all of the requirements for disbursement of the Funds shall have been satisfied, the City shall disburse the Funds to Developer. The City shall disburse the Funds on a reimbursement basis and pro-rata with all other construction loan funds being utilized by Developer for the Public Improvements (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, including the Public Improvements. 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 30 days following completion of construction of the Public Improvements to the satisfaction of DOTE.

(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 Public Improvements 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 Public Improvements, under this Agreement as determined by the City in its sole discretion. For the avoidance of doubt, Developer may, following the completion of the Public Improvements, 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 Property Sale, 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 a Developer is legally required to comply with a Government Requirement, failure to comply with such a Government Requirement is a violation of the Agreement.

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

(A) Construction Workforce.

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

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

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

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

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Conferring with Trade Unions.

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

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

(ii) Contracts and Subcontracts; Competitive Bidding.

(a) Applicability. This clause (ii) is applicable to “construction contracts” under Cincinnati Municipal Code Chapter 321. Municipal Code Chapter 321 defines “construction” as “any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by

Federal or Ohio statutes to be more than four thousand dollars and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority,” and “contract” as “all written agreements of the City of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction.”

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

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

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

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

- (1) “Bid” means an offer in response to an invitation for bids to provide construction work.
- (2) “Invitation to Bid” means the solicitation for quoted prices on construction specifications and setting a time, date and place for the submission of and public reading of bids. The place for the public reading of bids shall be chosen at the discretion of Developer; however, the place chosen must be accessible to the public on the date and time of the public reading and must have sufficient room capacity to accommodate the number of respondents to the invitation to bid.
- (3) “Trade Craft” means (a) general construction work, (b) electrical equipment, (c) plumbing and gas fitting, (d) steam and hot water heating and air conditioning and ventilating apparatus, and steam power plant, (e) elevator work, and (f) fire protection.
- (4) “Public Notification” means (a) advertisement of an invitation to bid with ACI (Allied Construction Industries) and the Dodge Report, and (b) dissemination of the advertisement (either by mail or electronically) to the South Central Ohio Minority Business Council, Greater Cincinnati Northern Kentucky African-American Chamber of Commerce, and the Hispanic Chamber of Commerce. The advertisement shall include a description of the “scope of work” and any other information reasonably necessary for the preparation of a bid, and it shall be published and disseminated no less than fourteen days prior to the deadline for submission of bids stated in the invitation to bid.
- (5) “Read Aloud in a Public Forum” means all bids shall be read aloud at the time, date and place specified in the invitation for bids, and the bids shall be available for public inspection at the reading.

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

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

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

(F) Small Business Enterprise Program.¹

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

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

(1) Including qualified SBEs on solicitation lists.

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

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.

(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 DDCED, to include language specifically requiring compliance with the Americans With Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, the "**ADA**"), and imposing certain minimum accessibility standards on City-subsidized projects regardless of whether there are arguably exceptions or reductions in accessibility standards available under the ADA or State law.

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

(O) Electric Vehicle Charging Stations in Garages.

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

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

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

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

TO BE ATTACHED

May 25, 2022

To: Mayor and Members of City Council 202201256

From: John P. Curp, Interim City Manager

Subject: Emergency Ordinance - Lease and Operating Agreement – Lunken Trail –
Great Parks of Hamilton County

Attached is an Emergency Ordinance captioned:

AUTHORIZING the City Manager to execute a *Lease and Operating Agreement* with Great Parks of Hamilton County pursuant to which Great parks of Hamilton County will lease and operate the City-owned shared-use path known as Lunken Trail in Linwood and the East End.

By passing this ordinance the City will receive the benefits of being relieved of the expense and administrative burden of the management, operation, and maintenance of Lunken Trail throughout the term of the agreement.

The Administration recommends passage of this Emergency Ordinance.

cc: Daniel E. Betts, Recreation Director

EMERGENCY

City of Cincinnati

CHM

AWB

An Ordinance No. _____

- 2022

AUTHORIZING the City Manager to execute a *Lease and Operating Agreement* with Great Parks of Hamilton County pursuant to which Great Parks of Hamilton County will lease and operate the City-owned shared-use path known as Lunken Trail in Linwood and the East End.

WHEREAS, the City of Cincinnati owns a shared-use path known as Lunken Trail that generally encircles Lunken Airport in Linwood and the East End, which trail is under the management of the Cincinnati Recreation Commission (“CRC”); and

WHEREAS, pursuant to a *Grant of Easements* authorized by Ordinance No. 323-2020, passed by Council on September 16, 2020, the City granted Great Parks of Hamilton County, formerly known as the Hamilton County Park District, a political subdivision of the State of Ohio created and existing under Ohio Revised Code Chapter 1545 (“Great Parks”), permanent easement rights upon certain City-owned property located adjacent to Lunken Trail to facilitate the Little Miami Scenic Trail Beechmont Bridge Project, which project connects the Great Parks-owned Little Miami Scenic Trail with the City-owned Otto Armleder Trail and Lunken Trail; and

WHEREAS, the City and Great Parks are parties to a *Lease and Operating Agreement* authorized by Ordinance No. 462-2021, passed by Council on December 8, 2021, pursuant to which Great Parks leases and operates the Otto Armleder Trail; and

WHEREAS, the City and Great Parks desire to enter into a *Lease and Operating Agreement* pursuant to which Great Parks will lease and operate Lunken Trail as a shared-use path open to the public for public use for a term of up to 20 years (namely, an initial term ending December 31, 2027, followed by three successive five-year renewal terms), as further described in the *Lease and Operating Agreement* attached to this ordinance as Attachment A and incorporated herein by reference (the “Agreement”); and

WHEREAS, the City Manager, in consultation with CRC and the Department of Transportation and Engineering, has determined that (i) Lunken Trail is not needed for a municipal purpose for the duration of the Agreement; and (ii) leasing Lunken Trail to Great Parks is not adverse to the City’s retained interest in Lunken Trail or Lunken Airport; and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-5, Council may authorize the lease of City-owned 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’s Real Estate Services Division has determined by a professional appraisal that the fair market rental value of Lunken Trail is approximately \$10,250 per year; however, the City has agreed to lease Lunken Trail to Great Park for less than its fair market

rental value, namely, \$0.00, because the City will receive benefits from the Agreement that equal or exceed the fair market rental value of Lunken Trail in that the City will be relieved of the expense and administrative burden of the management, operation, and maintenance of Lunken Trail throughout the term of the Agreement; and

WHEREAS, CRC approved the Agreement at its meeting on May 17, 2022; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the lease of Lunken Trail at its meeting on May 20, 2022; 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 *Lease and Operating Agreement* (the “Agreement”) with Great Parks of Hamilton County, a political subdivision of the State of Ohio created and existing under Ohio Revised Code Chapter 1545 (“Great Parks”), in substantially the form attached as Attachment A to this ordinance and incorporated herein by reference, pursuant to which the City of Cincinnati will lease the shared-use path known as Lunken Trail that generally encircles Lunken Airport in Linwood and the East End, as more particularly depicted in the Agreement, for a period of up to 20 years (namely, an initial term ending December 31, 2027, followed by three successive five-year renewal terms).

Section 2. That Lunken Trail is not needed for a municipal purpose for the duration of the Agreement.

Section 3. That leasing Lunken Trail to Great Parks is not adverse to the City’s retained interest in Lunken Trail or Lunken Airport.

Section 4. That eliminating competitive bidding in connection with the City’s lease of Lunken Trail is in the best interest of the City because Great Parks is a governmental entity with extensive experience in operating the Otto Armleder and the Little Miami Scenic Trails that are interconnected with Lunken Trail. Therefore, the City desires Great Parks to operate Lunken

Trail to ensure access by the public to an attractive and uniform network of interconnected public shared-use paths for transportation and recreation purposes.

Section 5. That the City's Real Estate Services Division has determined by a professional appraisal that the fair market rental value of the Park is approximately \$10,250 per year; however, the City will lease Lunken Trail to Great Parks for less than its fair market rental value, namely, \$0.00, because the City will receive benefits from the Agreement that equal or exceed the fair market rental value of Lunken Trail in that the City will be relieved of the expense and administrative burden of the management, operation, and maintenance of Lunken Trail during the term of the Agreement.

Section 6. That the proper City officials are hereby authorized to take all necessary and proper actions to carry out the provisions and intent of this ordinance and the Agreement, including, without limitation, executing any and all ancillary documents associated with the Agreement, such as amendments or supplements to the Agreement deemed by the City Manager to be in the vital and best interests of the City.

Section 7. 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 for the City to execute the Agreement so that Great Parks may undertake the operation and maintenance of Lunken Trail without delay to relieve the City of the ongoing budgetary expense and administrative burden of seasonal maintenance activities and for

the public to realize the attendant benefits of a standardized network of interconnected public trails for transportation and recreation purposes at the earliest possible time.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

Contract No. _____

Property: Lunken Trail

LEASE AND OPERATING AGREEMENT

This Lease and Operating Agreement ("**Agreement**") is made and entered into effective as of the Effective Date (defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), and **Great Parks of Hamilton County**, a political subdivision of the State of Ohio created under Ohio Revised Code Chapter 1545 (*Park Districts*), 10245 Winton Road, Cincinnati, OH 45231 ("**Great Parks**").

Recitals:

A. The City owns Lunken Airport (the "**Airport**"), which is under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

B. The City owns a multimodal transportation and recreation trail open to the public for public use that generally encircles the Airport and is located on Airport property ("**Lunken Trail**" or "**the Trail**"). Lunken Trail is under the management of the Cincinnati Recreation Commission ("**CRC**") and is more particularly depicted on Exhibit A (Site Map) hereto.

C. The parties desire to enter into this Agreement, pursuant to which Great Parks shall lease and operate Lunken Trail as a recreation trail open to the public for public use, ensuring the Trail is a safe and attractive trail for use for transportation and recreation purposes.

D. The City is agreeable to lease Lunken Trail to Great Parks at a base rent of \$0.00 because of the considerable expenses that will be incurred by Great Parks in operating Lunken Trail, at no cost to the City, for the benefit of the people of the City. There is no City funding being provided to Great Parks under this Agreement.

E. The City has determined that eliminating competitive bidding with respect to the City's lease of the Trail is in the best interest of the public because the City has determined that Great Parks, being a governmental entity with experience in managing public parks generally, and recreation trails in particular, is the most qualified and suitable lessee of the Trail.

F. The execution of this Agreement was approved by the Cincinnati Recreation Commission at its meeting on May 17, 2022.

G. The City Planning Commission, having the authority to approve the change in the use of City owned property, approved this Agreement at its meeting on May 20, 2022.

H. The execution of this Agreement was authorized by Ordinance No. _____, passed by Cincinnati City Council on _____, 2022.

I. The execution of this Agreement was approved by the Great Parks Board at its meeting on April 21, 2022.

NOW THEREFORE, the parties hereby agree as follows:

1. GRANT OF LEASEHOLD.

(A) Grant. On the terms and conditions set forth herein, the City does hereby lease Lunken Trail to Great Parks, and Great Parks does hereby lease Lunken Trail from the City, for the Term established under section 2 below. The City leases Lunken Trail to Great Parks subject to any and all easements,

covenants, restrictions and other matters of record, matters that would be disclosed upon an ordinary inspection or survey of Lunken Trail, and any and all rights expressly reserved under this Agreement for the benefit of the City, utility companies, and other third parties. The City has not made any representations or warranties concerning the condition or characteristics of Lunken Trail or the suitability or fitness of Lunken Trail for the Permitted Use, as defined below, and Great Parks is not relying upon any such representations or warranties from the City. On the Commencement Date (as defined in section 2 below), Great Parks shall accept Lunken Trail in "as is" condition. During the Term, Great Parks shall not grant any easements or otherwise encumber the title to Lunken Trail without the City's prior written consent.

(B) City's Right to Inspect Lunken Trail. The City hereby reserves the right for its employees and agents to enter upon Lunken Trail from time to time for any proper purpose, provided, however, that in exercising such rights, (i) the City shall not unreasonably disrupt Great Parks' use of Lunken Trail for the Permitted Use, and (ii) except in emergencies, the City shall give Great Parks reasonable written notice prior to entering Lunken Trail.

(C) Access by Public Utilities. Great Parks shall ensure continuous access to Lunken Trail (24 hours/day, 7 days/week, 52 weeks/year) by any and all public utilities that have existing utility facilities within Lunken Trail for the maintenance, repair and replacement thereof, and Great Parks shall not undertake any action or construct any improvements within Lunken Trail that may interfere with any such utility company's rights without having first obtained such utility company's consent. If Great Parks, its employees, agents, contractors, subcontractors, licensees or invitees cause damage to such utility companies' facilities, Great Parks shall promptly reimburse the affected utility company for the cost of repairing such damage.

(D) Ingress/Egress Rights Across Lunken Trail. Great Parks shall ensure continuous access across Lunken Trail (24 hours/day, 7 days/week, 52 weeks/year) for any person that has ingress and egress rights (including but not limited to persons who have leasehold rights of airport property) across the Trail to a public way or the Airport. Although Great Parks is not responsible for the construction, maintenance or repair of driveway aprons abutting the Trail, Great Parks will coordinate with DOTE for the construction, repair, or replacement of driveway aprons for persons with ingress and egress rights across the Trail.

(E) Lease Subordinate to Airport Agreements. The rights herein granted to Great Parks are subject and subordinate to any and all existing covenants, easements, restrictions and other matters of record affecting the Airport, Airport property, and Lunken Trail and to any and all existing agreements between the City and the federal government pertaining to the same. The rights herein granted to Great Parks are also subject and subordinate to any and all leases which affect the Airport and Airport property, but which do not pertain to the Permitted Use, and Great Parks' obligations regarding, the Trail as outlined in Section 4. Great Parks acknowledges that Lunken Trail is located on Airport property, which property is in a 100-year floodplain, as designated by the Federal Emergency Management Agency ("FEMA"), and the City's ability to comply with all Federal Aviation Administration ("FAA"), FEMA, or other applicable federal requirements, including, without limitation to, controlling and protecting the use of Airport property for aviation purposes is of utmost importance to the City and FAA.

2. TERM.

(A) Initial Term (5 years). The initial term of this Agreement (the "Initial Term") shall commence on the Effective Date (the "**Commencement Date**") and, unless extended or sooner terminated as herein provided, shall expire on the **December 31, 2027**.

(B) Renewal Periods (three 5-year options). The parties may extend the Term for three (3) renewal periods of five (5) years each (each, a "**Renewal Period**") (for a total Term, including the Initial Term, of 20 years). Each renewal shall be on the same terms and conditions as set forth herein (except that, after the 3rd Renewal Period, there shall be no additional renewal options unless agreed to by the parties in a written amendment to this Agreement). As used herein, the "**Term**" of this Agreement means the Initial Term and, if applicable, the Renewal Periods.

3. **RENT.** \$0.00/year.

4. **PERMITTED USE; OPERATIONAL MATTERS.**

(A) **Permitted Use.** Great Parks shall use Lunken Trail solely for the operation of a trail open to the public for public use for transportation and recreation purposes (the "**Permitted Use**") and for no other purpose.

(B) **Operating Standards.** Great Parks shall keep, maintain, and operate Lunken Trail and one adjacent trailhead parking lot solely for the operation of a recreation trail open to the public for public use, in accordance with ORC Chapter 1545. Great Parks shall render the usual and customary services incidental thereto in a professional businesslike and efficient manner, including utilizing properly trained employees, volunteers and contractors. Great Parks shall not enforce its motor vehicle permit at Lunken Trail (i.e., Great Parks shall not require visitors to Lunken Trail to pay a permit fee), unless approved by the City. Great Parks shall have the right, however, to charge visitors reasonable fees for special uses, permits, programs, athletic events, and reserved areas as may be appropriate and as consistent with Great Parks' normal operations. Great Parks shall be responsible for the operation, and maintenance of Lunken Trail, at no cost to the City, in accordance with Great Parks' Code of By-Laws and in compliance with all applicable federal, state and local laws, codes, ordinances and other governmental requirements. Great Parks shall keep CRC and DOTE informed of any serious accidents or other incidents occurring on Lunken Trail so that the City can respond appropriately.

(C) **Operating Hours.** In order to accommodate the transportation use of Lunken Trail, and pursuant to §132.10(B) of the Code of By-Laws of Great Parks, the Chief Executive Officer of Great Parks will authorize the Trail to be open to the public twenty-four (24) hours a day.

(D) **Programs.** CRC and Great Parks shall be permitted to conduct educational, recreational, conservancy, beautification, and public athletic programs and events at Lunken Trail, and shall coordinate the dates thereof with Great Parks as appropriate.

(E) **Right to Close Trail.** Great Parks may temporarily barricade, close, or otherwise eliminate public access to Lunken Trail for safety and maintenance issues, *provided*, however, that Great Parks shall ensure continuous access across Lunken Trail (24 hours/day, 7 days/week, 52 weeks/year) for any person that has ingress and egress rights across the Trail to a public way or the Airport. Except in emergencies, Great Parks shall give the City at least seven (7) days' written notice prior to barricading, closing, or otherwise eliminating public access to Lunken Trail. The City reserves the right to temporarily or permanently barricade, close, or otherwise eliminate public access to Lunken Trail for any reason, *provided*, however, that in exercising such right, except in emergencies, the City shall give Great Parks seven (7) days' written notice prior to temporarily barricading, closing or otherwise eliminating public access to Lunken Trail and sixty (60) days' written notice prior to permanently barricading, closing, or otherwise eliminating public access to Lunken Trail.

(F) **Maintenance and Repairs.** Except as outlined in this Section, during the Term of this Agreement, Great Parks shall assume all responsibility for the maintenance and repair of Lunken Trail (including the one trailhead parking lot designated in Exhibit A and the vegetation immediately adjacent to the Trail) and shall maintain the same in a state of good and safe condition and repair, consistent with Great Parks' usual and customary practices. Except as outlined in this Section, the City shall not have any maintenance or repair obligations or any obligation to provide services for the benefit of Lunken Trail under this Agreement.

Maintenance and repair of Lunken Trail shall include, without limitation grass cutting, trash/litter/debris removal, park bench and signage management, vegetation management, snow removal and minor surface repairs. Great Parks shall not, however, be responsible for the following:

- I. Maintenance and/or repair of any public utility facilities located along or across Lunken Trail (e.g., public water mains, sanitary sewers, or storm sewers).

- II. Maintenance and/or repair of any fixtures or vegetation outside the areas designated in Exhibit A.
- III. Maintenance and/or repair of parking facilities other than the one trailhead parking lot designated in Exhibit A.

In addition, Great Parks specifically disavows any knowledge of federal regulations pertaining to aviation and airport safety and will not be responsible for knowing, learning, recognizing, or correcting any issues related to same. In the event that vegetation or other maintenance/repair issues are required due to FAA regulations, the City shall be responsible for notifying Great Parks of same. If the vegetation or other maintenance/repair issues related to FAA regulations would require services beyond those consistent with Great Parks' usual and customary practices, the City shall be responsible for same.

(G) Mitigation of Adjacent Hazards. In the event that Great Parks is made aware of any hazards (e.g. dangerous trees, deteriorating flood control structures) which are adjacent to Lunken Trail which it believes create a dangerous condition to persons utilizing the Trail, Great Parks shall notify the City of the dangerous condition as soon as practicable. Great Parks may temporarily barricade, close, or otherwise eliminate public access to any or all portions of Lunken Trail as it deems necessary to ensure the safety of persons utilizing the Trail and may keep such portions closed to the public until such time as Great Park determines that the City has mitigated the hazard.

(H) Signs. Great Parks shall maintain in good condition and repair any and all existing directional, informational, and other outdoor signs along Lunken Trail related to Lunken Trail. Great Parks has the right to install and replace signage indicating that Great Parks operates and maintains the Trail.

(I) Capital Repairs and Improvements. Great Parks shall contract for and provide construction oversight and management services for the completion of any capital repairs or improvements agreed to by the parties, in accordance with the process set forth below in Section 5.

(J) No Liens. If any mechanics' lien or other similar lien is filed against Lunken Trail as a result of labor or material furnished at Great Parks' request, Great Parks shall cause the lien to be released or bonded off within forty-five (45) days following the filing of such lien.

5. CAPITAL REPAIRS AND IMPROVEMENTS. Great Parks shall not undertake any capital repairs or improvements to Lunken Trail without prior written authorization from the City. During the Term, capital repairs and improvements to Lunken Trail shall be handled as set forth herein:

(A) Capital Repair and Improvement Definition. "**Capital Repair**" or "**Capital Improvement**" means the acquisition, construction, reconstruction, improvement, alteration, or repair of any physical or structural asset, improvement, or fixture at a cost greater than \$50,000.

(B) Upon Request by City. From time to time the City may request that Great Parks undertake, contract for, and oversee certain capital improvements to Lunken Trail, and the Great Parks may accept or reject such request. Notwithstanding the forgoing, the City at all times during the Term of this Agreement retains the ability to perform or undertake any capital improvements that it deems appropriate, in the City's complete and absolute discretion and with or without Great Parks' consent.

(C) Upon Request by Great Parks. Great Parks may also from time to time recommend to the City certain capital improvements to Lunken Trail. The City may, in its complete and absolute discretion approve such recommended capital improvements by providing written authorization to Great Parks to undertake, contract for, and oversee such capital project in accordance with the terms herein.

6. SECURITY. Great Parks shall provide the primary law enforcement and security duties for Lunken Trail (including one trailhead parking lot designated on Exhibit A) through its Ranger Department in accordance with Great Parks' most current Code of Bylaws and the current executed and effective agreement regarding the parties' respective law enforcement duties on the Trail.

7. **REAL ESTATE TAXES.** The parties acknowledge that Lunken Trail is exempt from real property taxes.

8. **INSURANCE: CLAIMS.**

(A) **Insurance.** Throughout the Term, Great Parks will maintain and cause to be maintained the following insurance throughout the Term:

- I. Workers Compensation insurance as required by law;
- II. Property insurance on all personal property of Great Parks from time to time located at the Trail in such amount as Great Parks shall from time to time determine to be reasonable;
- III. Automobile Liability Insurance in the amount of not less than \$1,000,000 per occurrence, naming the City as an additional insured; and
- IV. Commercial general liability insurance covering claims for bodily injury, personal injury or death, and property damage occurring at Lunken Trail in an amount not less than \$2,000,000 per occurrence, combined single limit/\$4,000,000 aggregate, naming the City and the CRC as additional insureds.

(B) **Policy Requirements.** Great Parks shall be permitted to satisfy the insurance requirements set forth above through primary and umbrella and/or excess liability policies under a self-insurance program authorized pursuant to ORC Section 2744.08 or a joint self-insurance pool authorized pursuant to ORC Section 2744.081 operated by or on behalf of Great Parks or written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better, provided that the insurance/coverage (i) may not be canceled or modified without at least thirty (30) days prior written notice to the City, and (ii) is primary and non-contributory with respect to insurance maintained by the City. On the Commencement Date and thereafter on an annual basis, Great Parks shall provide the City with a certificate of insurance evidencing the insurance required to be maintained by Great Parks hereunder.

(C) **Handling of Claims.** The City assumes no responsibility for any acts, errors or omissions of Great Parks or any employee, agent, representative or any other person acting or purporting to act for or on behalf of Great Parks; and similarly Great Parks assumes no responsibility for any acts, errors or omissions of the City or any employee, agent, representative or any other person acting or purporting to act for or on behalf of the City. In the event of third-party claims filed against either party pertaining to Lunken Trail, each party shall handle its own claims in accordance with its internal policies and procedures. (The parties acknowledge that, as governmental entities, the parties are not legally permitted under Ohio law to contractually agree to indemnify each other.)

9. **CASUALTY.** If Lunken Trail is damaged or destroyed by fire or other casualty, the City and Great Parks shall jointly participate in filing claims and taking such other actions which are necessary to obtain the payment of insurance proceeds resulting from such occurrence. All proceeds from any such occurrence (with the exception of proceeds of insurance obtained by Great Parks solely to protect Great Parks' property) shall be paid to the City. The City shall determine whether it wishes to utilize the proceeds to repair/reconstruct the Trail. Unless otherwise agreed in writing, this Agreement shall terminate in the event that the City determines that it will not restore the Trail to its prior condition or if the City does not as expeditiously as possible restore the Trail to substantially the same condition it was immediately prior to the casualty or if the Trail is damaged by more than fifty percent (50%).

10. DEFAULT; REMEDIES.

(A) Default. An event of default shall be deemed to have occurred if either party fails to perform or observe any of the covenants, terms or conditions contained in this Agreement, and such failure to perform continues for longer than sixty (60) days after the defaulting party receives written notice thereof from the non-defaulting party; provided, however, that if such failure is not reasonably susceptible of being cured within such sixty (60) day period, an event of default shall not be deemed to have occurred if the defaulting party commences to cure such failure within such sixty (60) day period and thereafter diligently pursues such cure to completion and, in fact, cures such failure within one hundred twenty (120) days after the defaulting party receives written notice of the default from the non-defaulting party. The foregoing notwithstanding, if the failure creates a dangerous condition or otherwise constitutes an emergency as determined by the non-defaulting party, an event of default shall be deemed to have occurred if the defaulting party fails to take corrective action immediately upon discovering such dangerous condition or emergency.

(B) Remedies. Upon the occurrence of an event of default that continues beyond the applicable notice and cure period provided for under paragraph (A) above, the non-defaulting party shall be entitled to: (i) terminate this Agreement by giving the defaulting party written notice thereof, (ii) take such actions in the way of "self-help" as the non-defaulting party determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of defaulting party, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity. The failure of either party 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.

11. ASSIGNMENT AND SUBLETTING. Great Parks shall not assign its interests under this Agreement, or sublet all or any portion of the Trail, without the prior written consent of the City. Great Parks acknowledges that the City is entering into this Agreement because of the City's confidence that Great Parks has the financial resources, experience, and community support that are necessary to carry out the operation of the Trail, and that therefore the City shall not be expected to consent to a proposed assignment to any individual or entity in which the City does not have similar confidence. No assignment by Great Parks of its rights or obligations under this Agreement to a third party shall relieve Great Parks from any liability to the City under this Agreement.

12. SURRENDER; HOLDOVER.

(A) Surrender. On the last day of the Term of this Agreement, Great Parks shall surrender the Trail to the City in good condition and repair and free and clear of all liens and other encumbrances created by Great Parks (if any). On or before the last day of the Term, Great Parks shall remove all of Great Parks' personal property, and any property not so removed shall be deemed abandoned. Great Parks shall not remove any signs, trade fixtures, ordinary fixtures or affixed equipment used in connection with the Trail unless the City approves of such removal in writing. Great Parks shall promptly repair any and all damage to the Trail caused by its removal of any items under this paragraph.

(B) Holdover. If Great Parks fails to surrender possession of the Trail to the City at the end of the Term, such holdover shall be deemed as creating a tenancy-at-will on all of the same terms and conditions as set forth herein (except for the duration of the Term), terminable by either party at any time by giving written notice thereof to the other party.

(C) Documents to be Delivered to City. At the end of the Term, Great Parks shall deliver to the City originals of all operating manuals, warranty information, books and records, contracts with third parties, and all other written materials and documents that are in Great Parks' possession or under Great Parks' control and that are reasonably needed in order for there to be a seamless transition with respect to the operation of the Trail.

13. NOTICES. All notices required to be given to any party under this Agreement shall be in writing and (i) personally delivered, (ii) deposited in the United States mail, or (iii) delivered by a reputable

courier service (e.g., Federal Express, UPS), to the parties at the following addresses or such other address as either party may specify from time to time by notice to the other. Notices shall be deemed given upon receipt.

To the City:

Director, Cincinnati Recreation
Commission
805 Central Avenue, Suite 800
Cincinnati, OH 45202

Director, Department of Transportation
and Engineering
801 Plum Street, 4th Floor
Cincinnati, Ohio 45202

To Great Parks:

Great Parks of Hamilton County
10245 Winton Road
Cincinnati, OH 45231
Attention: Chief Executive Officer

If Great Parks sends a notice to the City alleging that the City is in breach of this Agreement, Great Parks 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. Likewise, if the City sends a notice to Great Parks alleging that Great Parks is in breach of this Agreement, the City shall send such notice to the Executive Director of Great Parks at the address listed above by U.S. certified mail.

14. TERMINATION FOR AIRPORT PURPOSES. At any time during the Term, the City may provide written notice to Great Parks that the City is exercising its right to terminate this Agreement for Airport purposes. Any such termination for Airport purposes shall be effective immediately.

15. GENERAL PROVISIONS.

(A) Entire Agreement. This Agreement (including the exhibits hereto and the other agreements referred to herein, if any) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

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

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

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

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

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

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

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

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

(J) No Brokers. The City and Great Parks 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.

(K) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future member, officer, agent or employee of the City in other than his or her official capacity. No official executing or approving the City's participation in this Agreement shall be personally liable under this Agreement.

(L) Representation as to Authority. The City and Great Parks each represents to the other that it has the power and authority to enter into and perform its obligations under this Agreement without the consent of anyone who is not a party to this Agreement, and that the execution and performance of this Agreement have been duly authorized by all necessary actions on the part of the performing party.

(M) Appropriation of Funds. Notwithstanding anything in this Agreement, the City's performance of its obligations under the Agreement that require the expenditure of money is subject to the appropriation of funds for such purposes by Cincinnati City Council.

(N) Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A - *Site Map*

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

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

CITY OF CINCINNATI

By: _____

Printed name: _____

Title: _____

Date: _____, 2022

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022, by (name) _____, the (title) _____ of the **CITY OF CINCINNATI**, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Recommended By:

John Brazina, Director
Department of Transportation and Engineering

Daniel Betts, Director
Cincinnati Recreation Commission

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

GREAT PARKS OF HAMILTON COUNTY

By: _____
Todd Palmeter, Chief Executive Officer

Date: _____, 2022

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022, by Todd Palmeter, the Chief Executive Officer of **GREAT PARKS OF HAMILTON COUNTY**, a political subdivision of the State of Ohio created under Ohio Revised Code Chapter 1545, on behalf of the Board of Park Commissioners of Great Parks of Hamilton County. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

EXHIBIT A
to Lease and Operating Agreement

Site Map

EXHIBIT A



Contract No. _____

Property: Lunken Trail

LEASE AND OPERATING AGREEMENT

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E. The City has determined that eliminating competitive bidding with respect to the City’s lease of the Trail is in the best interest of the public because the City has determined that Great Parks, being a governmental entity with experience in managing public parks generally, and recreation trails in particular, is the most qualified and suitable lessee of the Trail.

F. The execution of this Agreement was approved by the Cincinnati Recreation Commission at its meeting on May 17, 2022.

G. The City Planning Commission, having the authority to approve the change in the use of City owned property, approved this Agreement at its meeting on May 20, 2022.

H. The execution of this Agreement was authorized by Ordinance No. _____, passed by Cincinnati City Council on _____, 2022.

I. The execution of this Agreement was approved by the Great Parks Board at its meeting on April 21, 2022.

NOW THEREFORE, the parties hereby agree as follows:

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covenants, restrictions and other matters of record, matters that would be disclosed upon an ordinary inspection or survey of Lunken Trail, and any and all rights expressly reserved under this Agreement for the benefit of the City, utility companies, and other third parties. The City has not made any representations or warranties concerning the condition or characteristics of Lunken Trail or the suitability or fitness of Lunken Trail for the Permitted Use, as defined below, and Great Parks is not relying upon any such representations or warranties from the City. On the Commencement Date (as defined in section 2 below), Great Parks shall accept Lunken Trail in "as is" condition. During the Term, Great Parks shall not grant any easements or otherwise encumber the title to Lunken Trail without the City's prior written consent.

(B) City's Right to Inspect Lunken Trail. The City hereby reserves the right for its employees and agents to enter upon Lunken Trail from time to time for any proper purpose, provided, however, that in exercising such rights, (i) the City shall not unreasonably disrupt Great Parks' use of Lunken Trail for the Permitted Use, and (ii) except in emergencies, the City shall give Great Parks reasonable written notice prior to entering Lunken Trail.

(C) Access by Public Utilities. Great Parks shall ensure continuous access to Lunken Trail (24 hours/day, 7 days/week, 52 weeks/year) by any and all public utilities that have existing utility facilities within Lunken Trail for the maintenance, repair and replacement thereof, and Great Parks shall not undertake any action or construct any improvements within Lunken Trail that may interfere with any such utility company's rights without having first obtained such utility company's consent. If Great Parks, its employees, agents, contractors, subcontractors, licensees or invitees cause damage to such utility companies' facilities, Great Parks shall promptly reimburse the affected utility company for the cost of repairing such damage.

(D) Ingress/Egress Rights Across Lunken Trail. Great Parks shall ensure continuous access across Lunken Trail (24 hours/day, 7 days/week, 52 weeks/year) for any person that has ingress and egress rights (including but not limited to persons who have leasehold rights of airport property) across the Trail to a public way or the Airport. Although Great Parks is not responsible for the construction, maintenance or repair of driveway aprons abutting the Trail, Great Parks will coordinate with DOTE for the construction, repair, or replacement of driveway aprons for persons with ingress and egress rights across the Trail.

(E) Lease Subordinate to Airport Agreements. The rights herein granted to Great Parks are subject and subordinate to any and all existing covenants, easements, restrictions and other matters of record affecting the Airport, Airport property, and Lunken Trail and to any and all existing agreements between the City and the federal government pertaining to the same. The rights herein granted to Great Parks are also subject and subordinate to any and all leases which affect the Airport and Airport property, but which do not pertain to the Permitted Use, and Great Parks' obligations regarding, the Trail as outlined in Section 4. Great Parks acknowledges that Lunken Trail is located on Airport property, which property is in a 100-year floodplain, as designated by the Federal Emergency Management Agency ("FEMA"), and the City's ability to comply with all Federal Aviation Administration ("FAA"), FEMA, or other applicable federal requirements, including, without limitation to, controlling and protecting the use of Airport property for aviation purposes is of utmost importance to the City and FAA.

2. TERM.

(A) Initial Term (5 years). The initial term of this Agreement (the "Initial Term") shall commence on the Effective Date (the "**Commencement Date**") and, unless extended or sooner terminated as herein provided, shall expire on the **December 31, 2027**.

(B) Renewal Periods (three 5-year options). The parties may extend the Term for three (3) renewal periods of five (5) years each (each, a "**Renewal Period**") (for a total Term, including the Initial Term, of 20 years). Each renewal shall be on the same terms and conditions as set forth herein (except that, after the 3rd Renewal Period, there shall be no additional renewal options unless agreed to by the parties in a written amendment to this Agreement). As used herein, the "**Term**" of this Agreement means the Initial Term and, if applicable, the Renewal Periods.

3. **RENT.** \$0.00/year.

4. **PERMITTED USE; OPERATIONAL MATTERS.**

(A) **Permitted Use.** Great Parks shall use Lunken Trail solely for the operation of a trail open to the public for public use for transportation and recreation purposes (the “**Permitted Use**”) and for no other purpose.

(B) **Operating Standards.** Great Parks shall keep, maintain, and operate Lunken Trail and one adjacent trailhead parking lot solely for the operation of a recreation trail open to the public for public use, in accordance with ORC Chapter 1545. Great Parks shall render the usual and customary services incidental thereto in a professional businesslike and efficient manner, including utilizing properly trained employees, volunteers and contractors. Great Parks shall not enforce its motor vehicle permit at Lunken Trail (i.e., Great Parks shall not require visitors to Lunken Trail to pay a permit fee), unless approved by the City. Great Parks shall have the right, however, to charge visitors reasonable fees for special uses, permits, programs, athletic events, and reserved areas as may be appropriate and as consistent with Great Parks’ normal operations. Great Parks shall be responsible for the operation, and maintenance of Lunken Trail, at no cost to the City, in accordance with Great Parks’ Code of By-Laws and in compliance with all applicable federal, state and local laws, codes, ordinances and other governmental requirements. Great Parks shall keep CRC and DOTE informed of any serious accidents or other incidents occurring on Lunken Trail so that the City can respond appropriately.

(C) **Operating Hours.** In order to accommodate the transportation use of Lunken Trail, and pursuant to §132.10(B) of the Code of By-Laws of Great Parks, the Chief Executive Officer of Great Parks will authorize the Trail to be open to the public twenty-four (24) hours a day.

(D) **Programs.** CRC and Great Parks shall be permitted to conduct educational, recreational, conservancy, beautification, and public athletic programs and events at Lunken Trail, and shall coordinate the dates thereof with Great Parks as appropriate.

(E) **Right to Close Trail.** Great Parks may temporarily barricade, close, or otherwise eliminate public access to Lunken Trail for safety and maintenance issues, *provided*, however, that Great Parks shall ensure continuous access across Lunken Trail (24 hours/day, 7 days/week, 52 weeks/year) for any person that has ingress and egress rights across the Trail to a public way or the Airport. Except in emergencies, Great Parks shall give the City at least seven (7) days’ written notice prior to barricading, closing, or otherwise eliminating public access to Lunken Trail. The City reserves the right to temporarily or permanently barricade, close, or otherwise eliminate public access to Lunken Trail for any reason, *provided*, however, that in exercising such right, except in emergencies, the City shall give Great Parks seven (7) days’ written notice prior to temporarily barricading, closing or otherwise eliminating public access to Lunken Trail and sixty (60) days’ written notice prior to permanently barricading, closing, or otherwise eliminating public access to Lunken Trail.

(F) **Maintenance and Repairs.** Except as outlined in this Section, during the Term of this Agreement, Great Parks shall assume all responsibility for the maintenance and repair of Lunken Trail (including the one trailhead parking lot designated in Exhibit A and the vegetation immediately adjacent to the Trail) and shall maintain the same in a state of good and safe condition and repair, consistent with Great Parks’ usual and customary practices. Except as outlined in this Section, the City shall not have any maintenance or repair obligations or any obligation to provide services for the benefit of Lunken Trail under this Agreement.

Maintenance and repair of Lunken Trail shall include, without limitation grass cutting, trash/litter/debris removal, park bench and signage management, vegetation management, snow removal and minor surface repairs. Great Parks shall not, however, be responsible for the following:

- I. Maintenance and/or repair of any public utility facilities located along or across Lunken Trail (e.g., public water mains, sanitary sewers, or storm sewers).

- II. Maintenance and/or repair of any fixtures or vegetation outside the areas designated in Exhibit A.
- III. Maintenance and/or repair of parking facilities other than the one trailhead parking lot designated in Exhibit A.

In addition, Great Parks specifically disavows any knowledge of federal regulations pertaining to aviation and airport safety and will not be responsible for knowing, learning, recognizing, or correcting any issues related to same. In the event that vegetation or other maintenance/repair issues are required due to FAA regulations, the City shall be responsible for notifying Great Parks of same. If the vegetation or other maintenance/repair issues related to FAA regulations would require services beyond those consistent with Great Parks' usual and customary practices, the City shall be responsible for same.

(G) Mitigation of Adjacent Hazards. In the event that Great Parks is made aware of any hazards (e.g. dangerous trees, deteriorating flood control structures) which are adjacent to Lunken Trail which it believes create a dangerous condition to persons utilizing the Trail, Great Parks shall notify the City of the dangerous condition as soon as practicable. Great Parks may temporarily barricade, close, or otherwise eliminate public access to any or all portions of Lunken Trail as it deems necessary to ensure the safety of persons utilizing the Trail and may keep such portions closed to the public until such time as Great Park determines that the City has mitigated the hazard.

(H) Signs. Great Parks shall maintain in good condition and repair any and all existing directional, informational, and other outdoor signs along Lunken Trail related to Lunken Trail. Great Parks has the right to install and replace signage indicating that Great Parks operates and maintains the Trail.

(I) Capital Repairs and Improvements. Great Parks shall contract for and provide construction oversight and management services for the completion of any capital repairs or improvements agreed to by the parties, in accordance with the process set forth below in Section 5.

(J) No Liens. If any mechanics' lien or other similar lien is filed against Lunken Trail as a result of labor or material furnished at Great Parks' request, Great Parks shall cause the lien to be released or bonded off within forty-five (45) days following the filing of such lien.

5. CAPITAL REPAIRS AND IMPROVEMENTS. Great Parks shall not undertake any capital repairs or improvements to Lunken Trail without prior written authorization from the City. During the Term, capital repairs and improvements to Lunken Trail shall be handled as set forth herein:

(A) Capital Repair and Improvement Definition. "**Capital Repair**" or "**Capital Improvement**" means the acquisition, construction, reconstruction, improvement, alteration, or repair of any physical or structural asset, improvement, or fixture at a cost greater than \$50,000.

(B) Upon Request by City. From time to time the City may request that Great Parks undertake, contract for, and oversee certain capital improvements to Lunken Trail, and the Great Parks may accept or reject such request. Notwithstanding the forgoing, the City at all times during the Term of this Agreement retains the ability to perform or undertake any capital improvements that it deems appropriate, in the City's complete and absolute discretion and with or without Great Parks' consent.

(C) Upon Request by Great Parks. Great Parks may also from time to time recommend to the City certain capital improvements to Lunken Trail. The City may, in its complete and absolute discretion approve such recommended capital improvements by providing written authorization to Great Parks to undertake, contract for, and oversee such capital project in accordance with the terms herein.

6. SECURITY. Great Parks shall provide the primary law enforcement and security duties for Lunken Trail (including one trailhead parking lot designated on Exhibit A) through its Ranger Department in accordance with Great Parks' most current Code of Bylaws and the current executed and effective agreement regarding the parties' respective law enforcement duties on the Trail.

7. **REAL ESTATE TAXES.** The parties acknowledge that Lunken Trail is exempt from real property taxes.

8. **INSURANCE: CLAIMS.**

(A) **Insurance.** Throughout the Term, Great Parks will maintain and cause to be maintained the following insurance throughout the Term:

- I. Workers Compensation insurance as required by law;
- II. Property insurance on all personal property of Great Parks from time to time located at the Trail in such amount as Great Parks shall from time to time determine to be reasonable;
- III. Automobile Liability Insurance in the amount of not less than \$1,000,000 per occurrence, naming the City as an additional insured; and
- IV. Commercial general liability insurance covering claims for bodily injury, personal injury or death, and property damage occurring at Lunken Trail in an amount not less than \$2,000,000 per occurrence, combined single limit/\$4,000,000 aggregate, naming the City and the CRC as additional insureds.

(B) **Policy Requirements.** Great Parks shall be permitted to satisfy the insurance requirements set forth above through primary and umbrella and/or excess liability policies under a self-insurance program authorized pursuant to ORC Section 2744.08 or a joint self-insurance pool authorized pursuant to ORC Section 2744.081 operated by or on behalf of Great Parks or written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better, provided that the insurance/coverage (i) may not be canceled or modified without at least thirty (30) days prior written notice to the City, and (ii) is primary and non-contributory with respect to insurance maintained by the City. On the Commencement Date and thereafter on an annual basis, Great Parks shall provide the City with a certificate of insurance evidencing the insurance required to be maintained by Great Parks hereunder.

(C) **Handling of Claims.** The City assumes no responsibility for any acts, errors or omissions of Great Parks or any employee, agent, representative or any other person acting or purporting to act for or on behalf of Great Parks; and similarly Great Parks assumes no responsibility for any acts, errors or omissions of the City or any employee, agent, representative or any other person acting or purporting to act for or on behalf of the City. In the event of third-party claims filed against either party pertaining to Lunken Trail, each party shall handle its own claims in accordance with its internal policies and procedures. (The parties acknowledge that, as governmental entities, the parties are not legally permitted under Ohio law to contractually agree to indemnify each other.)

9. **CASUALTY.** If Lunken Trail is damaged or destroyed by fire or other casualty, the City and Great Parks shall jointly participate in filing claims and taking such other actions which are necessary to obtain the payment of insurance proceeds resulting from such occurrence. All proceeds from any such occurrence (with the exception of proceeds of insurance obtained by Great Parks solely to protect Great Parks' property) shall be paid to the City. The City shall determine whether it wishes to utilize the proceeds to repair/reconstruct the Trail. Unless otherwise agreed in writing, this Agreement shall terminate in the event that the City determines that it will not restore the Trail to its prior condition or if the City does not as expeditiously as possible restore the Trail to substantially the same condition it was immediately prior to the casualty or if the Trail is damaged by more than fifty percent (50%).

10. DEFAULT; REMEDIES.

(A) Default. An event of default shall be deemed to have occurred if either party fails to perform or observe any of the covenants, terms or conditions contained in this Agreement, and such failure to perform continues for longer than sixty (60) days after the defaulting party receives written notice thereof from the non-defaulting party; provided, however, that if such failure is not reasonably susceptible of being cured within such sixty (60) day period, an event of default shall not be deemed to have occurred if the defaulting party commences to cure such failure within such sixty (60) day period and thereafter diligently pursues such cure to completion and, in fact, cures such failure within one hundred twenty (120) days after the defaulting party receives written notice of the default from the non-defaulting party. The foregoing notwithstanding, if the failure creates a dangerous condition or otherwise constitutes an emergency as determined by the non-defaulting party, an event of default shall be deemed to have occurred if the defaulting party fails to take corrective action immediately upon discovering such dangerous condition or emergency.

(B) Remedies. Upon the occurrence of an event of default that continues beyond the applicable notice and cure period provided for under paragraph (A) above, the non-defaulting party shall be entitled to: (i) terminate this Agreement by giving the defaulting party written notice thereof, (ii) take such actions in the way of "self-help" as the non-defaulting party determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of defaulting party, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity. The failure of either party 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.

11. ASSIGNMENT AND SUBLETTING. Great Parks shall not assign its interests under this Agreement, or sublet all or any portion of the Trail, without the prior written consent of the City. Great Parks acknowledges that the City is entering into this Agreement because of the City's confidence that Great Parks has the financial resources, experience, and community support that are necessary to carry out the operation of the Trail, and that therefore the City shall not be expected to consent to a proposed assignment to any individual or entity in which the City does not have similar confidence. No assignment by Great Parks of its rights or obligations under this Agreement to a third party shall relieve Great Parks from any liability to the City under this Agreement.

12. SURRENDER; HOLDOVER.

(A) Surrender. On the last day of the Term of this Agreement, Great Parks shall surrender the Trail to the City in good condition and repair and free and clear of all liens and other encumbrances created by Great Parks (if any). On or before the last day of the Term, Great Parks shall remove all of Great Parks' personal property, and any property not so removed shall be deemed abandoned. Great Parks shall not remove any signs, trade fixtures, ordinary fixtures or affixed equipment used in connection with the Trail unless the City approves of such removal in writing. Great Parks shall promptly repair any and all damage to the Trail caused by its removal of any items under this paragraph.

(B) Holdover. If Great Parks fails to surrender possession of the Trail to the City at the end of the Term, such holdover shall be deemed as creating a tenancy-at-will on all of the same terms and conditions as set forth herein (except for the duration of the Term), terminable by either party at any time by giving written notice thereof to the other party.

(C) Documents to be Delivered to City. At the end of the Term, Great Parks shall deliver to the City originals of all operating manuals, warranty information, books and records, contracts with third parties, and all other written materials and documents that are in Great Parks' possession or under Great Parks' control and that are reasonably needed in order for there to be a seamless transition with respect to the operation of the Trail.

13. NOTICES. All notices required to be given to any party under this Agreement shall be in writing and (i) personally delivered, (ii) deposited in the United States mail, or (iii) delivered by a reputable

courier service (e.g., Federal Express, UPS), to the parties at the following addresses or such other address as either party may specify from time to time by notice to the other. Notices shall be deemed given upon receipt.

To the City:

Director, Cincinnati Recreation
Commission
805 Central Avenue, Suite 800
Cincinnati, OH 45202

Director, Department of Transportation
and Engineering
801 Plum Street, 4th Floor
Cincinnati, Ohio 45202

To Great Parks:

Great Parks of Hamilton County
10245 Winton Road
Cincinnati, OH 45231
Attention: Chief Executive Officer

If Great Parks sends a notice to the City alleging that the City is in breach of this Agreement, Great Parks 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. Likewise, if the City sends a notice to Great Parks alleging that Great Parks is in breach of this Agreement, the City shall send such notice to the Executive Director of Great Parks at the address listed above by U.S. certified mail.

14. TERMINATION FOR AIRPORT PURPOSES. At any time during the Term, the City may provide written notice to Great Parks that the City is exercising its right to terminate this Agreement for Airport purposes. Any such termination for Airport purposes shall be effective immediately.

15. GENERAL PROVISIONS.

(A) Entire Agreement. This Agreement (including the exhibits hereto and the other agreements referred to herein, if any) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

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

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

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

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

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

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

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

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

(J) No Brokers. The City and Great Parks 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.

(K) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future member, officer, agent or employee of the City in other than his or her official capacity. No official executing or approving the City's participation in this Agreement shall be personally liable under this Agreement.

(L) Representation as to Authority. The City and Great Parks each represents to the other that it has the power and authority to enter into and perform its obligations under this Agreement without the consent of anyone who is not a party to this Agreement, and that the execution and performance of this Agreement have been duly authorized by all necessary actions on the part of the performing party.

(M) Appropriation of Funds. Notwithstanding anything in this Agreement, the City's performance of its obligations under the Agreement that require the expenditure of money is subject to the appropriation of funds for such purposes by Cincinnati City Council.

(N) Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A - *Site Map*

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

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

CITY OF CINCINNATI

By: _____

Printed name: _____

Title: _____

Date: _____, 2022

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022, by (name) _____, the (title) _____ of the **CITY OF CINCINNATI**, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Recommended By:

John Brazina, Director
Department of Transportation and Engineering

Daniel Betts, Director
Cincinnati Recreation Commission

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

GREAT PARKS OF HAMILTON COUNTY

By: _____
Todd Palmeter, Chief Executive Officer

Date: _____, 2022

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Todd Palmeter, the Chief Executive Officer of **GREAT PARKS OF HAMILTON COUNTY**, a political subdivision of the State of Ohio created under Ohio Revised Code Chapter 1545, on behalf of the Board of Park Commissioners of Great Parks of Hamilton County. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

EXHIBIT A
to Lease and Operating Agreement

Site Map

EXHIBIT A



May 11, 2022

To: Mayor and Members of City Council

From: John P. Curp, Interim City Manager **202201159**

Subject: Ordinance – Approving and Authorizing a Community Reinvestment Area Tax Exemption Agreement with EK Brown Properties LLC

Attached is an Ordinance captioned:

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with EK Brown Properties LLC, thereby authorizing a 12-year tax exemption for 100% of the value of improvements made to real property located at 810 Plum Street in the Central Business District of Cincinnati, in connection with the remodeling of an existing building into approximately 3,600 square feet of residential space consisting of 5 residential rental units at a total construction cost of approximately \$522,898.

BACKGROUND/CURRENT CONDITIONS

EK Brown Properties LLC plans to renovate the property located at 810 Plum Street in the Central Business District. The property is currently 40% occupied with a dental office on the first floor and office space on the upper floor. There are two additional vacant office spaces, one on the first floor and one on the second floor. EK Brown Properties LLC purchased the property in September 2019 for \$399,000.

DEVELOPER INFORMATION

EK Brown Properties LLC is owned by Eric Brown, a dentist who currently operates his dental business on the first floor of the project site.

PROJECT DESCRIPTION

EK Brown Properties LLC will complete the conversion of the larger, vacant second-floor office space to bring five (5) market-rate rental units on to the market. The residential units will include five (5) 500 square foot studio units with residential rents of approximately \$1,000 per month. Rents are naturally affordable to households making 80% of the Area Median Income based on HUD rent limits.

Total project cost is projected to be approximately \$1MM, including acquisition cost, with construction cost at \$522,898. The project is estimated to take seven (7) months to complete and is projected to support the creation of 50 temporary construction jobs with

a total annual payroll of \$210,000. The project is projected to retain four (4) full-time jobs with a total annual payroll of \$250,000. The developer intends to begin construction summer of 2022.

The proposed project is consistent with *Plan Cincinnati* (2012) within the Geographic Principle to “Focus revitalization on existing centers of activity” (p. 86). It is consistent with *Plan Cincinnati* within the Live Initiative Area’s Goals to “Create a more livable community” (p. 156) and “Provide a full spectrum of housing options, and improve housing quality and affordability” (p. 164), as well as a Strategy in the Compete Initiative Area to “Target investment to geographic areas where there is already economic activity” (p. 115). The proposed project will retain an existing business and bring residential units onto the market within the Downtown neighborhood center, an existing center of economic activity.

PROPOSED INCENTIVE

DCED is recommending a 12-year, net 52% CRA tax exemption. The exemption only applies to the increase in improvement value attributed to the construction.

SUMMARY	
Incentive Value	
Annual Net Incentive to Developer	\$4,663
Total Term Incentive to Developer	\$55,958
City's Portion of Property Taxes Forgone	\$6,438
Potential TIF District (#3) Revenues Forgone	\$50,678
Public Benefit	
CPS PILOT	
Annual CPS Pilot	\$2,959
Total Term CPS PILOT	\$35,512
VTICA	
Annual VTICA	\$1,345
Total Term VTICA	\$16,142
Income Tax (Max)	\$56,205
Total Public Benefit (CPS PILOT/VTICA /Income Tax)	\$107,859
Total Public Benefit ROI*	\$1.93
City's ROI*	\$1.27

*If the project were going to happen regardless of incentive, this is the return of real dollars for public benefits as potential future dollars are forgone. Note that the property is located in the Downtown OTR West TIF District which impacts the standard City property tax calculation.

PROFORMA WITHOUT ABATEMENT	
Revenue	\$105,825
Operating Expenses and Reserves	\$36,789
Net Operating Income	\$69,036
Debt Service	\$61,200
Cash Flow After Debt Service	\$7,836
Cash on Cash Return	3.24%

PROFORMA WITH ABATEMENT	
Revenue	\$105,825
Operating Expenses and Reserves	\$31,938
Net Operating Income	\$73,887
Debt Service	\$61,200
Cash Flow After Debt Service	\$12,687
Cash on Cash Return	5.25%

Market rate of return: ~8-10%

Pursuant to the Commercial CRA policy established by City Council, this project is located within the Streetcar VTICA Area and is therefore subject to analysis based on project underwriting, VTICA contribution, and job creation to determine abatement terms. The project merits a twelve-year, net 52% CRA Tax Abatement based on the following criteria:

- Project underwriting revealed a low cash-on-cash rate of return for the early years of the investment.
- Net 15% Streetcar VTICA contribution totals to \$16,142
- Project will retain four full-time positions with a total annual payroll of \$250,000 and create 50 temporary construction jobs with a total annual payroll of \$210,000

PROJECT TEAM & TIMELINE

The project team (listed below) will make themselves available at the request of the councilmember(s).

- Assistant City Manager: William Weber
- DCED Director: Markiea L. Carter
- Project Attorney: Samantha Brandenburg

The anticipated council timeline is as follows:

- May 11, 2022: Introduction to City Council
- May 16, 2022: Budget and Finance (1)
- May 23, 2022: Budget and Finance (2)
- May 30, 2022: Budget and Finance (3)
- June 1, 2022: City Council for Final Approval

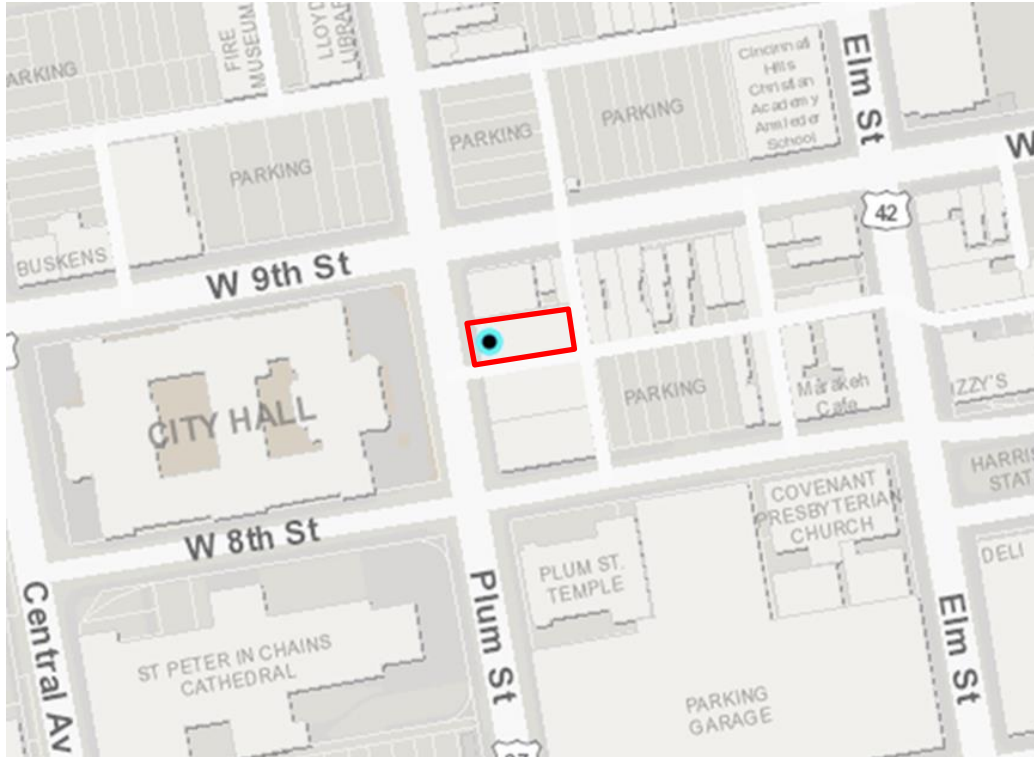
RECOMMENDATION

The Administration recommends approval of this Ordinance.

Attachment: A. Property location and photographs

Copy: Markiea L. Carter, Director, Department of Community & Economic Development

Attachment A: Location and Photographs



Property Location



810 Plum Street

City of Cincinnati

ZDS

AWB

An Ordinance No. _____ - 2022

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with EK Brown Properties LLC, thereby authorizing a 12-year tax exemption for 100% of the value of improvements made to real property located at 810 Plum Street in the Central Business District of Cincinnati, in connection with the remodeling of an existing building into approximately 3,600 square feet of residential space consisting of 5 residential rental units at a total construction cost of approximately \$522,898.

WHEREAS, to encourage the development of real property and the acquisition of personal property, the Council of the City of Cincinnati by Ordinance No. 274-2017 passed on September 27, 2017, designated the area within the corporate boundaries of the City of Cincinnati as a “Community Reinvestment Area” pursuant to Ohio Revised Code (“ORC”) Sections 3735.65 through 3735.70 (the “Statute”); and

WHEREAS, Ordinance No. 275-2017 passed by this Council on September 27, 2017, as amended by Ordinance No. 339-2018, passed by this Council on October 31, 2018, sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area; and

WHEREAS, effective October 23, 2017, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute; and

WHEREAS, EK Brown Properties LLC (the “Company”) desires to remodel an existing building into approximately 3,600 square feet of residential space consisting of 5 residential rental units on real property at 810 Plum Street located within the corporate boundaries of the City of Cincinnati (the “Improvements”), provided that the appropriate development incentives are available to support the economic viability of the Improvements; and

WHEREAS, to provide an appropriate development incentive for the Improvements, the City Manager has recommended a *Community Reinvestment Area Tax Exemption Agreement*, in substantially the form of Attachment A to this ordinance, to authorize a real property tax exemption for the Improvements in accordance with the Statute; and

WHEREAS, the property is located within the Cincinnati City School District; and

WHEREAS, the Board of Education of the Cincinnati City School District (the “Board of Education”), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020 (as may be amended, the “Board of Education Agreement”), has approved exemptions of up to 100% of Community Reinvestment Area projects, waived advance notice and the right to review

such projects, and waived sharing or allocation of municipal income taxes in connection with such projects; and

WHEREAS, pursuant to the Board of Education Agreement, the Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to 33% of the exempt real property taxes; and

WHEREAS, the Company has represented that it has entered into (or will enter into) a voluntary tax incentive contribution agreement with a third-party organization for amounts equal to 15% of the exempt real property taxes, which funds shall be committed by the third-party organization to support the streetcar that specially benefits the property; and

WHEREAS, the Improvements do not involve relocation of part or all of the Company's operations from another county or municipal corporation in Ohio or, if there is relocation, notice has been given per ORC Section 3735.673; now, therefore,

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

Section 1. That Council approves a *Community Reinvestment Area Tax Exemption Agreement* with EK Brown Properties LLC (the "Agreement"), thereby authorizing a 12-year tax exemption for 100% of the assessed value of improvements to be made to real property located at 810 Plum Street in Cincinnati, as calculated by the Hamilton County Auditor, in connection with the remodeling of an existing building into approximately 3,600 square feet of residential space consisting of 5 residential rental units, to be completed at a total construction cost of approximately \$522,898.

Section 2. That Council authorizes the City Manager:

- (i) to execute the Agreement on behalf of the City in substantially the form of Attachment A to this ordinance; and
- (ii) to forward on behalf of Council a copy of the Agreement, within fifteen (15) days after execution, to the Director of the Ohio Development Services Agency in accordance with Ohio Revised Code Section 3735.671(F); and
- (iii) to submit on behalf of Council annual reports on the Agreement to the Director of the Ohio Development Services Agency and to the Board of Education of the Cincinnati City School District, in accordance with Ohio Revised Code Section 3735.672; and

(iv) to take all necessary and proper actions to fulfill the City's obligations under the Agreement.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

Community Reinvestment Area Tax Exemption Agreement

This Community Reinvestment Area Tax Exemption Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and EK BROWN PROPERTIES LLC, an Ohio limited liability company (the "Company").

Recitals:

- A. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- B. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- C. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018 passed on October 31, 2018, Ordinance No. 370-2020 passed on November 12, 2020, and Ordinance No. 24-2022 passed on February 2, 2022 (the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. The Company is the sole owner of certain real property within the City, located at 810 Plum Street, Cincinnati, Ohio 45202 (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- E. The Company has proposed to remodel a building located on the Property, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"), provided that the appropriate development incentives are available to support the economic viability of the Project.
- F. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing five or more dwelling units, in order to be eligible for tax exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.
- G. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.
- H. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application

(i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars (\$750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.

- I. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- J. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- K. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").
- L. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").
- M. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- N. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- O. City Council passed (i) Motion No. 201401368 on November 19, 2014, establishing a tax incentive policy that incentivizes each applicant for a real property tax abatement in the neighborhoods of Downtown and OTR to enter into a voluntary tax incentive contribution agreement with a third-party organization ("VTICA") for an amount equal to a percentage of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the "VTICA Contribution"), which funds shall be committed by a third-party organization to support the streetcar that specially benefits the abated property, and (ii) Motion No. 201501592 on December 16, 2015, which established that the VTICA Contribution to be recognized by the Director of the Department of Community and Economic Development is 15% of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement. The Commercial Policy Ordinance confirmed that such motions have not been superseded and remain the will of Council.
- P. The Company acknowledges that the Streetcar will specially benefit the Project due to (a) the Streetcar's enhancement of public transit options in such neighborhoods and (b) the anticipated increase in property values attributable to public investment in Streetcar infrastructure.
- Q. The Company represents and warrants to the City that the Company has entered or will enter into a VTICA and shall pay the VTICA Contribution each year for the full term of the abatement.

- R. This Agreement has been authorized by Ordinance No. _____-2022, passed by Cincinnati City Council on _____, 2022.
- S. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company's representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, the VTICA Contribution, and the Project's effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to remodel an existing building on the Property into approximately 3,600 square feet of residential space consisting of 5 residential rental units (the "Improvements") at an estimated aggregate cost \$522,898 to commence after the execution of this Agreement and to be completed no later than April 30, 2023; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his or her discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The remodeling shall be in compliance with applicable building code requirements and zoning regulations. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, 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 the Company 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.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of one hundred percent (100%) of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of twelve (12) years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of remodeling, (B) the cost of remodeling, (C) the facts asserted in the application for exemption and (D) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the remodeling has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the

exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2023 nor extend beyond the earlier of (i) tax year 2034 or (ii) the end of the twelfth (12th) year of exemption.

Section 3. Use; Maintenance; Inspections. The Company shall use the Property solely for the purposes described in Section 1 hereof and shall properly maintain and repair the Property throughout the period of tax exemption authorized herein. The Company authorizes the Housing Officer, or the Housing Officer's designees, to enter upon the Property as reasonably required to perform property inspections in accordance with Ohio Revised Code Section 3735.68.

Section 4. Compliance with Board of Education Agreement. As a condition of the tax exemption authorized under this Agreement, the Company agrees to enter into and comply with its obligation under the Board of Education Agreement.

Section 5. Duty of Company to Pay Taxes. As required by Ohio Revised Code Section 3735.671(C)(2), the Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions from taxation granted or authorized under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and continuing thereafter.

Section 6. Company Certifications Regarding Non-Delinquency of Tax Obligations. As required by Ohio Revised Code Section 3735.671(C)(3), the Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which the Company is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747 or 5753, or if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, has filed a petition in bankruptcy under 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

Section 7. Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Revised Code Section 9.66, (A) the Company affirmatively covenants that it does not owe: (i) any delinquent taxes to the State or to a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due, regardless of whether the amounts owed are being contested in a court of law or not; (B) the Company authorizes the City and/or the State to inspect the personal financial statements of the Company, including tax records and other similar information not ordinarily open to public inspection; and (C) the Company authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements. As provided by statute, a knowingly false statement under this section may be prosecuted as a first degree misdemeanor under Ohio Revised Code Section 2921.13, may render the Company ineligible for any future economic development assistance from the State or any political subdivision of the State, and will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(C)(4), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 9. Continuation of Exemptions. As provided in Ohio Revised Code Section 3735.671(C)(5), if for any reason the City revokes the designation of the City of Cincinnati as a Community Reinvestment Area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation authorized pursuant to this Agreement.

Section 10. City Not Liable. The Company acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate state and/or county taxing authorities. The Company acknowledges that the City does not give any guarantee or assurance that the exemption approved in this Agreement will be so approved, and the Company agrees that in no event shall the Company seek to hold the City liable in any way in the event such exemption is not granted or implemented.

Section 11. Small Business Enterprise Program.¹

A. Compliance with Small Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code ("CMC") Section 323-1-S, "SBEs"). Pursuant to CMC Section 323-11, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve the City's goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City's Department of Economic Inclusion. The Company may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. The Company shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

- (i) Including qualified SBEs on solicitation lists.
- (ii) Assuring that SBEs are solicited whenever they are potential sources.

The Company 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, as applicable.

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

(iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.

(v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.

(vi) The Company shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting such information as may be requested from time to time by the City.

B. Remedies for Noncompliance with Small Business Enterprise Program. Failure of the Company or its contractors and subcontractors 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 SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Company to use its 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

¹ Note: this section will be revised prior to execution due to programmatic changes being implemented by the Department of Community and Economic Development as a result of recent legislation passed by City Council.

enforce specific performance of the terms of this Section. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

Section 12. Jobs. The Company represents that, as of the date of the execution of this Agreement, the Company has (i) 4 full-time equivalent employees at the Property with a total annual payroll of \$250,000 (the "Retained Jobs"), and (ii) no existing employment at any other locations in the State.

Section 13. Job Creation and Retention.

A. Jobs to be Retained by Company. The Company agrees to use its best efforts to retain the Retained Jobs in connection with the Project.

B. Jobs to be Created by Company. The Company agrees to use its best efforts to create 50 full-time temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with remodeling.

C. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately \$210,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

D. Community Reinvestment Area Employment. The Company shall (i) adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati and (ii) give preference to residents of the City relative to residents of the State who do not reside in the City when hiring new employees under this Agreement.

E. Posting Available Employment Opportunities. To the extent allowable by law, the Company shall use its best efforts to post available employment opportunities within the Company's organization or the organization of any subcontractor working with the Company with the Ohio Means Jobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

Section 14. Equal Employment Opportunity. This Agreement is subject to the City's Equal Employment Opportunity Program contained in CMC Chapter 325. The Equal Employment Opportunity Clause in CMC Section 325-9 is incorporated by reference in this Agreement. The term "Company" is substituted for "Contractor" throughout CMC Section 325-9 in the context of this Agreement.

Section 15. Compliance with Immigration and Nationality Act. In the performance of its obligations under this Agreement, the Company agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2). Any noncompliance with such provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default

under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

Section 17. Annual Review and Report. As required by Ohio Revised Code Sections 3735.671(C)(7) and 5709.85, the Company shall provide to the City's Tax Incentive Review Council (or to the City Manager if so requested by the City) any information reasonably required by the Council or the City Manager to evaluate the Company's compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Council or City Manager. The performance of the Company's obligations stated in this Agreement shall be subject to annual review by the City's Tax Incentive Review Council (the "Annual Review and Report"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

Section 18. Revocation.

A. Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under Ohio Revised Code Section 3735.67. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the Company, the housing officer may revoke the exemption at any time after the first year of exemption. If the Company has materially failed to fulfill its obligations under this Agreement, or if the owner is determined to have violated division (E) of that section (see Section 18(B) of this Agreement), City Council, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or City Council shall notify the county auditor and the Company that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (E) of Ohio Revised Code Section 3735.671, and the reason for revoking the exemption.

B. Prior Statutory Violations. The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(E) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(C)(9), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any successor to the Company or any related member (as those terms are defined in division (E) of Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

A. Generally. As required in connection with Ohio Revised Code Section 9.66(C), the Company affirmatively covenants that it has made no false statements to the State or the City

in the process of obtaining approval for this Agreement. If any representative of the Company has knowingly made a false statement to the State or the City to obtain approval for this Agreement, or if the Company fails to provide any information expressly required under the Application, the Company shall be required to immediately return all benefits received under this Agreement (by payment of the amount of taxes exempted hereunder, paid as directed by the City within thirty (30) days of written demand) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or any political subdivision of the State pursuant to Ohio Revised Code Section 9.66(C)(1). Amounts due and not paid under this Section 19 shall bear interest at the rate of twelve percent (12%) per year. Any person who provides a false statement to secure economic development assistance (as defined in Ohio Revised Code Section 9.66) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

B. Material Representations – Board of Education Agreement and VTICA. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement or VTICA Contribution shall constitute an event of default for purposes of Section 16 (*Default*) and the basis for revocation under Section 18 (*Revocation*). Subject to the terms of the VTICA, if the VTICA is unenforceable for reasons of infeasibility or otherwise, the Company shall enter into alternative arrangements providing for the economic equivalent of the VTICA Contribution in order to support the streetcar. Such arrangements may include, but are not limited to, providing for the economic equivalent of the VTICA Contribution through formation of a special improvement district. For purposes of this Section 19.B, alternative arrangements must result in services substantially similar to those that would have been supported through the VTICA and at a value that is the economic equivalent of the VTICA Contribution, which value shall not be required to exceed the VTICA Contribution amount that would have been payable by the Company. Any determination of infeasibility or mechanism for providing alternative arrangements is subject to approval by the City at its sole discretion. Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project, and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

Section 21. Annual Fee. As authorized by Ohio Revised Code Section 3735.671(D), the Company shall pay an annual fee of Five Hundred Dollars (\$500) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred Dollars (\$2,500) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

Section 23. Notices. Unless otherwise specified herein, each party shall address written notices, demands and communications in connection with this Agreement to the other party as follows (or to such other address as is communicated in accordance with this Section):

To the City:

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

To the Company:

Eric Brown
EK Brown Properties LLC
800 Stanton Ave
Terrace Park, OH 45174

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

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition 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 Project partner, the Company shall use either the phrase "Project Assistance 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.

Section 25. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the City and the Company with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto.

Section 26. Governing Law. This Agreement is entered into and is to be performed in the State. The City and the Company agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 28. Severability. This Agreement shall be severable; if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 29. Amendment. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. Non-Assignment. As required by Ohio Revised Code Section 3735.671(C)(8), this Agreement is not transferable or assignable by the Company without the express written approval of the City Manager of the City. If the Company has entered into a Board of Education Agreement or VTICA in connection with the Property, the City shall not approve the assignment of this Agreement unless the assignee has assumed the Company's remaining obligations under the Board of Education Agreement and VTICA, as applicable. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement or VTICA upon transfer of the Property during the term of the tax

abatement authorized by this Agreement shall be basis for revocation of the tax exemption under Section 18.

Section 31. Recording. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. Legislative Action Required. As provided in Ohio Revised Code Section 3735.671(C)(10), the Company and the City acknowledge that this Agreement must be approved by formal action of the City Council of the City as a condition for this Agreement to take effect. Notwithstanding anything to the contrary herein, this Agreement shall take effect after the later of the date of such approval or the final date of execution of this Agreement by all parties.

Section 33. Additional Representations and Warranties of Company. The Company represents and warrants that (a) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder; (b) no notices to, or consents, authorizations or approvals of, any person are required (other than any already given or obtained) for its due execution, delivery and performance of this Agreement; and (c) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Company.

Section 34. Certification as to Non-Debarment. The Company represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, the Company shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If the Company or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, the company shall be considered in default under this Agreement.

Section 35. Appeals. Pursuant to Ohio Revised Code Section 3735.70, a person aggrieved under the Statute or this Agreement may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Section 36. 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.

Section 37. Legal Requirements. In completing and operating the Project, the Company 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.

Section 38. Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

Remainder of this page intentionally left blank. Signature page follows.

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

CITY OF CINCINNATI,
an Ohio municipal corporation

EK BROWN PROPERTIES LLC,
Error! Reference source not found.

By: _____
John P. Curp, Interim City Manager

By: _____

Date: _____, 2022

Printed Name: _____

Title: _____

Date: _____, 2022

Authorized by resolution dated _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

Address: 810 Plum Street, Cincinnati, Ohio 45202
Auditor's Parcel #: 077-0001-0030-00

ALL THAT LOT OF GROUND SITUATED IN THE CITY OF CINCINNATI, OHIO AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST SIDE OF PLUM STREET BETWEEN 8TH AND 9TH STREETS, DISTANT 47 FEET SOUTH FROM 9TH STREET, THENCE RUNNING EAST PARALLEL WITH 9TH STREET AND ALONG THE SOUTH LINE OF LOT NO. 215 IN JACOB BURNETT'S SUBDIVISION, 100 FEET TO AN ALLEY; THENCE SOUTH WITH THE WEST LINE OF SAID ALLEY 48 FEET TO AN ALLEY; THENCE WEST IN THE NORTH LINE OF SAID LAST MENTIONED ALLEY AND PARALLEL WITH 9TH STREET, 100 FEET TO PLUM STREET, THENCE NORTH WITH THE EAST LINE OF PLUM STREET, 48 FEET TO THE PLACE OF BEGINNING. BEING LOTS NO. 214 AND 213 IN JACOB BURNETT'S SUBDIVISION.

Exhibit B to CRA Agreement
APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

Community Reinvestment Area Tax Exemption Agreement

This Community Reinvestment Area Tax Exemption Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and EK BROWN PROPERTIES LLC, an Ohio limited liability company (the "Company").

Recitals:

- A. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- B. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- C. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018 passed on October 31, 2018, Ordinance No. 370-2020 passed on November 12, 2020, and Ordinance No. 24-2022 passed on February 2, 2022 (the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. The Company is the sole owner of certain real property within the City, located at 810 Plum Street, Cincinnati, Ohio 45202 (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- E. The Company has proposed to remodel a building located on the Property, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"), provided that the appropriate development incentives are available to support the economic viability of the Project.
- F. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing five or more dwelling units, in order to be eligible for tax exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.
- G. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.
- H. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application

(i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars (\$750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.

- I. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- J. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- K. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").
- L. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").
- M. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- N. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- O. City Council passed (i) Motion No. 201401368 on November 19, 2014, establishing a tax incentive policy that incentivizes each applicant for a real property tax abatement in the neighborhoods of Downtown and OTR to enter into a voluntary tax incentive contribution agreement with a third-party organization ("VTICA") for an amount equal to a percentage of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the "VTICA Contribution"), which funds shall be committed by a third-party organization to support the streetcar that specially benefits the abated property, and (ii) Motion No. 201501592 on December 16, 2015, which established that the VTICA Contribution to be recognized by the Director of the Department of Community and Economic Development is 15% of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement. The Commercial Policy Ordinance confirmed that such motions have not been superseded and remain the will of Council.
- P. The Company acknowledges that the Streetcar will specially benefit the Project due to (a) the Streetcar's enhancement of public transit options in such neighborhoods and (b) the anticipated increase in property values attributable to public investment in Streetcar infrastructure.
- Q. The Company represents and warrants to the City that the Company has entered or will enter into a VTICA and shall pay the VTICA Contribution each year for the full term of the abatement.

- R. This Agreement has been authorized by Ordinance No. _____-2022, passed by Cincinnati City Council on _____, 2022.
- S. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company's representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, the VTICA Contribution, and the Project's effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to remodel an existing building on the Property into approximately 3,600 square feet of residential space consisting of 5 residential rental units (the "Improvements") at an estimated aggregate cost \$522,898 to commence after the execution of this Agreement and to be completed no later than April 30, 2023; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his or her discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The remodeling shall be in compliance with applicable building code requirements and zoning regulations. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, 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 the Company 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.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of one hundred percent (100%) of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of twelve (12) years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of remodeling, (B) the cost of remodeling, (C) the facts asserted in the application for exemption and (D) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the remodeling has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the

exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2023 nor extend beyond the earlier of (i) tax year 2034 or (ii) the end of the twelfth (12th) year of exemption.

Section 3. Use; Maintenance; Inspections. The Company shall use the Property solely for the purposes described in Section 1 hereof and shall properly maintain and repair the Property throughout the period of tax exemption authorized herein. The Company authorizes the Housing Officer, or the Housing Officer's designees, to enter upon the Property as reasonably required to perform property inspections in accordance with Ohio Revised Code Section 3735.68.

Section 4. Compliance with Board of Education Agreement. As a condition of the tax exemption authorized under this Agreement, the Company agrees to enter into and comply with its obligation under the Board of Education Agreement.

Section 5. Duty of Company to Pay Taxes. As required by Ohio Revised Code Section 3735.671(C)(2), the Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions from taxation granted or authorized under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and continuing thereafter.

Section 6. Company Certifications Regarding Non-Delinquency of Tax Obligations. As required by Ohio Revised Code Section 3735.671(C)(3), the Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which the Company is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747 or 5753, or if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, has filed a petition in bankruptcy under 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

Section 7. Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Revised Code Section 9.66, (A) the Company affirmatively covenants that it does not owe: (i) any delinquent taxes to the State or to a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due, regardless of whether the amounts owed are being contested in a court of law or not; (B) the Company authorizes the City and/or the State to inspect the personal financial statements of the Company, including tax records and other similar information not ordinarily open to public inspection; and (C) the Company authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements. As provided by statute, a knowingly false statement under this section may be prosecuted as a first degree misdemeanor under Ohio Revised Code Section 2921.13, may render the Company ineligible for any future economic development assistance from the State or any political subdivision of the State, and will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(C)(4), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 9. Continuation of Exemptions. As provided in Ohio Revised Code Section 3735.671(C)(5), if for any reason the City revokes the designation of the City of Cincinnati as a Community Reinvestment Area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation authorized pursuant to this Agreement.

Section 10. City Not Liable. The Company acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate state and/or county taxing authorities. The Company acknowledges that the City does not give any guarantee or assurance that the exemption approved in this Agreement will be so approved, and the Company agrees that in no event shall the Company seek to hold the City liable in any way in the event such exemption is not granted or implemented.

Section 11. Small Business Enterprise Program.¹

A. Compliance with Small Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code (“CMC”) Section 323-1-S, “SBEs”). Pursuant to CMC Section 323-11, the City’s annual goal for SBE participation shall be thirty percent (30%) of the City’s total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve the City’s goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City’s Department of Economic Inclusion. The Company may refer interested firms to the City’s Department of Economic Inclusion for review and possible certification as an SBE. The Company shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

(i) Including qualified SBEs on solicitation lists.

(ii) Assuring that SBEs are solicited whenever they are potential sources.

The Company 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, as applicable.

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

(iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.

(v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.

(vi) The Company shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting such information as may be requested from time to time by the City.

B. Remedies for Noncompliance with Small Business Enterprise Program. Failure of the Company or its contractors and subcontractors 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 SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Company to use its 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

¹ Note: this section will be revised prior to execution due to programmatic changes being implemented by the Department of Community and Economic Development as a result of recent legislation passed by City Council.

enforce specific performance of the terms of this Section. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

Section 12. Jobs. The Company represents that, as of the date of the execution of this Agreement, the Company has (i) 4 full-time equivalent employees at the Property with a total annual payroll of \$250,000 (the "Retained Jobs"), and (ii) no existing employment at any other locations in the State.

Section 13. Job Creation and Retention.

A. Jobs to be Retained by Company. The Company agrees to use its best efforts to retain the Retained Jobs in connection with the Project.

B. Jobs to be Created by Company. The Company agrees to use its best efforts to create 50 full-time temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with remodeling.

C. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately \$210,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

D. Community Reinvestment Area Employment. The Company shall (i) adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati and (ii) give preference to residents of the City relative to residents of the State who do not reside in the City when hiring new employees under this Agreement.

E. Posting Available Employment Opportunities. To the extent allowable by law, the Company shall use its best efforts to post available employment opportunities within the Company's organization or the organization of any subcontractor working with the Company with the Ohio Means Jobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

Section 14. Equal Employment Opportunity. This Agreement is subject to the City's Equal Employment Opportunity Program contained in CMC Chapter 325. The Equal Employment Opportunity Clause in CMC Section 325-9 is incorporated by reference in this Agreement. The term "Company" is substituted for "Contractor" throughout CMC Section 325-9 in the context of this Agreement.

Section 15. Compliance with Immigration and Nationality Act. In the performance of its obligations under this Agreement, the Company agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2). Any noncompliance with such provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default

under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

Section 17. Annual Review and Report. As required by Ohio Revised Code Sections 3735.671(C)(7) and 5709.85, the Company shall provide to the City's Tax Incentive Review Council (or to the City Manager if so requested by the City) any information reasonably required by the Council or the City Manager to evaluate the Company's compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Council or City Manager. The performance of the Company's obligations stated in this Agreement shall be subject to annual review by the City's Tax Incentive Review Council (the "Annual Review and Report"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

Section 18. Revocation.

A. Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under Ohio Revised Code Section 3735.67. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the Company, the housing officer may revoke the exemption at any time after the first year of exemption. If the Company has materially failed to fulfill its obligations under this Agreement, or if the owner is determined to have violated division (E) of that section (see Section 18(B) of this Agreement), City Council, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or City Council shall notify the county auditor and the Company that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (E) of Ohio Revised Code Section 3735.671, and the reason for revoking the exemption.

B. Prior Statutory Violations. The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(E) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(C)(9), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any successor to the Company or any related member (as those terms are defined in division (E) of Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

A. Generally. As required in connection with Ohio Revised Code Section 9.66(C), the Company affirmatively covenants that it has made no false statements to the State or the City

in the process of obtaining approval for this Agreement. If any representative of the Company has knowingly made a false statement to the State or the City to obtain approval for this Agreement, or if the Company fails to provide any information expressly required under the Application, the Company shall be required to immediately return all benefits received under this Agreement (by payment of the amount of taxes exempted hereunder, paid as directed by the City within thirty (30) days of written demand) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or any political subdivision of the State pursuant to Ohio Revised Code Section 9.66(C)(1). Amounts due and not paid under this Section 19 shall bear interest at the rate of twelve percent (12%) per year. Any person who provides a false statement to secure economic development assistance (as defined in Ohio Revised Code Section 9.66) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

B. Material Representations – Board of Education Agreement and VTICA. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement or VTICA Contribution shall constitute an event of default for purposes of Section 16 (*Default*) and the basis for revocation under Section 18 (*Revocation*). Subject to the terms of the VTICA, if the VTICA is unenforceable for reasons of infeasibility or otherwise, the Company shall enter into alternative arrangements providing for the economic equivalent of the VTICA Contribution in order to support the streetcar. Such arrangements may include, but are not limited to, providing for the economic equivalent of the VTICA Contribution through formation of a special improvement district. For purposes of this Section 19.B, alternative arrangements must result in services substantially similar to those that would have been supported through the VTICA and at a value that is the economic equivalent of the VTICA Contribution, which value shall not be required to exceed the VTICA Contribution amount that would have been payable by the Company. Any determination of infeasibility or mechanism for providing alternative arrangements is subject to approval by the City at its sole discretion. Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project, and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

Section 21. Annual Fee. As authorized by Ohio Revised Code Section 3735.671(D), the Company shall pay an annual fee of Five Hundred Dollars (\$500) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred Dollars (\$2,500) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

Section 23. Notices. Unless otherwise specified herein, each party shall address written notices, demands and communications in connection with this Agreement to the other party as follows (or to such other address as is communicated in accordance with this Section):

To the City:

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

To the Company:

Eric Brown
EK Brown Properties LLC
800 Stanton Ave
Terrace Park, OH 45174

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

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition 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 Project partner, the Company shall use either the phrase "Project Assistance 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.

Section 25. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the City and the Company with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto.

Section 26. Governing Law. This Agreement is entered into and is to be performed in the State. The City and the Company agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 28. Severability. This Agreement shall be severable; if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 29. Amendment. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. Non-Assignment. As required by Ohio Revised Code Section 3735.671(C)(8), this Agreement is not transferable or assignable by the Company without the express written approval of the City Manager of the City. If the Company has entered into a Board of Education Agreement or VTICA in connection with the Property, the City shall not approve the assignment of this Agreement unless the assignee has assumed the Company's remaining obligations under the Board of Education Agreement and VTICA, as applicable. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement or VTICA upon transfer of the Property during the term of the tax

abatement authorized by this Agreement shall be basis for revocation of the tax exemption under Section 18.

Section 31. Recording. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. Legislative Action Required. As provided in Ohio Revised Code Section 3735.671(C)(10), the Company and the City acknowledge that this Agreement must be approved by formal action of the City Council of the City as a condition for this Agreement to take effect. Notwithstanding anything to the contrary herein, this Agreement shall take effect after the later of the date of such approval or the final date of execution of this Agreement by all parties.

Section 33. Additional Representations and Warranties of Company. The Company represents and warrants that (a) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder; (b) no notices to, or consents, authorizations or approvals of, any person are required (other than any already given or obtained) for its due execution, delivery and performance of this Agreement; and (c) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Company.

Section 34. Certification as to Non-Debarment. The Company represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, the Company shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If the Company or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, the company shall be considered in default under this Agreement.

Section 35. Appeals. Pursuant to Ohio Revised Code Section 3735.70, a person aggrieved under the Statute or this Agreement may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Section 36. 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.

Section 37. Legal Requirements. In completing and operating the Project, the Company 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.

Section 38. Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

Remainder of this page intentionally left blank. Signature page follows.

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

CITY OF CINCINNATI,
an Ohio municipal corporation

EK BROWN PROPERTIES LLC,
Error! Reference source not found.

By: _____
John P. Curp, Interim City Manager

By: _____

Date: _____, 2022

Printed Name: _____

Title: _____

Date: _____, 2022

Authorized by resolution dated _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

Address: 810 Plum Street, Cincinnati, Ohio 45202
Auditor's Parcel #: 077-0001-0030-00

ALL THAT LOT OF GROUND SITUATED IN THE CITY OF CINCINNATI, OHIO AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST SIDE OF PLUM STREET BETWEEN 8TH AND 9TH STREETS, DISTANT 47 FEET SOUTH FROM 9TH STREET, THENCE RUNNING EAST PARALLEL WITH 9TH STREET AND ALONG THE SOUTH LINE OF LOT NO. 215 IN JACOB BURNETT'S SUBDIVISION, 100 FEET TO AN ALLEY; THENCE SOUTH WITH THE WEST LINE OF SAID ALLEY 48 FEET TO AN ALLEY; THENCE WEST IN THE NORTH LINE OF SAID LAST MENTIONED ALLEY AND PARALLEL WITH 9TH STREET, 100 FEET TO PLUM STREET, THENCE NORTH WITH THE EAST LINE OF PLUM STREET, 48 FEET TO THE PLACE OF BEGINNING. BEING LOTS NO. 214 AND 213 IN JACOB BURNETT'S SUBDIVISION.

Exhibit B to CRA Agreement
APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

May 11, 2022

To: Mayor and Members of City Council **202201161**
From: John P. Curp, Interim City Manager
Subject: **ORDINANCE – CRA AGREEMENT WITH 123 E MCMICKEN AVENUE, LLC**

Attached is an Ordinance captioned:

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with 123 E. McMicken Avenue, LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 123 E. McMicken Ave in Over-the-Rhine, in connection with the remodeling of an existing building into approximately 1,530 square feet of commercial space at a total remodeling cost of approximately \$272,488.

BACKGROUND/CURRENT CONDITIONS

123 E McMicken Avenue, LLC (the “Developer”) currently owns the 142-year-old building located at 123 E. McMicken Avenue in Over-the-Rhine. Given the age of the property, it requires substantial reinvestment to bring it to market standards.

DEVELOPER INFORMATION

123 E McMicken Avenue, LLC is affiliated with OTR A.D.O.P.T. OTR A.D.O.P.T. has eleven years of experience in the preservation of historic buildings and has redeveloped properties in Over-the-Rhine and the West End. Previous projects include 1702 Central Parkway, 1620 Walnut Street, and 2013 Colerain Avenue.

PROJECT DESCRIPTION

The Developer plans to remodel the 142-year-old building into approximately 1,530 square feet of commercial space that will serve as Action Tank’s headquarters, as well as a coworking and community space for residents. The total project cost is expected to be approximately \$352,909. The project will support the creation of 1.5 Full-Time Equivalent jobs with \$46,800 in annual payroll and 2.5 temporary construction jobs with \$185,587 in annual payroll.

PROPOSED INCENTIVE

DCED is recommending a 100% (net 52%), 15-year CRA tax exemption for this property.

The exemption applies only to the increase in value of the building attributable to the project improvements.

SUMMARY	
Incentive Value	
Annual Net Incentive to Developer	\$2,219
Total Term Incentive to Developer	\$33,282
City's Portion of Property Taxes Forgone	\$8,994
Public Benefit	
CPS PILOT	
Annual CPS Pilot	\$1,408
Total Term CPS PILOT	\$21,121
VTICA	
Annual VTICA	\$640
Total Term VTICA	\$9,601
Income Tax (Max)	\$46,217
Total Public Benefit (CPS PILOT/VTICA /Income Tax)	\$76,938
Total Public Benefit ROI*	\$2.31
City's ROI*	\$8.55

*If the project were going to happen regardless of incentive, this is the return of real dollars for public benefits as potential future dollars are forgone

PROFORMA WITHOUT ABATEMENT	
Revenue	\$31,624
Operating Expenses and Reserves	\$14,865
Net Operating Income	\$16,760
Debt Service	\$6,724
Cash Flow After Debt Service	\$10,035
Cash on Cash Return	9.50%

PROFORMA WITH ABATEMENT	
Revenue	\$31,624
Operating Expenses and Reserves	\$12,510
Net Operating Income	\$19,114
Debt Service	\$6,724
Cash Flow After Debt Service	\$12,389
Cash on Cash Return	11.70%

Market rate of return: ~8-10%

Pursuant to the Commercial CRA policy established by City Council, this project is located within the Streetcar VTICA Area and is therefore eligible for a 100% (net 52%), 15-year tax exemption. The project merits a fifteen-year, net 52% CRA Tax Abatement based on the following criteria:

- While the project proforma is healthy, the primary tenant to the building will be a lease with the non-profit Action Tank. DCED is recommending the incentive to limit the operating costs (including property taxes) that are passed along by the landlord to the tenant who is a nonprofit organization with limited resources.
- Net 15% Streetcar VTICA contribution totals to \$9,601
- The project will support the creation of 1.5 Full-Time Equivalent jobs with \$46,800 in annual payroll and 2.5 temporary construction jobs with \$185,587 in annual payroll.

PROJECT TEAM & TIMELINE

The project team (listed below) will make themselves available at the request of the Councilmember(s).

- Assistant City Manager: Billy Weber (Ext. 3318)
- DCED Director: Markiea Carter (Ext. 1953)
- Project Attorneys: Samantha Brandenburg (Ext. 4704)

The anticipated Council timeline is as follows:

- May 11, 2022: Introduction to City Council
- May 16, 2022: Budget and Finance (1)
- May 23, 2022: Budget and Finance (2)
- May 30, 2022: Budget and Finance (3)
- June 1, 2022: City Council for Final Approval

RECOMMENDATION

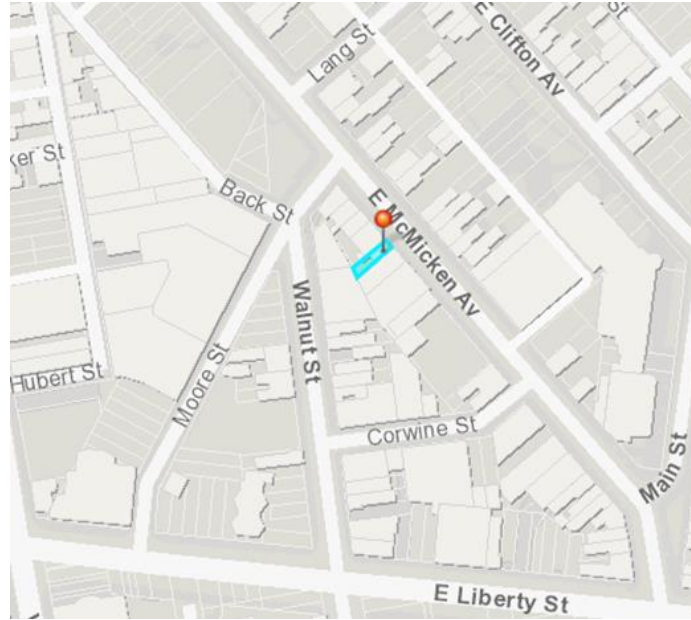
The Administration recommends approval of this Ordinance.

The project will bring a currently vacant building back into commercial use in Over-the-Rhine, further adding to the neighborhood's vibrancy. After 142 years, this property requires substantial reinvestment to bring it to market standards, and to enable it to contribute positively in the forthcoming decades.

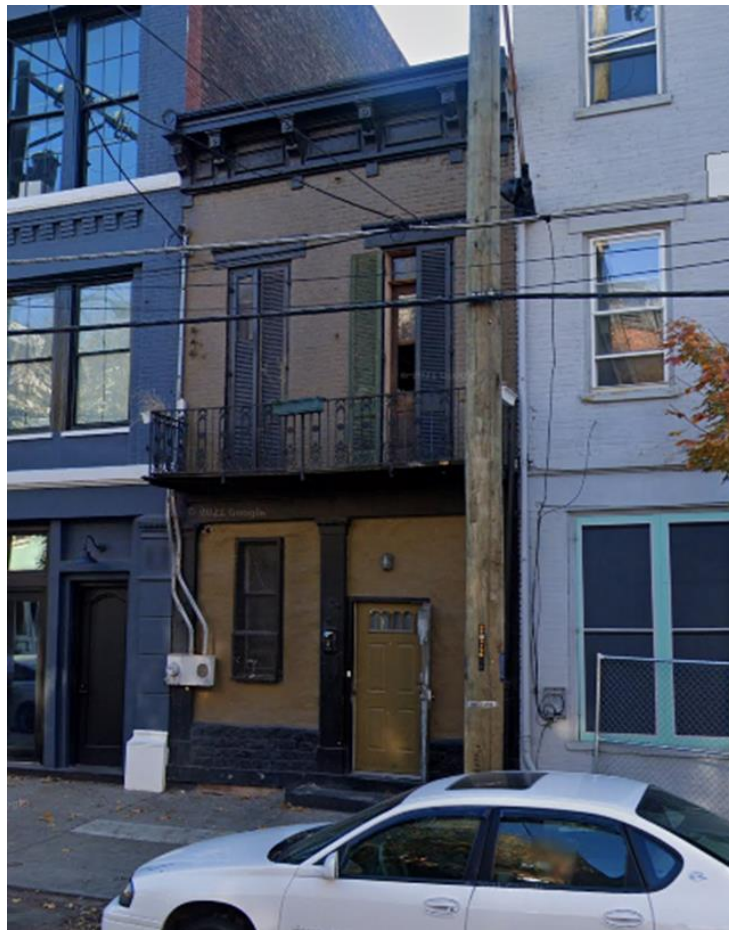
Attachment: A. Property location and photographs

Copy: Markiea L. Carter, Director, Department of Community & Economic Development

Attachment A: Property Location and Photographs



Property Location



123 E. McMicken Avenue

City of Cincinnati

ZDS *AWB*

An Ordinance No. _____

-2022

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with 123 E McMicken Avenue, LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 123 E. McMicken Avenue in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of an existing building into approximately 1,530 square feet of commercial space, at a total construction cost of approximately \$272,488.

WHEREAS, to encourage the development of real property and the acquisition of personal property, the Council of the City of Cincinnati by Ordinance No. 274-2017 passed on September 27, 2017, designated the area within the corporate boundaries of the City of Cincinnati as a “Community Reinvestment Area” pursuant to Ohio Revised Code (“ORC”) Sections 3735.65 through 3735.70 (the “Statute”); and

WHEREAS, Ordinance No. 275-2017 passed by this Council on September 27, 2017, as amended by Ordinance No. 339-2018, passed by this Council on October 31, 2018, sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area; and

WHEREAS, effective October 23, 2017, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute; and

WHEREAS, 123 E McMicken Avenue, LLC (the “Company”) desires to remodel an existing building into approximately 1,530 square feet of commercial space on real property at 123 E. McMicken Avenue located within the corporate boundaries of the City of Cincinnati (the “Improvements”), provided that the appropriate development incentives are available to support the economic viability of the Improvements; and

WHEREAS, to provide an appropriate development incentive for the Improvements, the City Manager has recommended a *Community Reinvestment Area Tax Exemption Agreement*, in substantially the form of Attachment A to this ordinance, to authorize a real property tax exemption for the Improvements in accordance with the Statute; and

WHEREAS, the property is located within the Cincinnati City School District; and

WHEREAS, the Board of Education of the Cincinnati City School District (the “Board of Education”), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020 (as may be amended, the “Board of Education Agreement”), has approved exemptions of up to 100% of Community Reinvestment Area projects, waived advance notice and the right to review

such projects, and waived sharing or allocation of municipal income taxes in connection with such projects; and

WHEREAS, pursuant to the Board of Education Agreement, the Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to 33% of the exempt real property taxes; and

WHEREAS, the Company has represented that it has entered into (or will enter into) a voluntary tax incentive contribution agreement with a third-party organization for amounts equal to 15% of the exempt real property taxes, which funds shall be committed by the third-party organization to support the streetcar that specially benefits the property; and

WHEREAS, the Improvements do not involve relocation of part or all of the Company's operations from another county or municipal corporation in Ohio or, if there is relocation, notice has been given per ORC Section 3735.673; now, therefore,

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

Section 1. That Council approves a *Community Reinvestment Area Tax Exemption Agreement* with 123 E McMicken Avenue, LLC (the "Agreement"), thereby authorizing a 15-year tax exemption for 100% of the assessed value of improvements to be made to real property located at 123 E. McMicken Avenue in Cincinnati, as calculated by the Hamilton County Auditor, in connection with the remodeling of an existing building into approximately 1,530 square feet of commercial space, to be completed at a total construction cost of approximately \$272,488.

Section 2. That Council authorizes the City Manager:

- (i) to execute the Agreement on behalf of the City in substantially the form of Attachment A to this ordinance; and
- (ii) to forward on behalf of Council a copy of the Agreement, within fifteen (15) days after execution, to the Director of the Ohio Development Services Agency in accordance with Ohio Revised Code Section 3735.671(F); and
- (iii) to submit on behalf of Council annual reports on the Agreement to the Director of the Ohio Development Services Agency and to the Board of Education of the Cincinnati City School District, in accordance with Ohio Revised Code Section 3735.672; and

(iv) to take all necessary and proper actions to fulfill the City's obligations under the Agreement.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

Community Reinvestment Area Tax Exemption Agreement

This Community Reinvestment Area Tax Exemption Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and 123 E MCMICKEN AVENUE, LLC, an Ohio limited liability company (the "Company").

Recitals:

- A. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- B. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- C. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018, passed on October 31, 2018, Ordinance No. 370-2020, passed on November 12, 2020, and Ordinance No. 24-2022, passed on February 2, 2022 (as amended, the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. The Company is the sole owner of certain real property within the City, located at 123 E. McMicken Avenue, Cincinnati, Ohio 45202 (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- E. The Company has proposed to remodel a building located on the Property, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"), provided that the appropriate development incentives are available to support the economic viability of the Project.
- F. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing five or more dwelling units, in order to be eligible for tax exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.
- G. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.
- H. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the

City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars (\$750) made payable to the Ohio Development Services Agency (“ODSA”), to be forwarded to the ODSA with an executed copy of this Agreement.

- I. The Director of the City’s Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- J. The Board of Education of the Cincinnati City School District (the “Board of Education”), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- K. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the “Board of Education Agreement”).
- L. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the “State”).
- M. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- N. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- O. City Council passed (i) Motion No. 201401368 on November 19, 2014, establishing a tax incentive policy that incentivizes each applicant for a real property tax abatement in the neighborhoods of Downtown and OTR to enter into a voluntary tax incentive contribution agreement with a third-party organization (“VTICA”) for an amount equal to a percentage of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the “VTICA Contribution”), which funds shall be committed by a third-party organization to support the streetcar that specially benefits the abated property, and (ii) Motion No. 201501592 on December 16, 2015, which established that the VTICA Contribution to be recognized by the Director of the Department of Community and Economic Development is 15% of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement. The Commercial Policy Ordinance confirmed that such motions have not been superseded and remain the will of Council.
- P. The Company acknowledges that the Streetcar will specially benefit the Project due to (a) the Streetcar’s enhancement of public transit options in such neighborhoods and (b) the anticipated increase in property values attributable to public investment in Streetcar infrastructure.
- Q. The Company represents and warrants to the City that the Company has entered or will enter into a VTICA and shall pay the VTICA Contribution each year for the full term of the abatement.
- R. This Agreement has been authorized by Ordinance No. _____-2022, passed by Cincinnati City Council on _____, 2022.

- S. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company's representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, the VTICA Contribution, and the Project's effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to remodel an existing building on the Property into approximately 1,530 square feet of commercial space (the "Improvements") at an estimated aggregate cost of \$272,488 to commence after the execution of this Agreement and to be completed no later than March 31, 2024 *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his or her discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The remodeling shall be in compliance with applicable building code requirements and zoning regulations. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, 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 the Company 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.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of one hundred percent (100%) of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of fifteen (15) years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of remodeling, (B) the cost of remodeling, (C) the facts asserted in the application for exemption and (D) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the remodeling has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2025 nor extend beyond the earlier of (i) tax year 2039 or (ii) the end of the fifteenth (15th) year of exemption.

Section 3. Use; Maintenance; Inspections. The Company shall use the Property solely for the purposes described in Section 1 hereof and shall properly maintain and repair the Property throughout the period of tax exemption authorized herein. The Company authorizes the Housing Officer, or the Housing Officer's designees, to enter upon the Property as reasonably required to perform property inspections in accordance with Ohio Revised Code Section 3735.68.

Section 4. Compliance with Board of Education Agreement. As a condition of the tax exemption authorized under this Agreement, the Company agrees to enter into and comply with its obligation under the Board of Education Agreement.

Section 5. Duty of Company to Pay Taxes. As required by Ohio Revised Code Section 3735.671(C)(2), the Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions from taxation granted or authorized under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and continuing thereafter.

Section 6. Company Certifications Regarding Non-Delinquency of Tax Obligations. As required by Ohio Revised Code Section 3735.671(C)(3), the Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which the Company is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747 or 5753, or if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, has filed a petition in bankruptcy under 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

Section 7. Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Revised Code Section 9.66, (A) the Company affirmatively covenants that it does not owe: (i) any delinquent taxes to the State or to a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due, regardless of whether the amounts owed are being contested in a court of law or not; (B) the Company authorizes the City and/or the State to inspect the personal financial statements of the Company, including tax records and other similar information not ordinarily open to public inspection; and (C) the Company authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements. As provided by statute, a knowingly false statement under this section may be prosecuted as a first-degree misdemeanor under Ohio Revised Code Section 2921.13, may render the Company ineligible for any future economic development assistance from the State or any political subdivision of the State, and will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(C)(4), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 9. Continuation of Exemptions. As provided in Ohio Revised Code Section 3735.671(C)(5), if for any reason the City revokes the designation of the City of Cincinnati as a Community Reinvestment Area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation authorized pursuant to this Agreement.

Section 10. City Not Liable. The Company acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate state and/or county taxing authorities. The Company acknowledges that the City does not give any guarantee or assurance that the exemption approved in this Agreement will be so approved, and the Company agrees that in no event shall the Company seek to hold the City liable in any way in the event such exemption is not granted or implemented.

Section 11. Small Business Enterprise Program.¹

A. Compliance with Small Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code (“CMC”) Section 323-1-S, “SBEs”). Pursuant to CMC Section 323-11, the City’s annual goal for SBE participation shall be thirty percent (30%) of the City’s total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve the City’s goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City’s Department of Economic Inclusion. The Company may refer interested firms to the City’s Department of Economic Inclusion for review and possible certification as an SBE. The Company shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

- (i) Including qualified SBEs on solicitation lists.
- (ii) Assuring that SBEs are solicited whenever they are potential sources. The Company 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, as applicable.
- (iii) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.
- (iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.
- (v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.
- (vi) The Company shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting such information as may be requested from time to time by the City.

B. Remedies for Noncompliance with Small Business Enterprise Program. Failure of the Company or its contractors and subcontractors 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 SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Company to use its 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. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

Section 12. Jobs. The Company represents that, as of the date of the execution of this Agreement, there are (i) 2 full-time equivalent employees in Cincinnati that will relocate to the Property with a total annual payroll of \$112,000 (the “Retained Jobs”), and (ii) the Company has no existing employment at any other locations in the State.

¹ Note: this section will be revised prior to execution due to programmatic changes being implemented by the Department of Community and Economic Development as a result of recent legislation passed by City Council.

Section 13. Job Creation and Retention.

A. Jobs to be Retained by Company. The Company agrees to use its best efforts to retain or cause to be retained the Retained Jobs in connection with the Project.

B. Jobs to be Created by Company. The Company agrees to use its best efforts to create or cause to be created (i) 1.5 full-time equivalent permanent jobs and (ii) 2.5 full-time temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with remodeling, and in the case of the other jobs described herein, the job creation period shall begin upon completion of remodeling and shall end three (3) years thereafter.

C. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately (i) \$46,800 of additional annual payroll with respect to the full-time equivalent permanent jobs and (ii) \$185,587 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

D. Community Reinvestment Area Employment. The Company shall (i) adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati and (ii) give preference to residents of the City relative to residents of the State who do not reside in the City when hiring new employees under this Agreement.

E. Posting Available Employment Opportunities. To the extent allowable by law, the Company shall use its best efforts to post available employment opportunities within the Company's organization or the organization of any subcontractor working with the Company with the Ohio Means Jobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

Section 14. Equal Employment Opportunity. This Agreement is subject to the City's Equal Employment Opportunity Program contained in CMC Chapter 325. The Equal Employment Opportunity Clause in CMC Section 325-9 is incorporated by reference in this Agreement. The term "Company" is substituted for "Contractor" throughout CMC Section 325-9 in the context of this Agreement.

Section 15. Compliance with Immigration and Nationality Act. In the performance of its obligations under this Agreement, the Company agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2). Any noncompliance with such provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this

Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

Section 17. Annual Review and Report. As required by Ohio Revised Code Sections 3735.671(C)(7) and 5709.85, the Company shall provide to the City's Tax Incentive Review Council (or to the City Manager if so requested by the City) any information reasonably required by the Council or the City Manager to evaluate the Company's compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Council or City Manager. The performance of the Company's obligations stated in this Agreement shall be subject to annual review by the City's Tax Incentive Review Council (the "Annual Review and Report"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

Section 18. Revocation.

A. Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under Ohio Revised Code Section 3735.67. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the Company, the housing officer may revoke the exemption at any time after the first year of exemption. If the Company has materially failed to fulfill its obligations under this Agreement, or if the owner is determined to have violated division (E) of that section (see Section 18(B) of this Agreement), City Council, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or City Council shall notify the county auditor and the Company that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (E) of Ohio Revised Code Section 3735.671, and the reason for revoking the exemption.

B. Prior Statutory Violations. The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(E) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(C)(9), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any successor to the Company or any related member (as those terms are defined in division (E) of Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

A. Generally. As required in connection with Ohio Revised Code Section 9.66(C), the Company affirmatively covenants that it has made no false statements to the State or the City in the process of obtaining approval for this Agreement. If any representative of the Company has knowingly made a false statement to the State or the City to obtain approval for this Agreement, or if the Company fails to provide any information expressly required under the Application, the Company shall be required to immediately return all benefits received under this Agreement (by payment of the amount of taxes exempted hereunder, paid as directed by the City within thirty (30) days of written demand) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or any political subdivision of the State pursuant to Ohio Revised Code Section 9.66(C)(1). Amounts due and not paid under this Section 19 shall bear

interest at the rate of twelve percent (12%) per year. Any person who provides a false statement to secure economic development assistance (as defined in Ohio Revised Code Section 9.66) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

B. Material Representations – Board of Education Agreement and VTICA. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement or VTICA Contribution shall constitute an event of default for purposes of Section 16 (*Default*) and the basis for revocation under Section 18 (*Revocation*). Subject to the terms of the VTICA, if the VTICA is unenforceable for reasons of infeasibility or otherwise, the Company shall enter into alternative arrangements providing for the economic equivalent of the VTICA Contribution in order to support the streetcar. Such arrangements may include, but are not limited to, providing for the economic equivalent of the VTICA Contribution through formation of a special improvement district. For purposes of this Section 19.B, alternative arrangements must result in services substantially similar to those that would have been supported through the VTICA and at a value that is the economic equivalent of the VTICA Contribution, which value shall not be required to exceed the VTICA Contribution amount that would have been payable by the Company. Any determination of infeasibility or mechanism for providing alternative arrangements is subject to approval by the City at its sole discretion. Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project, and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

Section 21. Annual Fee. As authorized by Ohio Revised Code Section 3735.671(D), the Company shall pay an annual fee of Five Hundred Dollars (\$500) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred Dollars (\$2,500) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

Section 23. Notices. Unless otherwise specified herein, each party shall address written notices, demands and communications in connection with this Agreement to the other party as follows (or to such other address as is communicated in accordance with this Section):

To the City:

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

To the Company:

123 E McMicken Avenue, LLC
1311 Vine Street
Cincinnati, Ohio 45202
Attention: Ashley Feist

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

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition 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 Project partner, the Company shall use either the phrase "Project Assistance 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.

Section 25. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the City and the Company with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto.

Section 26. Governing Law. This Agreement is entered into and is to be performed in the State. The City and the Company agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 28. Severability. This Agreement shall be severable; if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 29. Amendment. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. Non-Assignment. As required by Ohio Revised Code Section 3735.671(C)(8), this Agreement is not transferable or assignable by the Company without the express written approval of the City Manager of the City. If the Company has entered into a Board of Education Agreement or VTICA in connection with the Property, the City shall not approve the assignment of this Agreement unless the assignee has assumed the Company's remaining obligations under the Board of Education Agreement and VTICA, as applicable. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement or VTICA upon transfer of the Property during the term of the tax abatement authorized by this Agreement shall be basis for revocation of the tax exemption under Section 18.

Section 31. Recording. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. Legislative Action Required. As provided in Ohio Revised Code Section 3735.671(C)(10), the Company and the City acknowledge that this Agreement must be approved by formal action of the City Council of the City as a condition for this Agreement to take effect. Notwithstanding anything to the contrary herein, this Agreement shall take effect after the later of the date of such approval or the final date of execution of this Agreement by all parties.

Section 33. Additional Representations and Warranties of Company. The Company represents and warrants that (a) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder; (b) no notices to, or consents, authorizations or approvals of, any person are required (other than any already given or obtained) for its due execution, delivery and performance of this Agreement; and (c) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Company.

Section 34. Certification as to Non-Debarment. The Company represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, the Company shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If the Company or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, the company shall be considered in default under this Agreement.

Section 35. Appeals. Pursuant to Ohio Revised Code Section 3735.70, a person aggrieved under the Statute or this Agreement may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Section 36. 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.

Section 37. Legal Requirements. In completing and operating the Project, the Company 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.

Section 38. Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

Remainder of this page intentionally left blank. Signature page follows.

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

CITY OF CINCINNATI,
an Ohio municipal corporation

123 E MCMICKEN AVENUE, LLC,
Error! Reference source not found.

By: _____
John P. Curp, Interim City Manager

By: 123 E McMicken Avenue Manager, LLC
Error! Reference source not found.
its managing member

Date: _____, 2022

By: _____
Daniel Klingler, Manager

Date: _____, 2022

Authorized by resolution dated _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

Address: 123 E. McMicken Avenue, Cincinnati, Ohio 45202
Auditor's Parcel No.: 094-0007-0221-00

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

That certain lot being Fourteen (14) feet and Ten (10) inches off the Northerly side of Lot Number One Hundred and Sixty-four (164) on the plat on Hugh Moore's Subdivision, made under order of partition of the Superior Court of Cincinnati in the year, 1918, said Lot One Hundred Sixty-Four (164) fronting Twenty (20) feet on the Southeasterly side of the Hamilton Road back to the rear line of the lots fronting on Walnut Street.

Subject to rights of access and maintenance obligations benefitting the contiguous property known as 125 East McMicken Avenue as contained in a deed recorded in Official Record Volume 5969, Page 1023, Hamilton County, Ohio Records.

094-0007-0221-00

Exhibit B to CRA Agreement
APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED