



CONTRACT NO. _____

OPERATIONS AGREEMENT Cincinnati Access to Capital Program

THIS OPERATIONS AGREEMENT (“**Agreement**”) is made as of the Effective Date (as defined on the signature page hereof) by and among the **CITY OF CINCINNATI**, an Ohio municipal corporation (the “**City**”), the address of which is 801 Plum Street, Cincinnati, Ohio 45202, **BUILD CINCINNATI DEVELOPMENT FUND LLC**, an Ohio limited liability company (“**BCDF**”), the address of which is 1224 Race Street, Cincinnati, Ohio 45202, and **CINCINNATI HOUSING DEVELOPMENT FUND LLC**, an Ohio limited liability company (“**CHDF**”; and together with BCDF, collectively, “**Operator**”), the address of which is 1224 Race Street, Cincinnati, Ohio 45202.

RECITALS:

A. In 2003, the City and Cincinnati Development Fund, Inc. (“**CDF**”), an Ohio non-profit corporation and managing member of Operator, collaborated to form the Cincinnati Housing Development Fund loan program (the “**CHDF Program**”), to be managed and operated by CHDF. The City’s overall funding commitment to the CHDF Program was \$15,000,000. The City’s funds were used to serve as cash collateral for loans originated by CHDF, in which the member financial institutions participated. The City would provide an amount equal to 15% of the principal amount of a CHDF loan to serve as cash collateral for the loans. CHDF loans were made for the purpose of enabling developers to finance acquisition, rehabilitation, and new construction of market-rate residential development in areas suffering from blight and underinvestment.

B. In 2009, the City, CDF, and CHDF agreed to a restructuring of the CHDF Program into the Build Cincinnati Development Fund loan program (the “**BCDF Program**”), to be managed and operated by BCDF pursuant to a certain *Build Cincinnati Development Fund BCDF Operations Agreement* dated as of March 15, 2010, among the City and Operator, as amended by that certain *First Amendment to Build Cincinnati Development Fund BCDF Operations Agreement* dated April 7, 2015, that certain *Second Amendment to Build Cincinnati Development Fund BCDF Operations Agreement* dated October 19, 2018, and that certain *Third Amendment to Build Cincinnati Development Fund BCDF Operations Agreement* dated December 9, 2021 (as amended, the “**BCDF Operations Agreement**”).

C. The BCDF Program (i) maintained the City-provided cash collateral concept, (ii) expanded the eligible lending purposes under the CHDF Program to include mixed-use and commercial development, and (iii) increased the City’s per-loan collateralization to 75% of the principal amount of each loan.

D. The City and Operator desire to cooperate in the creation of a new program to be known as the Cincinnati Access to Capital Program (as described more particularly in this Agreement, the “**ATC Program**”). The purpose of the ATC Program is to provide credit enhancement funding to support loans originated by Operator, and with funds provided by Operator’s participating lenders (“**Participating Lenders**”), similar in concept to the BCDF and CHDF Programs, but to facilitate lending to contractors and developers that would not typically have readily-available access to capital for projects located entirely within the City’s corporate boundaries, with a particular (though non-exclusive) emphasis on cultivating the growth of minority-owned businesses within the City’s neighborhoods. As further described herein, the businesses receiving such loans shall be referred to, collectively, as the “**Participants**,” and each, individually, as a “**Participant**,” and such loans, made in accordance with the parameters set forth in this Agreement, shall be referred to, collectively, as the “**Loans**,” and each, individually, a “**Loan**.”

E. The City desires to redirect **\$3,000,000** of the existing BCDF funds under the BCDF Program on deposit with the City’s Finance Department (the “**Existing BCDF Funds**”) to fund the credit-enhancement of the ATC Program (the “**ATC Funds**”) and to cultivate an accessible and flexible lending

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environment for businesses that would not typically have readily-available access to the capital required to grow. Following the redirection of the ATC Funds consistent with this Agreement, there is **\$5,800,000** of funds on deposit in third-party collateral accounts with BCDF Program participating financial institutions, in addition to \$1,000,000 held in the City's BCDF account reserved through a loan loss agreement, which will be recycled through the BCDF Program upon maturity of the applicable loans.

F. The City and Operator desire to enter into this Agreement to memorialize their agreement with respect to Operator's operation of the ATC Program.

G. Execution of this Agreement was authorized by Ordinance No. _____-2024, passed by City Council on _____, 2024.

NOW, THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties mutually agree as follows:

1. THE PROGRAM. Subject to the terms of this Agreement, Operator shall, in a satisfactory and proper manner as determined by the City Manager of the City, operate and administer the ATC Program as more fully described in Exhibit A (*Scope of Services*) attached hereto. Operator shall engage in the business of making Loans pursuant to participation agreements with one or more Participating Lenders substantially in the form attached hereto as Exhibit B (*Form of Participation Agreement*), as may be amended by BCDF and Participating Lenders on a case-by-case basis, subject to this Agreement. For each Loan the City will create a reserve within the Program Funds Account (as defined below) in accordance with the limitations in Exhibit A relating to specific Loans ("**Loan Loss Reimbursement**") made pursuant to a loan loss reimbursement agreement ("**Loan Loss Reimbursement Agreement**") substantially in the form attached hereto as Exhibit C (*Form of Loan Loss Reimbursement Agreement*). No lender or financial institution shall be a Participating Lender for the ATC Program without having previously entered into a Loan Loss Reimbursement Agreement with the City. For the avoidance of doubt, participating lenders under the BCDF Program must execute a new Loan Loss Reimbursement Agreement with the City to participate in the ATC Program.

2. TERM. This Agreement shall be effective on the Effective Date and shall continue in effect until such time as the City, BCDF, and CHDF execute an agreement terminating this Agreement, upon mutually agreeable terms and conditions (the "**Termination Agreement**"), or such later date upon the final disposition of all Loans have been returned to the City (the "**Term**"), unless this Agreement is sooner terminated as herein provided, *provided that* Operator and the City acknowledge that Operator has certain reporting requirements as documented in this Agreement that may extend past the Term and Operator shall perform those obligations after the Term. Operator shall not originate any new Loans, as evidenced by a fully executed commitment letter between Operator and a Participant, after the execution of the Termination Agreement.

3. FUNDS. Subject to the terms and conditions of this Agreement, the City shall create a new, separate interest-bearing account in the City's financial system (the "**Program Funds Account**") and shall redirect an amount not to exceed the ATC Funds of the Existing BCDF Funds on deposit with the City's Finance Department to the Program Funds Account. The ATC Funds held in the Program Funds Account, including the interest earned thereon, will be available to Operator and Participating Lenders during the Term for purposes of implementing the ATC Program in accordance with this Agreement.

4. AMENDMENT OF BCDF OPERATIONS AGREEMENT. The parties agree that the obligations of Operator under this Agreement are separate from and in addition to its obligations under the BCDF Operations Agreement. Notwithstanding the foregoing, the BCDF Operations Agreement is hereby deemed amended to the extent that it is inconsistent or in conflict with the terms and conditions of, or would in any way impede the prompt and complete performance by the City or Operator of, this Agreement or the ATC Program. For the avoidance of doubt, the City and Operator acknowledge and agree that this Agreement does not amend the operation of the BCDF Program, except for the limited purpose of redirecting the ATC Funds.

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5. NOTICES. All notices shall be personally delivered or sent by U.S. mail addressed to the parties as follows, with an electronic copy emailed to the email address listed below, or addressed in such other way in respect to either party as that party may from time to time designate. Operator shall promptly notify the City of any change of address. If Operator sends a notice to the City that the City is in default under this Agreement, Operator shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, Ohio 45202.

<p><u>To the City:</u> Department of Community and Economic Development City of Cincinnati 805 Central Avenue, Suite 700 Cincinnati, Ohio 45202 Attention: Markiea Carter, Director Markiea.carter@cincinnati-oh.gov</p>	<p><u>To Operator:</u> Build Cincinnati Development Fund LLC Cincinnati Housing Development Fund LLC 1224 Race Street Cincinnati, Ohio 45202 Attn: Joe Huber, President & CEO jhuber@cincinnati-developmentfund.org</p>
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6. PROGRAM COLLABORATION AND EVALUATION. No later than the date that is five years after the Effective Date, the parties will collaborate in good faith to ensure the operation of the ATC Program is meeting the program goals of the City. Notwithstanding the foregoing, at any point during the Term, the parties may amend this Agreement on mutually acceptable terms and conditions.

7. CREATION OF PROGRAM GUIDELINES. Operator shall provide to the City’s Department of Community and Economic Development (“**DCED**”) for its review and approval: (i) eligibility guidelines related to the criteria for selection of Participants; (ii) underwriting guidelines related to the issuance of Loans; and (iii) guidelines establishing additional terms in accordance with this Agreement (collectively, the “**Program Guidelines**”). Operator shall receive DCED’s prior written approval to make material amendments to the Program Guidelines.

8. AUTHORIZATIONS. All notices, approvals, authorizations, waivers, instructions, or determinations by the City shall be effective only when written and signed by the individual identified to receive notice for the City in Section 5 above or his or her designee.

9. INDEPENDENT CONTRACTOR. Operator shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of the City. Operator shall have exclusive control of and the exclusive right to control the details of work performed hereunder and all persons performing the same and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be construed as creating a partnership or joint venture between the City and Operator. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

10. SUBCONTRACTS, SUCCESSORS, AND ASSIGNS.

A. Subcontracts. Operator agrees that operation of the ATC Program shall not be subcontracted without the prior written approval of the City. The operation of the ATC Program subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each

provision of this Agreement. In the event that Operator employs a subcontractor without first securing the City's written approval of the subcontractor by the City, Operator shall be in default of this Agreement.

B. Assignment. Operator shall not assign or transfer its interest in this Agreement without the prior written consent of the City. Notwithstanding the foregoing, Operator may assign or transfer its interest in this Agreement to a subsidiary or affiliate entity controlled and managed by Operator.

11. OPERATOR'S INSURANCE AND INDEMNIFICATION.

A. Workers' Compensation. Operator shall secure and maintain such insurance as will protect Operator from claims under the Workers' Compensation Laws.

B. General Liability Insurance. Operator shall secure and maintain such commercial general liability insurance as will protect Operator from claims for bodily injury, death or property damage which may arise from the performance of Operator's services under this Agreement, with a combined single limit for bodily injury and property damage liability of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate. Operator's insurance policy shall name the City as an additional named insured and shall contain a provision prohibiting the insurer from canceling the policy without notifying the City in writing at least 90 days prior to cancellation. Within 10 days following execution of this Agreement, Operator shall send proof of all such insurance to the City at the address specified above or such other address as may be specified by the City in writing from time to time.

C. Indemnification of the City. Operator shall indemnify, defend, and save City, its agents, and employees harmless from and against any and all losses, damages, claims, causes of action, settlements, costs, charges, professional fees, and liability of every kind and character arising out of or relating to the actions or inactions by Operator, its officers, employees, agents, contractors, and subcontractors in connection with this Agreement. Further, Operator shall protect and save the City harmless from any and all obligations to reimburse any government entity for disallowed costs paid by the City to Operator.

12. COMPLIANCE WITH LAWS, REGULATIONS, AND PROGRAMS.

A. Generally. Operator shall obtain all necessary permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances, and other governmental requirements applicable to the operation of the ATC Program, including any and all applicable rules, orders, guidelines, laws, regulations, and binding directives issued by the federal government, the State of Ohio, and/or the City pertaining to COVID-19.

B. Compliance with Ohio Revised Code Section 149.431. If Operator is a non-profit corporation, it shall comply with Section 149.431 of the Ohio Revised Code, which provides: "Any non-profit corporation or association that enters into a contract with a political subdivision shall keep accurate and complete financial records of any moneys expended in relation to the performance of the services pursuant to such contract. Such contract and financial records are deemed to be public records."

C. Equal Employment Opportunity Program. This Agreement is or may be subject to the City's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. Said chapter is hereby incorporated by reference into this Agreement.

D. Minimum Wage. This Agreement is or may be subject to the provisions of Ohio Revised Code Section 4111.02 relating to minimum wage.

E. Living Wage. If the compensation for operation of the ATC Program is \$20,000 or more this Agreement is subject to the Living Wage provisions of Chapter 317 of the Cincinnati Municipal Code. The provisions require that, unless specific exemptions apply or a waiver is granted all employers (as

defined) under service contracts shall provide payment of a minimum wage to employees (as defined) at the applicable rates set forth in the code. Such rates shall be adjusted annually pursuant to the terms of the Code.

F. Prompt Payment. This Agreement is or may be subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System."

G. Small Business Enterprise Program. This Agreement is or may be subject to the provisions of the Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. Section 323-99 of the Cincinnati Municipal Code is hereby incorporated into this Agreement. Details concerning this program can be obtained from the Department of Economic Inclusion, Two Centennial Plaza, 805 Central Avenue, Suite 610, Cincinnati, Ohio 45202, (513) 352-3144. Operator shall utilize best efforts to recruit and maximize the participation of all qualified segments of the business community in subcontracting work, including the utilization of small business enterprises, including small business enterprises owned by minorities and women. This includes the use of practices such as assuring the inclusion of qualified Small Business Enterprises in bid solicitation and dividing large contracts into small contracts when economically feasible.

H. Conflict of Interest. Operator agrees to report to the City any potential conflicts of interest under any applicable laws before entering into this Agreement and agrees to report to the City any potential conflicts of interest that Operator discovers at any time during the Term.

- i. **Employee or Agent of City.** Operator agrees that no officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning and carrying out of the program, nor any immediate family member, close business associate, or organization which is about to employ any such person, shall have any personal financial interest, direct or indirect, in Operator or in this Agreement, and Operator shall take appropriate steps to assure compliance.
- ii. **Subcontractors.** Operator shall not contract with any subcontractors in which it has any personal financial interest, direct or indirect. Operator covenants that in the performance of this Agreement no person having any conflicting interest shall be employed.

I. Wage Enforcement. This Agreement 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 a contractor or subcontractor of that person, shall report all complaints or adverse determinations of Wage Theft and Payroll Fraud (as defined in Chapter 326 of the Cincinnati Municipal Code) against the person, contractor or subcontractors to the Department of Economic Inclusion within 30 days of notification of the complaint or adverse determination. Under the Wage Enforcement provisions, the City shall have the authority, under certain circumstances, to terminate this Agreement or reduce the incentives or subsidies to be provided under this Agreement and to seek other remedies.

J. Americans With Disabilities Act; Accessibility.

- i. **Applicability.** This section may be applicable if any of the ATC Funds are used for costs associated with construction or rehabilitation of real property (such construction or rehabilitation being a "Project"). Cincinnati City Council adopted Motion No. 201600188 on February 3, 2016 (the "Accessibility Motion"). The Accessibility Motion directs City administration 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.** If this section is applicable per paragraph (J)(i) above, then (a) the Project shall comply with the ADA, and (b) if (1) 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 (2) such building 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 Operator 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 (x) 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 (y) 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.

K. Prevailing Wage. Operator shall comply, and shall cause all Participants to comply with any prevailing wage requirements that may be applicable to the Loans. 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, Operator shall cause Participants to make such payments or reimburse the City for such payments within sixty (60) days of demand therefor.

13. REPORTS, INFORMATION, AND AUDITS.

A. Submission of Reports. In such form as the City may require, Operator shall collect, maintain, and furnish to the City data, information, and reports as may be requested that pertain to the work or services undertaken by this Agreement, the costs and obligations incurred or to be incurred in connection therewith, financial or operational controls, and/or any other matters covered by this Agreement, including without limitation, such accounting, financial, administrative, and operational statements and reports as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (if applicable). If requested by the City, financial statements furnished by Operator shall be audited.

B. Record Retention. Operator shall, throughout the Term of this Agreement and for a minimum of 3 years after the expiration or termination of this Agreement, keep and retain all accounting, financial, administrative, and operational statements and records pertaining to all matters covered by this Agreement.

C. Access/Right to Inspect and Audit. Upon request during the Term of this Agreement and for a period of 3 years after the expiration or termination of this Agreement, Operator shall permit the City or any designee or auditor to have access to and to inspect and audit all such accounting, financial, administrative and operational books, records, and statements of Operator that relate or pertain to this Agreement or as necessary for the City to ensure that all funds are used for authorized purposes in compliance with laws, regulations, and the provision of contracts or grant agreements and that performance expectations and goals are achieved.

14. SPECIAL REPORTING REQUIREMENTS.

A. Quarterly Reports. Within 45 days following the end of each quarter during the Term, Operator shall provide the City with a quarterly report describing the performance of the ATC Program and containing such other information and supporting documentation as the City may require.

B. Participation in Status Meetings. Operator shall participate in meetings providing updates to the City related to Operator's performance of this Agreement as reasonably requested by the City.

C. Final Report. Within 120 days following the end of the Term, Operator shall provide the City with a final report on the ATC Program and such report containing such other information and supporting documentation as the City may require. The final report shall be accompanied by the remaining ATC Funds after the disposition of all Loans.

15. CERTIFICATION AS TO NON-DEBARMENT. Operator certifies that neither Operator nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from the transaction covered by this Agreement. Operator acknowledges and agrees that if it or its principals are presently debarred, it shall not be entitled to the ATC Funds under this Agreement and it shall promptly return to the City any and all funds received pursuant to this Agreement. In such event, any and all materials received by the City pursuant to this Agreement shall be retained by the City.

16. NON-PERFORMANCE AND TERMINATION.

A. If, through any cause, Operator shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Operator shall violate any of the covenants or agreements of this Agreement, the City shall have the right to terminate this Agreement by giving written notice to Operator specifying the effective date of the termination, at least 30 days before such effective date. In such event, all finished or unfinished documents, data, studies, reports and/or information prepared by Operator under this Agreement shall, at the option of the City, become the City's property. Operator shall reimburse the City for all costs incurred by the City as a result of Operator's breach of this Agreement. Notwithstanding the foregoing provisions in this Section 16.A. to the contrary, all ATC Funds designated as credit enhancements for particular Loans prior to the termination of this Agreement, shall remain ATC Funds available to the applicable Lender until such time that underlying Loan has been paid in full or the final disposition of such Loan where the Lender may use its allocation of the ATC Fund to mitigate loan losses arising from such Loan.

B. Any periodic payments or disbursements of the ATC Funds from the City specified in this Agreement shall be contingent upon performance of contractual obligations to date, including the proper receipt of supporting receipts, invoices, reports, statements, or any other supporting information as required by the City in this Agreement. Failure to satisfactorily meet any one of the obligations of Operator hereunder may result in the City not approving periodic payments or disbursements of the ATC Funds, until Operator satisfactorily fulfills its obligations under this Agreement or satisfactorily reimburses the City for any prior payments. The City also reserves the right to seek any other legal financial remedies in connection with damages the City may have suffered by reason of Operator's default under this Agreement until all or part of the City's prior payments have been recouped as the City deems appropriate but not to exceed the total amount of any prior payments. The City also reserves the right in the event of non-performance of this Agreement to prohibit any future or limited contractual relationships with Operator either directly or indirectly.

17. OWNERSHIP OF PROPERTY. Upon the expiration or termination of this Agreement, any and all memoranda, maps, drawings, working papers, reports, and other similar documents produced in connection with this Agreement shall become the property of the City and Operator shall promptly deliver such items to the City. Operator may retain copies for Operator's records.

18. OUTSIDE CONTRACTS. Operator may contract with other public and private organizations and secure donations to provide related services, except that ATC Funds shall be used solely for the ATC Program. Operator shall include notification of the execution of any such agreement in the reports required under this Agreement. Operator shall keep records of the receipts and expenditures that result from such outside funds. Said records shall be in the same general form as for the ATC Funds provided hereunder.

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The City shall have the right to inspect said records at any time during reasonable business hours, provided that such inspection does not violate the terms of any agreement to which Operator is a party.

19. NON-EXCLUSIVE AGREEMENT. This is a non-exclusive Agreement. The City may procure the same or other similar services from other entities at any time during the Term of this Agreement.

20. CITY IDENTIFICATION IN MARKETING ACTIVITIES. Operator shall identify the City as a sponsor of activities undertaken pursuant to the terms of this Agreement on any and all stationery, informational releases, pamphlets, and brochures; and publicity, including that appearing on television or cable television, on the radio or in the press.

21. GOVERNING LAW. This Agreement is entered into and is to be performed in the State of Ohio. The City and Operator agree that the laws of the State of Ohio and City of Cincinnati shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Operator agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to all disputes arising under the Agreement.

22. WAIVER. This Agreement shall be construed in a manner that a waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

23. ENTIRETY. This Agreement and the exhibits and attachments, if any, hereto constitute the entire Agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

24. SEVERABILITY. This Agreement shall be severable, and 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.

25. AMENDMENT. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

26. REVERSION OF ASSETS. Upon the expiration or termination of this Agreement, Operator shall transfer to the City any and all ATC Funds remaining after the disposition and repayment or disposition of all Loans, which the City may return to the program account in the City's financial system containing the Existing BCDF Funds to be used for the BCDF Program.

27. 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.

28. EXHIBITS. The following attachments are hereby incorporated into and made a part of this Agreement:

- Exhibit A - *Scope of Services*
- Exhibit B - *Form of Participation Agreement*
- Exhibit C - *Form of Loan Loss Reimbursement Agreement*

SIGNATURE PAGE FOLLOWS.

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

CITY OF CINCINNATI

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

Date: _____, 2024

BUILD CINCINNATI DEVELOPMENT FUND LLC

By: Cincinnati Development Fund, Inc.
Its: Sole Member

By: _____

Name: _____

Title: _____

Date: _____, 2024

APPROVED AS TO FORM:

Assistant City Solicitor

CINCINNATI HOUSING DEVELOPMENT FUND LLC

By: Cincinnati Development Fund, Inc.
Its: Manager

By: _____

Name: _____

Title: _____

Date: _____, 2024

CERTIFICATION OF FUNDS:

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

EXHIBIT A
to Operations Agreement

SCOPE OF SERVICES

Program Overview and Obligations

The ATC Program will provide access to capital by providing credit-enhanced loans for developers and contractors who have difficulty accessing traditional business credit and access to financing, with a particular (though non-exclusive) emphasis on cultivating minority-owned businesses or projects within the City's neighborhoods, as determined by Operator in its sole discretion. The ATC Program is designed to help businesses and their communities thrive with a focus on community investment and economic growth.

Operator shall engage in the business of providing Loans as a conduit lender, coordinating with Participant Lenders on a per-project/loan basis during the Term, pursuant to a Participation Agreement. The City hereby grants Operator the exclusive right during the Term to instruct the City to create reserves of cash held within the Program Funds Account to provide Loan Loss Reimbursement. Such instructions shall be submitted to the City's Finance Director, who will promptly order such reserves to be established within 5 business days of Operator's delivery of instructions to the Finance Director. Loans made to developers and/or contractors shall include terms and conditions that are determined by Operator and the Participating Lender.

Operator will utilize the least amount of City credit enhancement necessary for each Loan to proceed. Private capital will be leveraged in order to maximize impact. The program will finance a variety of expansion costs, including normal expenses such as machinery and equipment, inventory and receivables, working capital, new construction, renovation, permanent financing and site acquisition. Refinancing of existing debt is not permitted. Operator will service the Loans originated by Operator.

Operator shall establish Program Guidelines to determine:

1. Eligibility criteria for Participants,
2. Underwriting criteria, and
3. Additional terms.

Eligibility

To be eligible for the ATC Program, a Participant must meet the following criteria:

- Eligible business shall be businesses that have difficulty accessing traditional business credit as a result of challenges such as limited collateral, few traditional credentials, poor or no credit history, and who may be considered "unbankable." The eligible business entity must be independently owned and controlled by an individual or individuals and not by other businesses. The individual owners of the eligible business entity must have compensation and authority commensurate with majority ownership and control. Operator shall establish additional criteria for business ownership in the Program Guidelines.
- **Business Type**
 - **Developer** – Businesses may qualify for the ATC Program as Developers if they are commercial businesses involved in the construction industry that meet the following criteria:
 - **Prior Development Experience:** The business and/or development team must demonstrate a reliable track record (based on Operator's sole discretion) to successfully complete the proposed project.
 - **Emerging Developer:** The business shall demonstrate (based on Operator's sole discretion) that its track record and/or the financial capacity of the business and/or its principals has not yet reached a point where it can attract traditional financing.
 - **Contractor** – an individual, joint venture, or legal entity with a written agreement to provide goods or services in the furtherance of the performance of economic development initiatives.

- **Employees:** Businesses that have 2 or more employees.
- **Profitability:** Businesses that have positive historical financial performance (sales growth, profit). Gross revenue limits as determined by Operator eligibility criteria.
- **Longevity:** The business must demonstrate a reliable track record (based on Operator's sole discretion) to successfully perform on the contracts and repay the loan.
- **Personal Net Worth:** Principals of business shall demonstrate (based on Operator's sole discretion) that they have not yet reached a point where they can qualify for traditional financing.

Lending

- The ATC Program shall provide ready access of up to a \$1,000,000 loan product for eligible businesses from Participating Lenders in the form of a credit enhanced loan.
 - **Loan from a Participating Lender**
 - Maximum limits as determined by Program Guidelines
 - **City's Credit Enhancement**
 - No more than \$250,000 for contractors unless the City provides prior written approval to exceed this limit
 - No more than \$500,000 for developers unless the City provides prior written approval to exceed this limit
 - Cannot exceed 75% of the loan amount

Loan Description

- Loan terms subject to City's Credit Enhancement can vary based on the lender, project, creditworthiness, and specific circumstances.
 - **Working Capital Loan**
 - Maximum loan limits and repayment requirements as determined by the Program Guidelines
 - Interest rate: Determined by the Program Guidelines
 - Term length: Up to 24 months
 - Repayment schedule: Monthly
 - Use of funds: Operational expenses included but not limited to inventory, equipment and payroll.
 - Collateral: Collateral will vary for each project. Personal guarantees will be required from company principals. For contractors, UCC liens will be filed on specific equipment and/or all business assets. For developers, real estate collateral will be required (Senior or Junior Mortgage) and/or UCC filings on all business assets.
 - **Development Loan**
 - Maximum loan limits and repayment requirements as determined by the Program Guidelines
 - Interest rate: Determined by the Program Guidelines
 - Term length: Up to 60 months
 - Repayment schedule: Monthly
 - Use of funds: Development costs including but not limited to acquisition, financial applications, legal fees, architectural fees, engineering fees, due diligence, permits, insurance, construction, and permanent financing.
 - Collateral: Collateral will vary for each project. Personal guarantees will be required from company principals. For contractors, UCC liens will be filed on specific equipment and/or all business assets. For developers, real estate collateral will be required (1st or 2nd Mortgage) and/or UCC filings on all business assets.

Additional Terms and Conditions

- **Location:** Eligible projects must be located within the City of Cincinnati.
- **Amount:** Operator will establish underwriting criteria that determines individual loan amounts and applicable caps in the Program Guidelines
- **Term:**
 - Working Capital: up to 24 months;
 - Development Capital: up to 60 months
- **Loan Fees:** Operator will establish underwriting criteria that determine loan fees.
- **Interest Rates:** Operator will establish underwriting criteria that determine interest rate calculations.
- **Cash Flow:** Existing and/or projected cash flow must be sufficient for funding request as outlined in the Program Guidelines.
- **Collateral:** For credit enhancements, personal guarantees will be required from principals of the contracting and development companies. Collateral will vary for each deal. For contractors, UCC liens will be filed on specific equipment and/or all business assets. For developers, real estate collateral will be required (Senior or Junior Mortgage) and/or UCC filings on all business assets.
- **Limits:** The credit enhancement on each deal will be limited to \$250,000 for contractors and \$500,000 for developers, not to exceed 75% of the loan amount for both categories. No more than \$1,000,000 can be collectively credit enhanced to one project where multiple contractors may be seeking assistance. Upon request by Operator, the City may authorize credit enhancement to exceed these limits for contractors, developers, or projects by providing prior written approval.

Marketing & Outreach

Operator will market the ATC Program through its typical client relationships and pipeline channels, in addition to leveraging the strategic partnerships with 3CDC and The Port. Operator will take applications and make decisions on a per deal basis.

Budget

\$3,000,000 redirected from the Build Cincinnati Development Fund City Account

EXHIBIT B
to Operations Agreement

FORM OF PARTICIPATION AGREEMENT

CINCINNATI ACCESS TO CAPITAL PROGRAM

LOAN PARTICIPATION AGREEMENT

THIS LOAN PARTICIPATION AGREEMENT (this “Agreement”) is made and entered into as of _____, 20____, by and among the Build Cincinnati Development Fund LLC, an Ohio Limited Liability Company, (“BCDF”), and _____ (“Lead Lender” [if only one bank]), *then need to replace Participant with Lead Lender throughout*)), (and _____) (together with Lead Lender, the “Participants”) with respect to the following:

A. One of BCDF’s purposes is to facilitate lending to contractors and developers that would not typically have readily-available access to capital for projects located entirely within the City’s corporate boundaries, with a particular (though non-exclusive) emphasis on cultivating the growth of minority-owned businesses within the City’s neighborhoods.

B. In order to provide financing to fund [working capital needs/the cost of [certain machinery and equipment] [the acquisition, new construction and/or rehabilitation of _____ (the “Project”)], BCDF shall make a loan to _____ (“Borrower”), in the principal amount of \$_____ (the “Loan”).

C. The obligation of Borrower to repay the Loan with interest shall be evidenced by a promissory note in the principal amount of \$_____ to be executed by Borrower in favor of BCDF (as may be amended, restated, supplemented and/or modified from time to time, the “Borrower Note”).

D. The Borrower Note shall be secured with certain collateral (the “Collateral”) pursuant to such agreements, mortgages, collateral assignments, pledges, guarantees, financing statements or other documents used to encumber the Collateral in favor of BCDF (as amended, restated, supplemented and/or modified from time to time, collectively, the “Security Documents”).

E. In order to provide the funding for the Loan, Lead Lender and the other Participants shall loan monies to BCDF under the terms of this Agreement (the “Master Loan”), which Master Loan shall be evidenced by a promissory note given by BCDF to Lead Lender, dated as of the closing of the Loan and in the original principal amount of the Loan ((as amended, restated, supplemented and/or modified from time to time, the “Master Note”). The Master Note shall be in substantially the form attached hereto as Exhibit B.

F. To secure the Loan and otherwise provide credit support for the Master Note, BCDF shall (i) execute a Security Agreement and Collateral Assignment of Loan Documents, granting to Lead Lender a collateral assignment of the Loan Documents (as defined in Section 3 below), and (ii) instruct the City of Cincinnati (the “City”), under the ATC Operations Agreement, dated _____, a copy of which is attached as Exhibit C (as amended, restated, supplemented and/or modified from time to time, the “ATC Operations Agreement”), to create a reserve within the Program Funds Account (as defined in the ATC Operations Agreement) in the amounts (collectively, the “City Credit Enhancement Support”) set forth on Schedule A, which shall equal the lesser of: i) seventy-five percent (75%) of the Loan, or ii) _____ Dollars (\$_____)¹. The term, “Percentage Credit Enhancement” means the City Credit Enhancement Support amount divided by the principal amount of the Loan.

¹ NTD: Dollar amount to be no more than \$250,000 for contractors and \$500,000 for developers. No more than \$1,000,000 to multiple borrowers for any one project.
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G. BCDF, Lead Lender, and the other Participants are entering into this Agreement to provide for the respective rights and obligations of each in connection with the Master Loan and the administration of the Loan until each is paid in full.

NOW THEREFORE, in consideration of the above premises, the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The above Recitals are true and are incorporated herein by reference.

2. Terms of the Loan and Master Loan. The basic terms of the Loan are as set forth in the Borrower Note and the [Construction] Loan Agreement between Borrower and BCDF dated as of even date herewith (as amended, restated, supplemented and/or modified from time to time, the "Loan Agreement"). The basic terms of the Master Loan are as set forth in the Master Note and this Agreement.

3. Loan Documents. Borrower's obligation to repay the Loan with interest is and shall be evidenced by the Borrower Note and the Loan Agreement and secured by the Security Documents, and may also be further evidenced and secured by such other documents and instruments as shall be deemed by the parties hereto to be necessary and desirable (as amended, restated, supplemented and/or modified from time to time, the "Loan Documents"). Both BCDF and Lead Lender shall have approved each Loan Document prior to acceptance of any such Loan Document.

4. Participation Interest in Loan.

A. Participant Advances. Participants agrees to lend to BCDF funds in connection with the Loan in the amount set forth on Exhibit A (the "Participation Amount") attached hereto and made a part hereof, all pursuant to the terms and conditions of this Agreement. Each Participant shall make advances ("Advances") from time to time to BCDF payable in installments ("Installment Payments") due in accordance with this Section 4; provided, however, that no Participant shall be obligated to make Advances that would exceed its share of the Participation Amount as set forth on Exhibit A corresponding to such Participant. Each Participant shall make its Installment Payments associated with Advances to BCDF by wire transfer. Installment Payments shall be made in amounts as called from time to time pursuant to a written notice given by BCDF not less than ten (10) days prior to the date such payment is due and payable, specifying (i) the total amount of the Installment Payment being called pursuant to such notice; (ii) Installment Payments due from each Participant, respectively; (iii) the date by which such Installment Payments must be made; (iv) that all conditions required to be satisfied under this Section 4 have been satisfied or waived by Lead Lender; and (v) that all of BCDF's representations and warranties made in Section 5.A. were true and correct in all material respects when made and are true and correct in all material respects as if made on the date of such notice.

B. Conditions to Lead Lender's Obligations. The Lead Lender's obligations to make Lead Lender Advances related to the Loan are subject to the satisfaction of the following:

(a) The Participants' obligations to make any Installment Payment related to an initial disbursement under the Loan are subject to the satisfaction or waiver of the following conditions as determined in the sole discretion of Lead Lender.

(i) BCDF shall have received an appraisal of the property, tangible or intangible, relating to a particular Project and the related Loan at Borrower's expense by an appraiser selected by Lead Lender. The appraisal reports and procurement process therefore shall be made in accordance with the United States Department of the Treasury's current regulations, Office of the Comptroller of the Currency, 12 C.F.R., Part 34, Subpart C, as amended. Each appraisal and reappraisal shall have been in proper form and otherwise satisfactory to Lead Lender in its sole discretion, and each appraiser shall have met all Federal and Ohio legal requirements.

(ii) In cases deemed appropriate in the sole discretion of Lead Lender, BCDF shall have received a Phase I environmental site assessment (the "Phase I") for the real property that will be Collateral or otherwise related to the Project (the "Real Estate") at Borrower's expense in proper form and otherwise satisfactory to Lead Lender. Such report shall have provided evidence regarding the potential presence of toxic or hazardous substances or waste, underground storage tanks, other pollutants that could be detrimental to the Project, Real Estate, human health or to the environment, whether the Real Estate is in violation of any local, state or Federal laws or regulations or whether any other environmental problems exist with respect to the Real Estate. The Phase I shall have also provided evidence regarding whether the Real Estate contains any areas which constitute wetlands as that term is defined at 40 C.F.R. § 122.2 and 33 C.F.R. §328.3, and whether there has been any un-permitted filling of wetlands on the Real Estate. If the Phase I review indicates the presence of potential environmental hazards on the Real Estate, and if required by Lead Lender, BCDF shall have received a Phase II environmental site assessment (the "Phase II") for such Real Estate.]²

(iii) Borrower shall have provided to BCDF a detailed project budget, acceptable to Lead Lender in its sole discretion, for the construction, rehabilitation and development costs associated with a particular Project, including land costs, site improvements, buildings and other improvements, interest expense, professional fees and all other costs incurred in connection with the Project, broken down into expense categories and showing a projected expenditure for each category.

(iv) Borrower shall have prepared a notice of commencement to be recorded, posted at the Real Estate and delivered to contractors and requesting sub-trades in accordance with the requirements of Ohio Revised Code Section 1311.04.

(v) Borrower shall have provided to BCDF a title insurance policy commitment issued by a title company selected or approved by Lead Lender in proper form, and otherwise satisfactory to Lead Lender in its sole discretion.

(vi) The Project's construction plans and specifications shall have been approved by Lead Lender in its sole discretion]³.

(vii) Lead Lender shall have received (x) a credit history and evaluation of Borrower's current creditworthiness satisfactory to Lead Lender in its sole discretion; or (y) a performance bond, letter of credit, third-party guarantee or additional contingency financing.

(viii) Borrower shall have provided to BCDF certificates of insurance in proper form and otherwise satisfactory to Lead Lender in its sole discretion, indicating that such insurance is in effect and naming BCDF as additional insured and or loss payee, as applicable. Such required insurance required may include liability, fire and extended coverage, builder's risk insurance and flood insurance, as required by Lead Lender in its sole discretion.

(ix) BCDF shall have received in proper form and otherwise satisfactory to Lead Lender in its sole discretion, personal guarantees by Borrower's principal shareholders, members or partners, as the case may be, as well as current personal financial statements regarding such guarantors.

(x) BCDF shall have received the Loan Documents executed by Borrower, which Loan Documents shall include (except as deemed unnecessary by Lead Lender in its sole discretion) Security Documents, certified Borrower organizational documents and authorizing resolutions, evidence of Borrower's regulatory compliance and receipt of all necessary governmental permits, current good standing certificates, and such other documents as deemed necessary by Lead Lender.

² NTD: Conditions for real estate and construction loans only.

³ NTD: Conditions for construction loans only.

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(xi) If Lead Lender deems necessary, BCDF shall have received a survey of the Real Estate the results of which are satisfactory to Lead Lender in its sole discretion.]⁴

(xii) If the Loan is being made to support the purchase of machinery and/or equipment, BCDF shall have received a copy of invoices of regarding such machinery and/or equipment, in form and substance satisfactory to Lead Lender in its sole discretion.

(xiii) If the Loan is being made to support working capital and the Lead Lender deems necessary, BCDF shall have received account receivable, inventory and payable agings of Borrower, in form and substance satisfactory to Lead Lender it is sole discretion.

(xiv) If the Loan is being made to support working capital and/or the purchase of machinery or equipment; BCDF shall have received (A) Borrower's financial statements for Borrower's two prior fiscal year ends and most recent interim financial statements and (B) lien an litigation search results, in form and substance satisfactory to Lead Lender in its sole discretion.

(b) The Participants' obligations to make any Installment Payment related to an interim disbursement under a Loan are subject to the satisfaction or waiver of the following conditions as determined in the sole discretion of Lead Lender.

(i) Borrower's representations and warranties made under the Loan Documents are true and correct in all material respects at the time of the disbursement as if then made, there shall have been no condemnation of or material damage to [any material portion of Borrower's assets/the Real Estate or the Project], and no event of default by Borrower shall have occurred under the Loan Documents which has not been cured.

(ii) BCDF shall have received a title endorsement to the title insurance policy in proper form and otherwise satisfactory to Lead Lender in its sole discretion, increasing the amount of the title insurance on the Real Estate to the amount that shall have been disbursed by BCDF under the Borrower Note after payment of the pending advance, and insuring that BCDF has a first and best lien on the Real Estate and that the Real Estate has no other liens or encumbrances except as approved by Lead Lender.

(iii) BCDF shall have received a certificate from an inspector satisfactory to Lead Lender in its sole discretion stating that the work covered by previous Advances has been performed in all material respects in accordance with the Project's plans and specifications, that the amount of Borrower's request for advance is accurate and proper and that the percentage of the work shown on such request for advance has been completed.

(iv) The Loan shall be "In Balance" at the time of the disbursement. "In Balance" means when the undistributed proceeds of a Loan as of a particular time equals or exceeds the amount needed, based upon Lead Lender's reasonable estimate as of such time, to pay for all work, labor and materials and all other costs necessary for the completion of the related Project in accordance with the Project's plans and specifications, including the payment of all retainages, the installation of all fixtures, equipment and finishes, and all of Borrower's obligations associated with the Project's construction and non-construction (i.e. "soft") costs.

(v) Borrower shall have provided to Lead Lender copies of all notices of furnishing received under Ohio Revised Code Section 1311.05. Borrower shall have provided lien waivers and such other documentation from all persons delivering a notice of furnishing and any other persons furnishing labor or materials to the Project, as requested by Lead Lender in its sole discretion.]⁵

⁴ NTD: For real estate and construction loans only.

⁵ NTD: Conditions to be included with construction loan only.

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(c) The Participants' obligations to make any Installment Payment related to a final disbursement under the Loan, in addition to the requirements set forth in Section 4.B(a) above (as applicable), are subject to the satisfaction or waiver of the following conditions as determined in the sole discretion of Lead Lender.

(i) The Project shall have been completed and equipped in all material respects in accordance with the Project's plans and specifications, free and clear of mechanics' liens, encumbrances and security interests other than encumbrances permitted under the Loan Documents.

(ii) BCDF shall have received written certification from Borrower's architect (or other contractor or Borrower representative acceptable to Lead Lender) in proper form and otherwise acceptable to Lead Lender in its sole discretion that the Project has been completed in all material respects in accordance with the Project's plans and specifications.

(iii) Borrower shall have furnished to BCDF a certificate of occupancy for the Project in proper form and otherwise acceptable to Lead Lender in its sole discretion.⁶

(d) In the event a Participant fails to make any Installment Payment when due under Section 4.A., BCDF shall promptly give written notice of such default to the Participant. If the Participant does not cure the default within ten (10) business days after written notice, the Participant shall hereby be deemed in default until its defaulted obligations shall have been fully satisfied, and during such period of default the following provisions shall apply.

(i) That amount of the Participant's defaulted Installment Payment plus interest accruing at the interest rate under the Borrower Note plus 3% per annum from the date or dates of default shall remain the obligation of the Participant.

(ii) The defaulting Participant's right to receive an origination fee for the Loan giving rise to the default shall be forfeited, and any origination fee previously paid to the Participant pursuant to such Loan shall be repaid to BCDF out of the payments of principal and interest otherwise due and payable to the Participant under the Master Note.

(iii) No right, power or remedy available to BCDF in this Section 4.B(d) shall be exclusive, and each such right, power or remedy shall be cumulative and in addition to any other right, power or remedy available at law or in equity. No course of dealing among BCDF, non-defaulting Participants and any defaulting Participant, and no delay by BCDF in exercising any right, power or remedy shall operate as a waiver or otherwise prejudice the exercise of such right, power or remedy.

C. Collateral. In consideration of its participation in the Loan, each Participant shall be entitled to its Existing Pro Rata Share in (i) the Collateral, (ii) the City Credit Enhancement Amount (iii) subject to Sections 4.D. and 8.B.(g) the interest accrued and unpaid on the Loan, and (iv) subject to Section 4.D. below, any loan fees or other charges assessed Borrower in consideration for the Loan and any subsequent assessments or fees charged to Borrower for any extensions, modifications, or changes to the Loan, regardless of whether such fees or charges are built in to the Loan or agreed upon later by Borrower (the "Loan Fees"). As used in this Agreement, "Existing Pro Rata Share" means the initial Participation Amount of the Master Loan owned by the Participant, less any sums received by that Participant, in relation to the amount then due under the Master Note.

D. Origination Fees. ***[In addition to any other Loan Fees BCDF may charge Borrower, BCDF may assess Borrower a loan origination fee (the "Lender's Origination Fee"), which BCDF shall pay to Participants their Existing Pro Rata Share.]*** The Participants acknowledge and agree that BCDF may charge Borrower an origination fee in excess of the Lender's Origination Fee, which BCDF is entitled to retain for its own account.

⁶ NTD: 4B(c) Only needed if a construction loan.
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5. Representations and Warranties.

A. Representations and Warranties of BCDF. BCDF warrants and represents to, and agrees with, the Participants that:

(a) Current drafts of the Loan Documents are attached hereto as Exhibit E.

(b) BCDF has made available to the Participants copies of all documents in BCDF's possession or control that contain material information relating to the Loan. BCDF has not previously assigned any of its right, title or interest in, to or under the Loan or the Loan Documents to any third party. Without the prior written consent of Participants, BCDF shall not assign all or any portion of its remaining right, title or interest in, to or under the Loan or the Loan Documents.

(c) BCDF is a limited liability company duly organized and validly existing under the laws of the State of Ohio.

(d) BCDF has the full power and authority to hold the Loan, to issue and sell the Loan, and to execute, deliver and perform, and to enter into and consummate all transactions required of it by this Agreement. BCDF has duly authorized the execution, delivery and performance of this Agreement, and has duly executed and delivered this Agreement. This Agreement, when duly authorized, executed and delivered by BCDF, shall constitute a legal, valid and binding obligation of BCDF, enforceable against it in accordance with its terms except that the binding effect and enforceability thereof is subject to: applicable bankruptcy, insolvency, reorganization and moratorium and other similar laws affecting enforcement of creditors' rights heretofore or hereinafter enacted to and the effect of rules of law (whether in proceedings in equity or in law) governing specific performance, injunctive relief and other equitable remedies on the binding effect and enforceability of this Agreement.

(e) Neither the execution and delivery of this Agreement, the origination of the Loan by BCDF, the consummation of the transactions required of BCDF herein, nor the fulfillment of or compliance with the terms and conditions of this Agreement shall conflict with or result in a breach of any of the terms, conditions or provisions of BCDF's articles of organization or any agreement or instrument to which BCDF is now a party or by which it is bound, or constitute a default or result in the violation of any law, rule, regulation, order, judgment or decree to which BCDF is subject.

(f) On the occasion of each advance of Loan principal by BCDF to Borrower pursuant to the Loan Documents, funded by funds delivered by the Participants to BCDF, BCDF shall be deemed to have made a representation and warranty to the Participants that (a) if the loan is secured by real property, that there is in force in favor of BCDF one or more title insurance policies with respect to such real property providing the coverage required under the Loan Documents, (b) evidence of property insurance policies naming BCDF as additional insured, lender loss payee and/or mortgagee, as applicable, with respect to the Collateral were obtained by BCDF at the closing of the Loan and BCDF has received no written notification of cancellation or reduction of any such policies, (c) BCDF has in its possession executed Loan Documents, appropriately filed or recorded, as necessary for perfection, and (d) to the best of BCDF's knowledge, Borrower has fulfilled all conditions set forth in the Loan Documents, not intentionally waived by BCDF, and is entitled to the advance of Loan principal.

Except as expressly provided above, BCDF makes no other representations or warranties, express or implied concerning the Loan or the Loan Documents.

B. Representations and Warranties of Participants. Participants each represent and warrant to, and agree with, BCDF that:

(a) The Participant has inspected the Loan Documents and the Collateral and hereby approves such Loan Documents and agrees to accept the credit risk with respect to the Loan.

(b) The Participant has the power and authority to enter into this Agreement and to carry out the transactions contemplated hereby. All proceedings required to be taken by Participant to authorize the execution, delivery and performance of this Agreement have been properly taken.

(c) The Participant has made its own independent investigation of the financial condition and affairs of Borrower, any guarantors and the Collateral in connection with the making and continuance of the Loan and its own assessment of the creditworthiness of Borrower and each guarantor.

6. Appointment of BCDF. Each Participant hereby designates and appoints BCDF as the administrative and collateral agent of such Participant under this Agreement and the Loan Documents. BCDF shall act as administrative and collateral agent lender for the Participants on the express terms, provisions and conditions contained in this Agreement.

A. Authorization. Each Participant hereby authorizes and directs BCDF to enter into the Loan Documents with respect to the Loan and to take such action on its behalf under the provisions of this Agreement and the Loan Documents and to exercise such powers as are set forth herein, together with such other powers as are reasonably incidental thereto, except to the extent that this Agreement and such Loan Documents limit such powers. Each Participant ratifies and approves those Loan Documents previously entered into by BCDF. If BCDF shall desire any authority in addition to the authority granted or reserved to BCDF herein or any consent to any matter, whether or not consent is otherwise required hereunder, then BCDF shall propose in writing such additional authority or matter for consent to the Participants. Upon receipt of the written authorization or consent sought from the Participants, such authorization or consent shall be deemed granted.

B. Nature of Duties. BCDF shall not have any duties or responsibilities except those expressly set forth in this Agreement or in the Loan Documents. The duties of BCDF shall be administrative in nature. BCDF shall administer the Loan in the same manner as it administers its other similar loans in the ordinary course of its business, and in accordance with the law and the Loan Documents. Promptly following the execution by all parties thereto, BCDF shall send to each Participant a copy of each Loan Document in favor of BCDF with the originals of such documents to be held and retained by BCDF for the benefit of the Participants. Except as otherwise set forth herein, BCDF shall not have by reason of this Agreement a fiduciary relationship in respect of any Participant. Nothing in this Agreement or in any of the Loan Documents, expressed or implied, is intended or shall be construed to impose upon BCDF any obligation in respect of this Agreement or any of the Loan Documents except as expressly set forth herein or therein.

C. Obligation to Disclose Material Information. BCDF shall provide to each Participant all material credit or other information with respect to Borrower and any guarantors coming into the possession of BCDF. Each Participant shall immediately disclose to BCDF any material information received or obtained concerning (a) the financial condition of the Borrower or any person liable for payment of the Loan or performance of the Loan Documents, (b) the ability of Borrower to manage or complete improvements to any of the Collateral, to conduct its business operation as a going concern on a basis substantially equivalent to that existing on the date of this Agreement, or to pay the Loan and to otherwise perform the Loan Documents, or (c) any material change in the condition or status of the Collateral.

D. Actions With Respect to the Guaranty. Notwithstanding anything herein to the contrary, BCDF agrees that it shall take such direction from the Lead Lender as to all actions with respect to any guaranty and any guarantors. Further, BCDF agrees that it shall take no action that impairs any guaranty or the liability of the guarantors thereunder.

7. Loan Closing Deliveries. On the closing date of the Loan, BCDF shall deliver to the Participants copies of the executed Loan Documents and such other documentation as Participants may reasonably request.

8. Loan Servicing. BCDF shall service the Loan for the benefit of the Participants in accordance with their respective interest in the Loan and in accordance with the requirements of this Agreement [; provided, however, that Lead Lender agrees to timely provide BCDF with monthly interest rate information necessary for BCDF to determine accrued interest and principal due on the Borrower Note and to timely bill the Borrower for principal and accrued interest on the Borrower Note].⁷

A. No Assignment. BCDF may not, without the unanimous express, written consent of the Participants, assign its rights and obligations hereunder. The obligation to service the Loan is a non-delegable obligation.

B. Servicing Responsibilities of BCDF. BCDF's responsibilities shall be as follows:

(a) Except as otherwise provided in Sections 4.D. and 8.B.(g), BCDF shall disburse all payments of principal and interest in respect of the Loan, all payments of the fees described in the commitment (other than reimbursable costs and expenses inuring to the benefit of a particular Participant or BCDF) including, without limitation, Loan Fees, and all payments in respect of any other obligation (each individually, a "Payment," and collectively, "Payments") among the Participants, in proportion to their Existing Pro Rata Shares or in the manner otherwise specified herein. If BCDF shall receive, on or before 11:00 a.m., Cincinnati local time, on a Banking Business Day, a Payment requiring further disbursement to one or more of the Participants, BCDF shall disburse each Participant's Existing Pro Rata Share on or before the close of business on the same Banking Business Day. If BCDF shall receive such a Payment requiring further disbursement to Participants after 11:00 a.m., Cincinnati local time, on a Banking Business Day, BCDF shall disburse such Payment to the Participants on or before the close of business on the next Banking Business Day. All payments or other sums received by BCDF for the account of the Participants (including, without limitation, principal and interest payments, the proceeds of any and all insurance maintained with respect to the collateral and any and all condemnation proceeds with respect to any of the collateral) shall not constitute property or assets of BCDF. BCDF shall hold any such payment or other sum solely in its capacity of administrator for itself and the Participants in accordance with this Agreement and the Loan Documents. Except with respect to amounts BCDF is otherwise entitled to retain for its own account under this Agreement for fees and compensation, BCDF expressly acknowledges and agrees that any sums collected from guarantors under any guaranty shall belong solely to the Participants; and that it shall not remit any of those aforementioned sums so collected to any other party other than the Participants. A "Banking Business Day" means a day on which banks are open for business in Cincinnati, Ohio.

(b) BCDF shall keep accurate and complete accounts for the Loan and shall furnish the Participants with copies of the same upon request of Participants but no less frequently than on a monthly basis. Notwithstanding anything to the contrary herein, BCDF, with each payment to Participants, shall furnish Participants with the following information: (a) amount of payment as it relates to principal, interest and other charges; and (b) the outstanding balance of the Loan.

(c) BCDF shall promptly provide Participants with all correspondence, reports, financial statements of Borrower and any guarantors, tax returns of Borrower and any guarantors, rent rolls, title updates, insurance certificates, or other information of any kind that it receives relating in any way to the Loan. BCDF shall obtain each of the foregoing (as applicable) in accordance with the requirements of the Loan Documents, but in no event less frequently than annually.

(d) If the Loan Documents require any escrows for taxes or insurance or otherwise, BCDF shall maintain such accounts for the benefit of BCDF. To the extent BCDF maintains an escrow account for real estate taxes and/or hazard insurance as to the Loan, BCDF shall use commercially reasonable efforts to pay real estate taxes when due and keep hazard insurance in place on the properties securing the Loan. If the Loan Documents require no escrow for hazard insurance, BCDF shall use commercially reasonable efforts to keep all properties and other Collateral securing the Loan insured at all

⁷ NTD: To be used only if Lead Lender requires using an interest rate (e.g. SOFR) that cannot be administered by BCDF.

times. To the extent that BCDF must place insurance on any portion of any property or any other Collateral securing the Loan, the Participants shall pay or reimburse BCDF for the same. BCDF shall, immediately following receipt of notice thereof, notify the Participants of the non-payment of real estate taxes or the failure of Borrower to maintain proper insurance on any of the properties and/or other Collateral securing the Loan. BCDF shall hold all insurance policies and shall promptly deliver the original or a certificate of the same to the Participants, at the Participants' request.

(e) The Participants shall pay all out-of-pocket expenditures made in the reasonable discretion of BCDF and Lead Lender for protection of the Collateral for the Loan. The Participants shall advance funds for the payment of any costs or expenses reasonably incurred or to be incurred by BCDF with third parties in connection with the administration of the Loan, the enforcement of the Loan Documents and the protection and preservation of the Collateral prior to foreclosure or conveyance in lieu thereof, including without limitation, attorneys' fees, and each Participant, upon receipt of written notice from and evidence of payment of the same by BCDF, shall promptly reimburse BCDF; provided, however, BCDF shall not be entitled to any payment for the routine servicing of the Loan except as expressly provided in this Agreement. For the purposes of this Agreement such advance or advances shall be secured by the Loan Documents but not be deemed to be counted against the maximum amount of Loan principal.

(f) Participants may not declare BCDF in default of this Agreement for failure to comply with the terms of this Section 8.B. unless (i) BCDF's failure results from willful neglect; and (ii) the Participant has given BCDF fifteen (15) days notice of BCDF's failure to comply with the terms of this Section 8.B. and an opportunity to cure within such fifteen (15) day period.

(g) BCDF shall retain all interest paid by Borrower on the Borrower Note in excess of the Master Note's interest rate, as and when received by BCDF.

(h) Upon any dissolution, termination of existence, insolvency, business failure, appointment of receiver for BCDF, assignment for the benefit of creditors, or commencement of any proceedings under any bankruptcy or insolvency law, State or Federal, with respect to BCDF, or upon any material breach of this Agreement by BCDF not cured within twenty (20) business days after written notice from the Participants to BCDF of such material breach, the Participants shall have the right to designate another Loan servicer (including any Participant or its affiliate) to service the Loan for the benefit of all the Participants at a reasonable rate of compensation as may be agreed upon by such Loan servicer, whereupon BCDF shall deliver the Loan, Loan Documents, Collateral and servicing records to the Loan servicer so selected and the compensation due BCDF hereunder shall end.

C. Borrower Default and Enforcement.

(a) Immediately upon learning of the occurrence of any event or existence of any condition constituting any event of default under the Loan Documents, the party hereto so aware shall promptly notify the other parties hereto of such event or condition. BCDF, with the written consent of the Participants, may declare or refrain from declaring Borrower in default, may accelerate or refrain from accelerating the maturity of the Loan, and may enforce or refrain from enforcing any or all of the rights set forth in the Loan Documents. The Lead Lender shall be responsible for enforcing all of BCDF's rights in connection with any Borrower default declared on the Loan.

(b) If any of the Collateral is acquired by foreclosure, conveyance in lieu thereof, or otherwise, then title shall be taken and held in such manner as may be then agreed upon by the Participants.

(c) If any of the Collateral is acquired by foreclosure, conveyance in lieu thereof, or otherwise, then, subject to the limitations contained herein, the Lead Lender, after good faith consultation with BCDF, shall make and execute all decisions with respect to the management, operation, improvement and completion of the Collateral.

(d) If any of the Collateral is acquired by foreclosure, conveyance in lieu thereof, or otherwise, then the Participants shall advance funds for the payment of any costs or expenses reasonably incurred or to be incurred by Lead Lender with third parties in connection with the acquisition, holding, management, operation, improvement and completion of the Collateral, and each Participant, upon receipt of written notice from and evidence of payment of the same by Lead Lender, shall promptly reimburse Lead Lender and BCDF for such Participant's Existing Pro Rata Share of the same; provided, however, that any costs or expenses incurred by Lead Lender and BCDF in connection with the improvement or completion of the Collateral (as distinguished from the maintenance or operation of the Collateral) must be unanimously approved in advance by the Participants.

(e) BCDF shall receive and account for all proceeds from the liquidation or operation of any of the Collateral, remit such to each Participant its Existing Pro Rata Share of the same within three (3) Business Days after the receipt thereof, in the case of proceeds from liquidation, and within twenty (20) Business Days after the end of each calendar month, in the case of proceeds (net of ordinary and necessary costs and expenses of operation of any of the Collateral including reasonable reserves) from operations, and hold the same in trust until so remitted.

D. Loan Modification. BCDF may not under any circumstances waive, modify, or otherwise alter or compromise any of the provisions of the Loan without the Participants' unanimous prior written consent. The Participants shall not unreasonably withhold such written consent. The Participants shall be deemed to have consented to any request for modification of the Loan if (i) the requested modification does not provide for a material adverse change to Participants, and (ii) the Participant fails to respond to a written request for modification within ten (10) days following the Participant's receipt thereof. If the request is for a change that is materially adverse to any Participant, such Participant shall respond in a reasonable time frame.

E. Collection Practices. BCDF shall promptly notify the Participants if the Loan becomes more than fifteen (15) days past due. In addition, following receipt of notice of any of the following events, BCDF shall promptly notify the Participants thereof: (i) any other known default under any of the Loan Documents;; (ii) the death or incompetency of Borrower, any guarantor, or any of the principals known of the same; (iii) any damage or destruction to any of the Project or the Collateral , (iv) any bankruptcy filings by Borrower, any guarantor, or any affiliate of any of Borrower; or (v) any other condition which has a material adverse impact on the Loan, including but not limited to any change in the financial condition of Borrower or any guarantor.

9. Rights, Exculpation, Etc. It is the intent of the parties hereto that BCDF's involvement in the transactions contemplated by this Agreement and the Loan Documents is solely to cause the City to provide the City Credit Enhancement Support for the Loan. Except as otherwise set forth herein, neither BCDF, any affiliate of BCDF, or any of their respective officers, directors, members, managers, employees, BCDF's, attorneys or consultants, shall be liable to any Participant for any action taken or omitted by them hereunder or under any of the Loan Documents or in connection herewith or therewith, except that BCDF shall be liable for its gross negligence or willful misconduct. Except as otherwise set forth herein, (i) in the absence of gross negligence or willful misconduct, BCDF shall not be liable for any apportionment or distribution of payments made in good faith, (ii) if any such apportionment or distribution is subsequently determined to have been in error, the sole recourse of any person to whom payment was due, but not made, shall be to recover from the recipients of such payments any payments in excess of the amounts to which they are determined to have been entitled, and (iii) BCDF shall not be responsible to any Participant for any recitals, statements, representations or warranties or for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency of any of the Loan Documents or any of the transactions contemplated hereby and thereby or for the financial condition of Borrower, any guarantor or any of their affiliates. BCDF need not inquire concerning the performance or observance of any of the terms, provisions, or conditions of or any of the Loan Documents. BCDF may rely upon any written notices, statements, certificates, orders or other documents, telecopies or any telephone message that BCDF believes in good faith to be genuine and correct and to have been signed, sent or made by the proper person. With respect to all matters pertaining to this Agreement or any of the Loan Documents and its duties hereunder and thereunder, BCDF may act or refrain from acting upon advice of legal counsel,

independent public accountant or other experts that BCDF may select. In the absence of gross negligence or willful misconduct of BCDF, each Participant's sole recourse against BCDF if BCDF is unable to repay the Master Note is the Participant's rights under this Agreement to realize under Lead Lender's or the other Participant's rights under the Loan Loss Reimbursement Agreement to receive the City Credit Enhancement Support and the Lead Lender's rights under the Security Agreement and Collateral Assignment to enforce the Loan Documents.

10. Indemnification. To the extent that Borrower does not reimburse or indemnify BCDF, the Participants shall pay or reimburse, as the case may be, BCDF, within seven (7) Banking Business Days after notice from BCDF, and indemnify and defend BCDF from and against any and all liabilities and costs (other than the loss of principal, interest and fees) that may be imposed upon, incurred by or asserted against it in any way relating to or arising out of this Agreement and/or the Loan Documents or any action taken or omitted by BCDF under this Agreement and/or the Loan Documents. No Participant shall be liable for any proportion of such liabilities and costs in the nature of internal or administrative costs or resulting from BCDF's gross negligence or willful misconduct, or violation of this Agreement, failure to comply with the Loan Documents, or violation of law. The obligations of the Participants under this Section shall survive the payment in full of the Loan and the termination of this Agreement. If after payment and distribution of any amount by BCDF to one or more Participants, or third party, including Borrower, any creditor of Borrower, and/or any guarantor, or any trustee in bankruptcy, recovers from BCDF any amount found to have been wrongfully paid to BCDF or disbursed by BCDF to a Participant, then Participants, in proportion to their Existing Pro Rata Shares, shall reimburse BCDF for all such amounts. Notwithstanding the foregoing, BCDF need not advance liabilities or costs and may require the deposit by each Participant of any material liabilities and costs anticipated by BCDF before they are incurred or made payable.

11. Other Transactions. Each Participant and its respective affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with Borrower, any guarantor and/or any of their respective affiliates as if it were not acting as a Participant pursuant hereto.

12. Miscellaneous Provisions.

A. Reliance. The provisions of this Agreement are solely for the benefit of BCDF and the Participants. Neither Borrower nor any guarantor may rely on or enforce any of the provisions hereof. In performing its functions and duties under this Agreement, BCDF shall act solely as agent of the Participants and does not assume and shall not be deemed to assume any obligation toward or relationship of agency or trust with or for the Borrower or any guarantor.

B. Document Contains Entire Agreement. This document contains the entire agreement among the parties hereto superseding all other prior agreements and undertakings both written and oral, between the parties with respect to the subject matter hereof. This Agreement cannot be modified in any respect except by an agreement in writing signed by the party sought to be bound. This Agreement and all applicable representations, warranties and indemnities contained herein shall survive the closing of the Loan.

C. Examination of Original Loan Documents. The Participants and any governmental agency charged with the supervision of the Participants shall have the right to examine and make copies of all original Loan Documents at any reasonable time during BCDF's normal business hours.

D. Notices. Any and all notices or other communications required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally or by facsimile or email transmission followed immediately by a copy of said notice mailed by first class registered or certified mail return receipt requested, five (5) days after being mailed by first class registered or certified mail return receipt requested, or one business day after deposit with an overnight delivery service that maintains in the ordinary course of its business a record of receipt of each of its deliveries, prepaid for overnight delivery:

If to Lead Lender, to: [insert address]

If to BCDF, to: Build Cincinnati Development Fund LLC
1224 Race Street
Cincinnati, Ohio 45202
Attn: Joe Huber, President & CEO
jhuber@cincinnati-developmentfund.org

E. Wire Transfer to the Participants. Notwithstanding anything herein to the contrary, any Payment, Payments, or sums due the Participants under this Agreement or the Loan Documents shall be remitted by BCDF or BCDF via wire transfer, unless otherwise agreed to in writing by the Participants, as follows: *[insert wire instructions]*

F. Waivers. No term or provision of this Agreement may be waived or modified unless in writing and signed by the party against whom such waiver or modification is sought to be enforced.

G. Successors and Assigns/No Joint Venture. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to confer, and it shall not confer on any person other than the parties or their respective successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

H. Assignment. Except as otherwise specifically permitted by this Agreement, a Participant may not assign, pledge, mortgage, hypothecate, sell or otherwise dispose or encumber (a "Transfer") of its interest in this Agreement (and no such Transfer, whether voluntary or involuntary and whether or not for value, shall be effective) unless the Transfer is approved by BCDF. Notwithstanding the foregoing, the Participants shall have the right to Transfer its interest in the Master Note (subject to the terms therein); provided that the assigning Participant agrees to remain primarily liable under the Master Note.

I. Further Assurances. The Participants and BCDF shall execute and deliver such instruments and take such actions as the other parties may from time to time, reasonably request in order to effectuate the purpose and carry out the terms of this Agreement.

J. Place of Delivery and Governing Law. This Agreement shall be deemed made in Ohio, and shall be construed and enforced in accordance with the laws of such state, except to the extent that such laws might direct the application of the law of a different state.

K. 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. Each party hereto agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this Agreement and to have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures and DocuSign signatures pursuant to the Ohio Uniform Electronic Transactions Act (R.C. 1306.01 et seq.) as amended from time to time.

L. Severability. Any part, provision, representation or warranty of this Agreement which is prohibited or is held to be void or unenforceable by a court, governmental body or administrative agency or authority shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. Any part, provision, representation or warranty of this Agreement that is prohibited or unenforceable or is held to be void or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof Any such prohibition or unenforceability in any jurisdiction as to any Loan shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted

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by applicable law, the parties hereto waive any prohibitions of law which prohibit or render void or unenforceable any provisions hereof.

M. Expenses. Each party shall pay its own expenses incident to this Agreement and the transactions contemplated hereby including, without limitation, fees and expenses of their own financial consultants, accountants and counsel.

N. Banking Requirements. Participants acknowledge and agree to the following banking requirements:

1. The City hereby requests and shall be granted read access to all bank account information and statements pertaining to the accounts held by Participants. Such access is necessary for the efficient reconciliation of financial transactions. Furthermore, it is agreed that any bank account where funds are transferred on behalf of the City shall be registered in the City's name.
2. Funds held in accounts at various banks by Participants, where the aggregate deposits exceed \$250,000, shall be collateralized to ensure their security and compliance with applicable regulations.
3. It is understood and agreed that the majority of the accounts maintained by Participants on behalf of the City shall remain dormant for extended periods. Participants shall ensure that no fees are levied against these accounts due to inactivity.
4. The City Treasurer shall be the sole authorized agent with the authority to conduct transactions, manage, and oversee any and all activities related to the aforementioned accounts maintained by Participants on behalf of the City.

The parties have caused this Agreement to be executed as of the day and year first above written.

[Remainder of page intentionally left blank, signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Loan Participation Agreement to be duly executed as of the date first written above.

[LEAD LENDER]

By: _____
Printed Name: _____
Title: _____

BUILD CINCINNATI DEVELOPMENT FUND LLC

By: Cincinnati Development Fund, Inc.
Its: Sole Member

By: _____
Printed Name: _____
Title: _____

[PARTICIPANT]

By: _____
Its: _____

By: _____
Printed Name: _____
Title: _____

EXHIBIT C
to Operations Agreement

FORM OF LOAN LOSS REIMBURSEMENT AGREEMENT

BUILD CINCINNATI DEVELOPMENT FUND

LOAN LOSS REIMBURSEMENT AGREEMENT

This LOAN LOSS REIMBURSEMENT AGREEMENT (the "**Agreement**") is made as of _____, 20____ (the "**Effective Date**") by and among, Build Cincinnati Development Fund LLC ("**BCDF**"), the City of Cincinnati (the "**City**"), and _____, an _____ ("**Lead Lender**").

WHEREAS, Lead Lender is a participating lender in BCDF's ATC Loan Program;

WHEREAS, BCDF facilitates lending to contractors and developers that would not typically have readily-available access to capital for projects located entirely within the City's corporate boundaries, with a particular (though non-exclusive) emphasis on cultivating the growth of minority-owned businesses within the City's neighborhoods;

WHEREAS, BCDF makes loans under the ATC Loan Program to finance working capital needs, the cost of machinery and equipment, and/or development costs, acquisition, rehabilitation and new construction of market-rate residential, mixed-use, and commercial real estate developments within the City ("**ATC Program Loans**");

WHEREAS, certain funds owned by the City are currently held in the City's "**Program Funds Account**" and are available to provide credit support for lenders who participate in BCDF's ATC Program Loans; and

WHEREAS, it is contemplated that BCDF will make a ATC Program Loan to _____, an _____ (the "**Loan Borrower**"), in the amount of _____ Dollars (\$_____) (the "**Loan**"), which will be financed by a Master Loan of _____ Dollars (\$_____) from Lead Lender [on behalf of itself and other participating lenders] to BCDF (the "**Master Loan**") and evidenced by a promissory note issued by BCDF to Lead Lender (the "**Master Note**"), in order to fund the _____.⁸

WHEREAS, the Master Loan will be funded 100% by Lead Lender [and other participating lenders] pursuant to the Master Note and that certain Loan Participation Agreement dated as of even date herewith among BCDF, the Lead Lender and the other participating lenders, a copy of which is attached hereto as Exhibit A (as amended, restated, supplemented and/or modified from time to time, the "**Participation Agreement**").

WHEREAS, the parties desire that the Lead Lender [and other participating lenders] be eligible to receive credit support to offset certain potential financial losses of the Lead Lender in the event of a default under the Master Loan subject to the terms and conditions contained in this Agreement.

⁸ NTD: Insert the specific use of the Loan.
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NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Defined Terms. All capitalized terms used in this Agreement but not defined herein have the meaning ascribed to them in the form of the Participation Agreement.

2. Acknowledgement of BCDF and City Responsibilities. The parties acknowledge that the City and BCDF have entered into that certain ATC Operations Agreement, dated _____, a copy of which is attached hereto as Exhibit B (as amended from time to time, the "**ATC Operations Agreement**"), which authorizes BCDF to make and administer ATC Program Loans and is authorized by the City to instruct the City to reserve certain funds within the City's Program Funds Account and to make certain transfers to Lead Lender (for the benefit of Lead Lender and any other participating lenders) in the event Lead Lender and the other participating lenders suffer a loss under the Master Loan, subject to the terms and conditions of this Agreement.

3. Establishment of Reserve Amount. Upon or prior to Lead Lender funding all or any installment portion of the Master Loan in accordance with the Participation Agreement (the amount of such funding, a "**Loan Funds Transfer Amount**"), BCDF shall provide instructions to the City to cause an amount equal to the City Credit Enhancement Support provided for in the Participation Agreement to be reserved within the City's Program Funds Account (the "**Reserve Amount**"). The City will establish the Reserve Amount in a timely manner upon receiving written instructions from BCDF in accordance with the terms and conditions of this Agreement and the ATC Operations Agreement.

4. Reserve Adjustments Upon Loan Repayments. On a quarterly basis, in the event of repayment by BCDF of any portion of the principal balance under the Master Note which is not in default, BCDF shall instruct the City to reduce the Reserve Amount by an amount equal to: the net decrease during the previous calendar quarter of the principal balance owed under the Master Note, multiplied by the Percentage Credit Enhancement.

5. Master Note Payment Defaults. Notwithstanding any provision of the Master Note that provides that (a) BCDF is excused from payment under the Master Note in the event that the Loan Borrower fails to make payments under the Loan, or (b) the Collateral Pledge (as defined in the Master Note) is deemed payment in full of the Master Note, in the event a payment is not timely made when due under the Master Note (which failure to pay has not been cured within any applicable cure period) by BCDF of any amount (the "**Default Amount**") owed to Lead Lender [for itself and any participating lenders] pursuant to the Master Note (the "**Defaulted Master Note**"), the City shall not make any further adjustments to the Reserve Amount, pending the earlier to occur of either payment of the Default Amount or the final disposition of the Defaulted Master Note. Upon the payment of the Default Amount, BCDF shall thereafter treat such loan as a performing loan for purposes of this Agreement and instruct the City to adjust the Reserve Amount accordingly. Upon the final disposition of the Defaulted Master Note which has not been cured, BCDF will instruct the City to transfer to Lead Lender from funds held in the Program Funds Account such amount equal to the lesser of the total losses of principal and interest from such Defaulted Master Note and the total remaining Reserve Amount (corresponding to the Defaulted Master Note). After final disposition of the Defaulted Master Note, including any transfers to Lead Lender made hereunder to reimburse Lead Lender [for itself and any participating lenders] for any losses of principal and interest, BCDF shall instruct the City to promptly reduce any remaining Reserve Amount corresponding to such Defaulted Master Note to zero, and any remaining funds no longer reserved will automatically become available in the Program Funds Account to be used in connection with other ATC Program Loans.

6. BCDF Standard of Care. BCDF shall not be liable for actions or omissions in connection with this Agreement except for its own gross negligence or willful misconduct.

7. Term. The term of this Agreement shall begin on the Effective Date and end when the Reserve Amount is reduced to zero.

8. Miscellaneous. This Agreement shall be binding upon BCDF and BCDF's administrators, successors and assigns, and shall inure to the benefit of, and be enforceable by, the Lead Lender and Lead Lender's successors, transferees and assigns. None of the terms or provisions of this Agreement may be waived, altered, modified or amended except in writing duly signed for and on behalf of the Lead Lender and BCDF. This Agreement may be executed in any number of counterparts, which counterparts shall, collectively and separately, constitute one agreement. If any term or provision set forth in this Agreement shall be deemed invalid or unenforceable, the remainder of this Agreement, other than such provisions held invalid or unenforceable, shall be construed in all respects as if such invalid or unenforceable term or provision were omitted.

9. Notices. Any notices under or pursuant to this Agreement shall be deemed duly sent when delivered by facsimile transmission, with electronic confirmation of delivery, or when mailed by overnight courier service, with the signature of the recipient upon delivery, addressed as follows:

If to BCDF, to: Build Cincinnati Development Fund LLC
1224 Race Street
Cincinnati, Ohio 45202
Attn: Joe Huber, President & CEO
jhuber@cincinnati-developmentfund.org

If to Lead Lender, to: _____

If to the City, to: City of Cincinnati
801 Plum Street
Room 152, City Hall
Cincinnati, Ohio 45202
Attn: City Manager

With a copy to:

City of Cincinnati
801 Plum Street
Room 250, City Hall
Cincinnati, Ohio 45202
Attn: Finance Director

10. Governing Law. All acts and transactions hereunder and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the domestic laws of the Ohio.

11. 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. Each party hereto agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this Agreement and to have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures and DocuSign signatures pursuant to the Ohio Uniform Electronic Transactions Act (R.C. 1306.01 et seq.) as amended from time to time.

[Remainder of page intentionally left blank, signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Loan Loss Reimbursement Agreement to be duly executed as of the date first written above.

[LEAD LENDER]

By: _____
Printed Name: _____
Title: _____

BUILD CINCINNATI DEVELOPMENT FUND LLC

By: Cincinnati Development Fund, Inc.
Its: Sole Member

By: _____
Printed Name: _____
Title: _____

CITY OF CINCINNATI

By: _____
Printed Name: _____
Title: _____

APPROVED AS TO FORM:

Assistant City Solicitor