

Contract No. \_\_\_\_\_

**PROPERTY SALE AND DEVELOPMENT AGREEMENT**

*between the*

**CITY OF CINCINNATI**

*and*

**GEST STREET DISTRIBUTIONS, LLC**

Project Name: Metro West Commerce Park 2.0

(sale of vacant lots at 1917-1933 Gest Street and a portion of vacated Summer street  
to build  
a new manufacturing facility)

Effective as of the Effective Date, as defined on the signature page

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## PROPERTY SALE AND DEVELOPMENT AGREEMENT

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), and **GEST STREET DISTRIBUTIONS, LLC**, an Ohio limited liability company ("**Developer**"), an affiliate of Nehemiah Manufacturing Company LLC, with an address of 1907 South Street, Cincinnati, OH 45204 ("**NMC**").

### Recitals:

A. The City owns approximately 1.8591 acres of unimproved real property generally located south of Gest Street and west of Berlin Street in the Lower Price Hill neighborhood, as more particularly depicted on Exhibit A (*Survey Plat*) hereto (the "**Gest Property**"), which is under the management of the City's Department of Community and Economic Development ("**DCED**").

B. The City owns approximately 0.2751 acres of real property designated as public right-of-way, commonly known as Summer Street, as more particularly depicted on Exhibit A hereto (the "**ROW Property**"), and together with the Gest Property, collectively referred to herein as the "**Sale Property**", which is under the management of the City's Department of Transportation and Engineering ("**DOT**").

C. The City issued a request for proposals to solicit offers to develop the Gest Property. Developer submitted a proposal in response, which proposal the City determined is the most advantageous to the City, involving a capital investment of at least \$3,630,000 to construct an approximately 49,900 square foot manufacturing facility to be leased to NMC, resulting in the creation of up to 15 new full-time jobs by NMC and 34 temporary construction jobs (the "**Project**").

D. Developer seeks the vacation and sale of the ROW Property to consolidate the Sale Property to facilitate the Project on a larger development site. Also, Developer or its designee intends to enter into a transaction with the Port of Greater Cincinnati Development Authority (the "**Port**") under which it will convey the Sale Property to the Port before undertaking construction of the Project's improvements, and the Port will lease the improvements to be constructed back to Developer or its designee (the "**Port Lease Transaction**"). The City supports and is agreeable to the Port Lease Transaction, finding that it is vital to put the currently undeveloped land to productive use and provide the City with the jobs and other economic benefits that are anticipated to result from the Project.

E. Ann D. Jennings, Esq., a reputable attorney practicing in Hamilton County, Ohio, at the request of the City has provided the following: (i) an Attorney's Certificate of Title dated June 9, 2021, certifying that the City and the Port are the owners of all real property abutting the ROW Property, and (ii) the written consent of all necessary abutters to the City's vacation and sale of the ROW Property to Developer.

F. Pursuant to Ohio Revised Code Chapter 723, the legislative authority of a municipal corporation may convey the fee simple estate or other interest in land used for streets and alleys if it has determined that the property is not needed for any municipal purpose.

G. The City has made the following determinations: (i) that the ROW Property is not needed for transportation or any other municipal purpose and that the sale of the ROW Property will not be detrimental to the public interest; (ii) that the Gest Property is not needed for any municipal purpose; (iii) it is in the best interest of the City to eliminate competitive bidding in connection with the City's sale of the Gest Property because the City issued a request for proposals to solicit offers to develop the Gest Property, and the City finds that Developer's development proposal is the most suitable and advantageous to the City; (iv) it is in the best interest of the City to eliminate competitive bidding in connection with the City's vacation and sale of the ROW Property because the City and the Port own all real property that abuts the ROW Property, Developer has obtained the consent of all necessary abutters

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to the City's vacation and sale of the ROW Property, and as a practical matter no one other than an abutting property owner would have any use for it.

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

I. The City believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements. Accordingly, the City is cooperating to facilitate a real property tax abatement with respect to the Project pursuant to a *Community Reinvestment Area Tax Exemption Agreement* (the "**CRA Agreement**"), subject to passage by City Council of a separate ordinance authorizing such abatement.

J. The City's Real Estate Services Division has determined, by professional appraisal, that the approximate fair market value of the Gest Property is \$195,500, and that the approximate fair market value of the ROW Property is \$13,500 for a combined total of \$209,000, however, the City is agreeable to convey the Sale Property for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits from the Project that equal or exceed the fair market value of the Sale Property because it is anticipated that the Project will create new jobs, stimulate economic growth in the Lower Price Hill neighborhood, and restore the City's Sale Property to a productive use.

K. The City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's sale of the Gest Property and the City's vacation and sale of the ROW Property on December 18, 2020.

L. Cincinnati City Council approved the City's sale of the Sale Property to Developer, and the execution of this Agreement by Ordinance No. [\_\_\_\_]-2021, passed by City Council on [\_\_\_\_], 2021.

NOW, THEREFORE, the parties agree as follows:

**1. DUE DILIGENCE.**

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

- (i) *Title Commitment:* A current title commitment for the Sale Property;
- (ii) *ALTA Survey:* An ALTA survey of the Sale Property;
- (iii) *Construction Schedule:* The proposed construction schedule for the Project;
- (iv) *Environmental Site Assessment:* A Phase I Environmental Site Assessment of the Property; if the Phase I Environmental Site Assessment reports any recognized environmental conditions, then Developer shall also obtain a Phase II Environmental Site Assessment;
- (v) *Financing, Tax Credits, and Incentives:* Evidence of a satisfactory loan commitment or letter from Developer's lender evidencing that Developer has secured or will be able to secure all financing necessary to complete the Project. Developer having satisfied itself that it will qualify for and ultimately obtain tax credits, abatements, and/or other incentives and financing to support the Project, including but not limited to, the CRA Agreement;

- (vi) *Zoning Approval*: Evidence that any and all zoning approvals that may be required for completion of the Project;
- (vii) *Building Permit*: Evidence that Developer has obtained or is ready to obtain a building permit issued by the City's Department of Buildings and Inspections for the construction of the Project;
- (viii) *Project Plans*: A copy of the Final Plans (as defined below), as specified below;
- (ix) *Final Bids and Budget*: A copy of the Final Bids (as defined below) and Budget (as defined below) for the Project, as specified below;
- (x) *Plats*: A copy of a consolidation plat for the Sale Property, and vacation plat for the ROW Property for the Project;
- (xi) *Construction Contract*: A copy of the executed final construction contract executed by Developer's general contractor for construction of the Project;
- (xii) *As-Built Appraisal*: An "as-built" appraisal of the Project (if required by Developer's lender); and
- (xiii) *Other Information*: Such other information and documents pertaining to Developer or the Project as the City may reasonably require.

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

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

(C) Consolidation Plat; Vacation Plat. Prior to Closing and at no cost to the City, the Developer shall conduct all necessary surveying work and prepare (i) a consolidation plat and legal description for the Sale Property, which shall consolidate all City-owned parcels comprising the Project site and the adjacent ROW Property; and (ii) a vacation plat and legal description for the ROW Property for the Summer Street right-of-way to be vacated and sold to Developer. Developer shall submit the consolidation plat and vacation plat to the City for review and approval (the City-approved consolidation plat and vacation plat are individually referred to herein, respectively, as the "**Consolidation Plat**" and "**Vacation Plat**" and collectively referred to as the "**Plats**"). The City's Department of Community and Economic Development ("**DCED**") and the Developer shall work collaboratively to secure all appropriate Office of the County Engineer, Hamilton County, Ohio and Office of the County Auditor, Hamilton County, Ohio approvals of the Plats, in accordance with applicable law and regulation. Prior to Closing and at no cost to the City, the Developer shall provide to the City recordable versions of the Plats and any other related necessary documentation required by the City and shall pay for all other fees and expenses associated with the approval and recording of such Plats.

(D) Final Bids. Following approval of the Final Plans in accordance with Section 1(B) above, Developer shall solicit bids for construction of the Project. Developer shall not solicit bids from any contractors or subcontractors who are identified as being debarred by the federal or state government or who are identified as being debarred on the City's Vendor's Performance list. The final bids the Project, as approved by Developer, are referred to herein as the "**Final Bids**".

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

(F) Clearing of Title Objections. The City agrees to cooperate with the Developer, at no cost to the City, in the release or other clearing from title of title objections raised by the Developer with respect to the Sale Property prior to Closing; provided, however, that such release or other clearing from title does not violate the findings of the CSPRO review and approval.

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

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

## **2. Real Estate Closing**

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

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

(C) Closing Conditions. The Closing shall not occur unless and until the following conditions have been satisfied (the "**Closing Conditions**"); *provided, however*, that if the City, in its sole discretion, determines that one or more of the Closing Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City's Quitclaim Deed to Developer or handle such Conditions post-Closing. Developer shall perform all work and investigations {00326366-6}

and shall obtain and prepare all necessary documents pertaining to the satisfaction of the Conditions, at no cost to the City. The City, in its sole discretion, may waive one or more of the Closing Conditions.

- (i) Due Diligence Materials: Each party must be satisfied with the various Due Diligence Materials and other reports related to the Project, as described in Section 1 above;
- (ii) Inspections and Utilities: Developer's approval (or waiver) of [x] inspections of the Sale Property, including without limitation environmental assessments and soil assessments, to the extent Developer, at its option, elects to obtain such inspections, [y] MSDGC/GCWW: Developer shall (i) have submitted a Request for Availability for Sewer Service to the Metropolitan Sewer District of Greater Cincinnati and be complying with all related City requirements, and (ii) be satisfactorily coordinating construction of the Project with the City's Greater Cincinnati Water Works and Division Stormwater Management Utility and complying with applicable requirements with respect to all matters pertaining to utility service for the Sale Property;
- (iii) Project Completion: Based upon all information then available to the City, the City must be reasonably satisfied that the Developer has attained or will attain all approvals and awards necessary to complete the Project; has made no false or misleading claims to the City regarding the Project; and is otherwise prepared, able, and ready to complete the Project in accordance with the requirements of this Agreement;
- (iv) Plats, Legal Descriptions, and Deeds: Developer shall have provided the City with all plats and legal descriptions as required by DOTE, the Department of City Planning, and the Hamilton County Auditor, Engineer, and Recorder in connection with the City's sale of the Sale Property, including a new legal description of the Sale Property;
- (v) Continued Compliance: Developer is in compliance with all obligations under this Agreement and that all representations made by Developer, as applicable, under this Agreement or the CRA Agreement continue to be true and accurate.
- (vi) Coordinated Report Conditions (CR #78-2019) \*Subject to change following satisfaction by Developer\*:

(a) DOTE:

(1) Maintain 10' minimum clearance from the face of curb to the property/Right-of-Way line for all parcels. The City shall retain this space or require any development to dedicate this back to the City when parcels are consolidated.

(2) DOTE shall review and approve future development plans.

(b) MSDGC:

(1) [intentionally omitted]

(2) As a reminder, the MSDGC Request for Availability for Sewer Service (RASS) will be required for a future development or redevelopment project, if not already requested to MSDGC. The MSDGC RASS will determine the availability of a sewer and outline any additional MSDGC project requirements that could impact a project schedule if not considered, such as the need to obtain any MSDGC tap permits, Ohio EPA Permit to Install, utilization of licensed and bonded sewer tappers with MSDGC, sewer inspection scheduling, project on-site separation of flow requirements, MSDGC Excavation/Fill permitting and bonding, MSDGC detention requirements per Section 303 of the MSDGC Rules and Regulations, need for a grease interception system, and/or a reminder for the project to coordinate with City of Cincinnati Stormwater Management

Utility of the Department of the Greater Cincinnati Waterworks for their specific additional detailed storm water, storm water detention, and flood plain requirements. As details of the project concept are developed, MSDGC Development Services Branch will serve as MSDGC's point of contact.

(c) GCWW:

(1) There is an inactive 5/8" lead water service branch (H-57508) attached to parcel 149-0014-0065. Because the existing branch is lead, it cannot be repurchased or reactivated. The future owner would need to purchase a new water service branch for the property.

(2) If in the future, the petitioner or their agents determine the existing water system does not meet their fire and/or domestic water demands, then the petitioner may need to upgrade the water mains in their area to meet their future water demands. The Water Works approval of this Coordinated Report for the sale of this City Parcel in no way relieves the petitioner of their responsibility to potentially upgrade the water system to meet their future fire and domestic water demands. This work will be performed at the expense of the petitioner and not at the expense of the Water Works.

(3) All conditions of water service to this property, including the location of attachment to the public water system, and abandonment of any existing water service branches that presently serve the subject premises, will be determined upon submission of final plans and application for service. Water service to this property is subject to all rules, regulations, and current practices and policies of the Cincinnati Water Works.

(d) Cincinnati Bell: [intentionally omitted]

(D) Right to Terminate. If the Closing Conditions have not been satisfied or waived and the Closing has not occurred by **12 months** from the date that Council authorized the execution of this Agreement, then the City or Developer shall have the right to terminate this Agreement by giving written notice thereof to the other, whereupon this Agreement and all rights and obligations of the parties hereunder shall immediately terminate.

(E) Conveyance; Miscellaneous Closing Provisions. At the Closing, (i) Developer shall pay the Purchase Price and (ii) the City shall convey the Sale Property to Developer by a Quitclaim Deed in substantially the form of the attached Exhibit B (Form of Quitclaim Deed) (the "**Deed**"). Developer shall pay all conveyance fees, transfer taxes, recording fees, title exam fees, title insurance premiums, settlement fees, and any and all other closing costs associated with the Closing such that the City shall not be required to come up with any funds for the Closing. There shall be no proration of real estate taxes and assessments at Closing, and from and after the Closing, Purchaser shall pay all real estate taxes and assessments thereafter becoming due. At Closing, the parties shall execute a settlement statement and any and all other customary closing documents that are necessary for the Closing, in such forms as are approved by the City. The City shall not however be required to execute a title affidavit at Closing. The provisions of this Agreement shall survive the City's execution and delivery of the *Quitclaim Deed* and shall not be deemed to have been merged therein. Pursuant to Section 301-20, Cincinnati Municipal Code, at Closing, Developer shall pay to the City any and all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed by Developer to the City.

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

(G) Transfer of fee title to the Port. Nothing in this Agreement shall be construed to prohibit Developer from entering into a sale and leaseback arrangement with respect to the Sale Property in which fee title to the Sale Property is held by the Port; *provided, however,* that (a) the purpose for the Port Lease Transaction is to take advantage of the sales tax exemption on the purchase of Project building materials, (b) the transfer of title to the Sale Property to the Port does not occur prior to the execution of the CRA Agreement, if such CRA Agreement is authorized by City Council, (c) Developer shall provide the City with such documents and other information with respect to this arrangement as the City may reasonably request, including the final form of the Port Lease Transaction documents that are to be executed after the execution of the CRA Agreement, at least 7 days prior to the date set by the parties for the Closing, (d) Developer agrees to execute an amendment to the terms of this Agreement, containing terms and provisions mutually agreed upon by the parties, should the City indicate, in writing, that such an amendment (or such amendments) are required to effect any technical and legal changes that the City may, in its discretion, deem to be necessary or desirable to accommodate such an arrangement while maintaining all of the material economic and financial terms of this Agreement, and (e) the City and Developer agree to negotiate in good faith towards any such amendment. Developer may not assign its rights, obligations, or any other interest under this Agreement to any other party, at any time, except that subject to the provisions of this paragraph, once Developer has obtained the fee interest in any given portion of the Sale Property, Developer may convey the same fee interest to the Port, in the manner, and subject to the terms described, above, but such fee title transferred to the Port shall still be subject to the City's rights under this Agreement to the First Repurchase Option, as described in Section 3, below, until the same are no longer valid under the Agreement. Developer hereby provides notice to the City that Developer will enter into the Port Lease Transaction.

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

(A) Construction Commencement & Completion Dates. Developer shall commence on-site construction of the Project no later than 6 months after the Deed is placed of record by the Hamilton County, Ohio Recorder (the "**Construction Commencement Date**"). Developer shall complete construction of the Project (as evidenced by a certificate of occupancy for the Project) in accordance with the Final Plans and all other City approvals ("**Construction Completion**") no later than **March 23, 2023** (the "**Completion Deadline**").

(B) Construction Commencement; First Repurchase Option. No later than the Construction Commencement Date, Developer shall (i) have applied for and received the required building permits from the City's Department of Buildings and Inspections for construction of the Project and (ii) have commenced on-site construction of the Project in accordance with the Final Plans ("**Construction Commencement**"). If Construction Commencement has not occurred on or before the Construction Commencement Date, then, at any time thereafter, the City shall have the right to re-purchase the Sale Property, exercisable by written notice thereof to Developer (the "**Repurchase Option**"). If the City elects to re-purchase the Sale Property, the reconveyance shall take place on the date specified in the City's notice. On the date of reconveyance: [x] the City shall refund the Purchase Price to Developer; [y] Developer shall reconvey the Sale Property (including any and all improvements) to the City in the same condition as presently exists, reasonable wear and tear and damage by the elements excepted (and under no circumstances shall the City be required to pay for the value of any improvements made by Developer to the Sale Property); (iii) Developer shall convey marketable title to the Sale Property to the City by limited warranty deed, free and clear of all liens and encumbrances, except for the lien of real estate taxes not yet then due and payable and except for those encumbrances, if any, that were in existence or newly-created at the time of the City's conveyance of the Sale Property to Developer; (iv) Developer shall pay all customary closing costs associated with such reconveyance (e.g., conveyance fees, transfer tax, recording fees); and (v) real estate taxes and assessments shall be prorated as of the date of the reconveyance. The provisions of this paragraph shall be reflected in the City's Quitclaim Deed attached hereto as Exhibit B.

(C) Special Environmental Compliance Requirements. Developer hereby acknowledges that it is aware that the Sale Property is located in what is technically referred to in environmental parlance as a "Brownfield," and that as such, it is subject to a No Further Action letter ("**NFA**") #13NFA518 and a {00326366-6}



Covenant Not to Sue issued by the Ohio Environmental protection Agency dated June 16, 2014 (“**CNS**”), and all of the associated special environmental requirements to safely develop the Sale Property, and maintain safe conditions with respect to all aspects of the Sale Property, developed and undeveloped. Developer understands and acknowledges that the responsibility to abide by the terms of the NFA and CNS with respect to the Sale Property run with the land and will thus transfer to Developer upon conveyance of each respective piece of the Sale Property to Developer. In furtherance of this legal duty, Developer specifically agrees that it will ensure that all engineering controls installed at the Sale Property, including, but not limited to, a vapor barrier system to be installed, are designed, engineered, installed and maintained in the future in accordance with all laws, ordinances, rules, regulations, restrictions, and continued compliance requirements of the Ohio Environmental Protection Agency.

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

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

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

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

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

#### **4. Insurance; Indemnification.**

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(A) Insurance. Throughout construction, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$2,000,000 per occurrence, combined single limit/\$3,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of one-hundred percent (100%) of the value of the improvements constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Developer's construction lenders, and (v) such other insurance as may be reasonably required by the City's Division of Risk Management prior to closing. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City.

(B) Waiver of Subrogation. Developer hereby waives all claims and rights of recovery, and on behalf of Developer's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Developer, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Developer shall at all times protect against such loss or damage by maintaining adequate insurance. Developer shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

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

**5. Casualty; Eminent Domain**. If the improvements are damaged or destroyed by fire or other casualty during construction, or if any portion of the Sale Property is taken by exercise of eminent domain (federal, state or local), Developer shall repair and restore the affected property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which the Sale Property was in immediately prior to such occurrence. To the extent the City's participation is required, the City and Developer shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the proceeds are insufficient to fully repair and restore the affected property, the City shall not be required to make up the deficiency. Developer shall handle all construction in accordance with the applicable requirements set forth herein, including without limitation obtaining the City's approval of the plans and specifications if they deviate from the original City-approved plans. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the Sale Property is being repaired or restored.

**6. Default; Remedies**.

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

(i) The failure of Developer to perform any obligation under this Agreement, and failure by Developer to correct such failure within thirty (30) days after Developer's receipt of written notice thereof from the City; *provided, however*, that if the nature of the default is such that it cannot reasonably be cured within 30 days, Developer shall not be in default so long as Developer commences to cure the default within such 30-day period and thereafter diligently completes such cure within a reasonable period of time (but not exceeding 90 days) after Developer's receipt of the City's initial notice of default. The foregoing notwithstanding, if Developer's failure to perform or observe any obligation, duty, or responsibility under this Agreement creates a dangerous condition or otherwise constitutes an emergency

as determined by the City, an event of default shall be deemed to have occurred if Developer fails to take corrective action immediately upon discovering such dangerous condition or emergency; or

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

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

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

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

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

To the City:

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

To Developer:

Gest Street Distribution LLC  
1907 South Street  
Cincinnati, OH 45204

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

**8. Representations, Warranties, and Covenants.** Developer makes the following representations, warranties and covenants to induce the City to enter into this Agreement:

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

(ii) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein.

(iii) Developer's execution, delivery and performance of this Agreement and the transactions contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or Developer's organizational documents, or any mortgage, contract,

agreement or other undertaking to which Developer is a party or which purports to be binding upon Developer or upon any of its assets, nor is Developer in violation or default of any of the foregoing.

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

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

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

(vii) Neither Developer nor its affiliates owe any outstanding fines, penalties, judgments, water or other utility charges or other amounts to the City.

## **9. Reporting Requirements.**

(A) Submission of Records and Reports; Records Retention. Developer shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to the Project, this Agreement, or Developer's involvement with the same, including, without limitation, audited financial statements, bank statements, income tax returns, information pertinent to the determination of finances of the Project, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (collectively, "**Records and Reports**"). All Records and Reports compiled by Developer and furnished to the City shall be in such form as the City may from time to time require.

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

## **10. General Provisions.**

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

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

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

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

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(E) Assignment. Developer shall not assign its rights or obligations under this Agreement without the prior written consent of the City, except as described above in Section 2(G) of this Agreement, which consent the City may be withheld in the its sole discretion, and any attempt by Developer to assign its rights or obligations under this Agreement without the City's consent shall, at the City's option, render this Agreement null and void. The City hereby consents to a collateral assignment of Developer's rights under this Agreement to Developer's construction lender for the Project.

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

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

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

(I) Brokers. Developer shall be responsible for payment of any and all commissions and fees payable to brokers and agents who have assisted Developer in its acquisition of the Sale Property.

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

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

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

(M) Joint and Several Liability. The obligations and liability of the parties comprising Developer under this Agreement (if more than one person or entity) are joint and several. In dealing with said entities, the City shall be entitled to rely upon information, notices, documents and the like received by the City from only one of said entities to the same extent as if the same had been provided to the City by both entities.

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

**12. Exhibits**. The following exhibits are attached hereto and made a part hereof:  
Exhibit A – *Survey Plat*  
Exhibit B - *Quitclaim Deed*  
Exhibit C - *Additional City Requirements*

[ *City Signature Page Follows* ]

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

**CITY OF CINCINNATI**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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Title: \_\_\_\_\_

Date: \_\_\_\_\_

Recommended by:

\_\_\_\_\_  
Markiea L. Carter, Director  
Department of Community and Economic Development

Approved by:

\_\_\_\_\_  
Jennifer B. Mackenzie Interim Director,  
Department of Economic Inclusion

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

Certified Date: \_\_\_\_\_

Fund/Code: \_\_\_\_\_

Amount: \_\_\_\_\_

By: \_\_\_\_\_  
Karen Alder, City Finance Director

[ *Developer Signature Page Follows* ]

**GEST STREET DISTRIBUTIONS, LLC,**  
an Ohio limited liability company

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

{00326366-6}







**EXHIBIT B**  
to Property Sale and Development Agreement

*FORM OF QUITCLAIM DEED*

SEE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE]

### QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), for valuable consideration paid, hereby grants and conveys to **GEST STREET DISTRIBUTIONS, LLC**, an Ohio limited liability company, whose mailing address is 1907 South Street, Cincinnati, OH 45204 ("**Grantee**"), all of the City's right, title and interest in and to (i) the real property described on Exhibit A (*Legal Description – Gest Street Parcels*), and (ii) the real property described on Exhibit B (*Legal Description – Vacated Portion of Summer Street*) hereto (the "**Property**"):

<b>Address</b>	<b>APN</b>	<b>Prior Instrument Reference</b>
1917 Gest Street	149-0014-0067-00	OR 10233, Page 3730 Hamilton County, Ohio Records
1919 Gest Street	149-0014-0065-00 (-65, -66, -160, -175, -183 Cons.)	OR 10783, Page 1291 Hamilton County, Ohio Records
1919 Gest Street	149-0014-0190-00	OR 10783, Page 1291 Hamilton County, Ohio Records
1929 Gest Street	149-0014-0063-00	OR 10783, Page 1291 Hamilton County, Ohio Records
1933 Gest Street	149-0014-0062-00 (-62, -64, -68, -69, -164 Cons.)	OR 10233, Page 3730 Hamilton County, Ohio Records
1935 Gest Street	149-0014-0061-00	OR 10233, Page 3730 Hamilton County, Ohio Records
None: a parcel located at the SW Corner of the intersection of Gest and Summer Streets	149-0014-0205-00	OR 13411, Page 1481 Hamilton County, Ohio Records
None: a portion of former public right-of-way designated as Summer Street	None: a portion of former public right-of-way designated as Summer Street	None: a portion of former public right-of-way designated as Summer Street

This conveyance was authorized by Ordinance No. \_\_\_-2021, passed by Cincinnati City Council on \_\_\_\_\_, 2021. Pursuant to Ohio Revised Code Chapter 723 and Ordinance No. \_\_\_-2021, the portion of public right-of-way designated as Summer Street, as more particularly described on Exhibit B and depicted on Exhibit C (*Vacation Plat – Summer Street*) hereto, is hereby vacated as public right-of-way by the City.

(A) Creation of Utility Easements: The conveyance of the former public right-of-way, as more particularly described on Exhibit B and depicted on Exhibit C hereto, is subject to R.C. Section 723.041 so that any affected public utility shall be deemed to have a permanent easement in such vacated portion of Summer Street for the purpose of maintaining, operating, renewing, reconstructing, and removing said utility facilities and for purposes of access to said facilities. Following the relocation of any City-owned or operated public utilities in such vacated portion of the public right-of-way to the satisfaction of the affected City-owned public utility, upon Grantee's request, the City agrees to execute and deliver to Grantee a recordable release, for recording in the Hamilton County Recorder's office, at Grantee's cost.

(B) Permanent Sewer Easement and Restrictions in favor of the City of Cincinnati: The conveyance of the former public right-of-way, as more particularly described on Exhibit B and depicted on Exhibit C hereto, is subject to the following easement:

The City hereby reserves and creates a permanent, non-exclusive 30-foot wide utility easement centered on the centerline of an existing combined sewer line, facilities, equipment, and appurtenances for the operation, maintenance, repair, reconstruction, removal, or replacement of said existing sewer lines, facilities, equipment, and all appurtenances located within the easement area, including the right to enter upon and renter upon the Property to access the sewer easement.

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

Any structure constructed on the Property after the date of acknowledgment herein shall be kept not less than three (3) feet outside the sewer easement line nearest the site of the proposed structure.

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

(C) Re-conveyance of Property to City for Failure to Timely Commence Construction. The City and Grantee are parties to that certain *Property Sale and Development Agreement* dated [\_\_\_\_\_] (the "**Sale Agreement**"). As provided in the Sale Agreement, if Grantee fails to obtain the required building permits from the City's Department of Buildings and Inspections for construction of the Project, as defined by the Sale Agreement, and commenced on-site construction of the Project in accordance with the Final Plans, as defined by the Sale Agreement, no later than 6 months after this conveyance instrument is placed of record by the Office of the Recorder, Hamilton County, Ohio, then Grantee shall re-convey the Property to the City free and clear of all liens and encumbrances, as more particularly described in the Sale Agreement. At such time as Grantee is no longer required to re-convey the Property to the City under the Sale Agreement, upon Grantee's request, the City shall execute and deliver to Grantee a recordable release, for recording in the Hamilton County Recorder's office, at Grantee's cost.

Executed on \_\_\_\_\_, 2021.

**CITY OF CINCINNATI**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF HAMILTON        )

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

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

Approved by:

\_\_\_\_\_  
Markiea L. Carter, Director  
Department of Community and Economic Development

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

This instrument prepared by:  
City of Cincinnati Law Department  
801 Plum Street  
Cincinnati, Ohio 45202

**EXHIBIT A**  
to Quitclaim Deed

*Legal Description – Gest Street Parcels*

**Tract I**

**Property Address:** 1917 Gest Street, Cincinnati, Ohio 45204  
**Auditor's Parcel No.:** 149-0014-0067-00

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

All that certain lot in Cincinnati, formerly Storrs Township, Hamilton County, Ohio, commencing at a point on the south side of Plank Road (Gest Street), 25 feet west of East line of Block "P" as laid down upon Stephen Wilders Subdivision, recorded in Plat Book 1, Page 282, of the Plat Records of Hamilton County, Ohio, which point is also the southwest corner of Gest Street and a 50 foot street laid out by C. R. Wilder, now known as Woodrow Street; thence west along Gest Street 25 feet; thence south at right angles 80.05 feet to the northwest corner of the property sold by Donald and Robert Schloemer to Hoeltge Bros. Inc. in Deed Book 2661, Page 600; thence North 89 degrees 35' East along the northerly side of an 8" brick wall, 25 feet to the west line of Woodrow Street; thence north along said Woodrow Street, 79.95 feet to the place of beginning.

**Tract II**

**Property Address:** 1919 Gest Street, Cincinnati, Ohio 45204  
**Auditor's Parcel Nos.:** 149-0014-0065-00 (-65, -66, -160, -175, -183 Cons.)

Parcel No. 149-14-65

All that certain real estate in the City of Cincinnati, Hamilton County, Ohio, situated on the southside of Gest Street, being 25.00 feet front by 95.00 feet deep between Berlin and Summer Streets, 50.00 feet west of Berlin Street, and lying 75 feet west of the east line of the block, being in Block "P" S.L. Wilder's Subdivision.

and

Parcel No. 149-14-66

Situate in the City of Cincinnati, Hamilton County, Ohio, and being part of Block "P" of Stephen Wilder's Subdivision, a plat of which is recorded in Plat Book 1, Page 383, Hamilton County Records, viz:

Beginning at a point on the south side of Gest Street 50 feet west of the northeast corner of said block and running thence west with said Gest Street 25 feet; thence south and parallel with the east line of said block 95 feet to a vacated alley; thence east and parallel to Gest Street 25 feet; thence North 95 feet to the place of beginning; the property herein referred to fronting 25 feet on the south side of Gest Street by 95 feet in depth between parallel lines and lying 25 feet west of the west line of Berlin Street.

and

**EXHIBIT A (Cont.)**

**Parcel No. 149-14-160**

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

Commencing at a point 94.00 feet east of the southeast corner of Gest and Summer Streets in Block "P" in S. Wilder's Subdivision of lands in Storrs Township, Hamilton County, Ohio; thence running south from Gest Street 95.00 feet parallel to the west line of said block; thence east 31.00 feet parallel to Gest Street; thence north between parallel lines 95.00 feet to Gest Street; thence west on Gest Street 31.00 feet to the place of beginning. Being known and numbered as No. 1923 Gest Street.

and

**Parcel Nos. 149-14-175 and -183**

All that lot of land in the City of Cincinnati, Hamilton County, Ohio and being part of Block "P" of Stephen Wilder's Subdivision as recorded in Plat Book 1, Page 282 of the Hamilton County, Ohio Records and being more particularly described as follows:

Beginning at a point in the intersection of the westerly line of Woodrow Street with the northerly line of an 8 inch brick wall located South 0 degrees 24 minutes west, 79.95 feet from the southwesterly intersection of Gest and Woodrow Streets; thence South 0 degrees 24 minutes west along the westerly line of Woodrow Street, 20.05 feet; thence south 89 degrees 48 minutes west parallel with the southerly line of Gest Street, 25 feet; thence North 0 degrees 24 minutes east parallel with the westerly line of Woodrow Street, 19.95 feet to the north side of an 8 inch brick wall 25 feet to the place of beginning.

**Tract III**

**Property Address:** 1919 Gest Street, Cincinnati, Ohio 45204  
**Auditor's Parcel Nos.:** 149-0014-0190-00

Situate in the City of Cincinnati, Hamilton County, Ohio, and being part of Block "P" of Stephen Wilder's Subdivision, same being recorded in Plat Book 1, Page 282, Recorder's Office, also being part of the resubdivision of Block "P" of Stephen Wilder's Subdivision, same being recorded in Case No. 41960 of the Superior Court of Cincinnati, Book 31, Page 300, of the Superior Court Records, and being more particularly described as follows, to-wit:

Beginning at a point on the west line of Woodrow Street, said point being 100 feet south of the southwest corner of Gest Street and Woodrow Street; thence continuing south with the west line of Woodrow Street for a distance of 11.60 feet; thence westerly parallel to Gest Street for a distance of 75.20 feet; thence northwardly parallel to Woodrow Street for a distance of 16.60 feet; thence eastwardly parallel to Gest Street for a distance of 50.20 feet; thence southwardly parallel to Woodrow Street for a distance of 5.00 feet; thence eastwardly parallel to Gest Street for a distance of 25.00 feet to the place of beginning.

**EXHIBIT A (Cont.)**

**Tract IV**

**Property Address:** 1929 Gest Street, Cincinnati, Ohio 45204  
**Auditor's Parcel Nos.:** 149-0014-0063-00

The following described premises located in the City of Cincinnati, Hamilton County, and State of Ohio, and more particularly described as follows:

Beginning at a point in the South line of Gest Street 106 feet west of Woodrow Street and 119 feet east of the northwest corner of said Block "P"; thence west with the south line of Gest Street 31 feet; thence south parallel to the west line of said Block "P" and 63 feet east of Summer Street, 100 feet; thence east parallel with Gest Street 31 feet to a point 106 feet west of Woodrow Street; thence north parallel with Woodrow Street 100 feet to the place of beginning.

**Tract V**

**Property Address:** 1933 Gest Street, Cincinnati, Ohio 45204  
**Auditor's Parcel Nos.:** 149-0014-0062-00 (-62, -64, -68, -69, -164 Cons.)

Situated in Section 30, Town 4, Fractional Range 1 of the Miami Purchase, in the City of Cincinnati, County of Hamilton, State of Ohio and being part of Block "P" of Stephen Wilder's Subdivision as recorded in Plat Book 1, Page 282, of the Hamilton County Recorder's Office and more particularly described as follows:

Begin at the intersection of the South right-of-way of Gest Street with the East right-of-way of Summer Street (found notch N. 5.0'), said point being North 89°30'00" East, 25.00 feet from the Northwest corner of the above-mentioned Block "P"; thence with the South right-of-way of Gest Street and North line of Block "P" North 89° 30'00" East, 32.00 feet to a set notch and the TRUE POINT OF BEGINNING;

thence from the TRUE POINT OF BEGINNING and continuing with the South right-of-way of Gest Street and North line of said Block "P" North 89°30'00" East, 31.00 feet to a set notch (found notch N. 5.0');

thence leaving said right-of-way and North line of Block "P" and with the West line of Inwood Automotive Products Co., Inc., as recorded in Deed Book 3289, Page 17, South 00°02'00" West, 100.00 feet to a set iron pin;

thence with the South line of Inwood Automotive Products Co., Inc., and The Central Carton Company as recorded in Deed Book 2213, Page 157, North 89°30'00" East, 62.00 feet to a set iron pin;

thence with the West line of Inwood Automotive Products Co., Inc., as recorded in Deed Book 3263, Page 162, South 00°02' 00" West, 11.60 feet (existing building corner N. 0.4' E. 1.0');

thence with the South line of said Inwood Automotive Products Co., Inc., North 89°30'00" East, 75.20 feet to a set notch in the West right-of-way of Woodrow Street;

thence with said right-of-way and parallel to and 25 feet West of the East line of Block "P" of Stephen Wilder's Subdivision South 00°02'00" West, 146.03 feet to a set notch at the Southeast corner of Lot 3 made by the Commissioners in Partition Case #41960 Superior Court of Cincinnati, Ohio;

thence with the South line of said Lot 3 and North line of Gabriel and Regina Guigui as recorded in Deed Book 4340, Page 485, South 89°30'00" West, 200.20 feet to a set notch in the East right-of-way of Summer Street;



### EXHIBIT A (Cont.)

thence with said East right-of-way, parallel to and 25 feet East of the West line of Block "P" of Stephen Wilder's Subdivision North 00°02'00" East, 162.63 feet to a found notch;

thence leaving said right-of-way and with the South line of The Central Carton Company as recorded in Deed Book 3289, Page 196, North 89°30'00" East, 32.00 feet to a set iron pin;

thence with the East line of The Central Carton Company North 00°02'00" East, 95.00 feet to the TRUE POINT OF BEGINNING.

#### Tract VI

**Property Address:** 1935 Gest Street, Cincinnati, Ohio 45204

**Auditor's Parcel Nos.:** 149-0014-0061-00

Situated in the City of Cincinnati, Hamilton County, Ohio, and being a part of Lot P of Stephen Wilder's plat of Subdivision recorded in Plat Book 1, page 282, Hamilton County, Ohio, records, and commencing at a point 25 feet east of the northwest corner of said Lot P as marked in said plat, which point is also the southeast corner of Gest Street and a 50 foot street, now called Sumner Street, laid out by said Stephen Wilder; thence south 95 feet in a line parallel with the west line of said block; thence east 32 feet in a line parallel with Gest Street; thence north 95 feet parallel with the west line of said block; thence west on Gest Street 32 feet to the place of beginning.

#### Tract VII

**Property Address:** None: a parcel located at the SW Corner of the intersection of Gest and Summer Streets, Cincinnati, Ohio 45204

**Auditor's Parcel Nos.:** 149-0014-0205-00

Situate in Section 30, Town 4, Fractional Range 1, Storrs Township, City of Cincinnati, Hamilton County, Ohio, and being more particularly described as follows:

Beginning at a set Mag nail at the intersection of the south line of Gest Street, 60' R/W and the west line of Sumner Street, 50' R/W; thence with said west line of Sumner Street South 06°30'40" West, 184.39 feet to a set 5/8" iron pin; thence North 83°29'20" West, 159.99 feet to a set 5/8" iron pin; thence North 06°30'40" East, 182.93 feet to a set 5/8" iron pin at the south line of said Gest Street; thence with the south line of said Gest Street South 84°00'41" East, 160.00 feet to the Place of Beginning. Containing 29,384 square feet of land more or less (0.6746 acres). Bearings are based on NAD 83 (2007). Subject to all legal highways, easements and restrictions of record. Based on a survey performed under the direction of Joseph N. Koopman, Ohio Registration Number 7184.

**EXHIBIT B**  
to Quitclaim Deed

*Legal Description – Vacated Portion of Summer Street*

**Description for: Summer Street Vacation, 0.2751 Acres**

**Location: City of Cincinnati, Ohio**

Situated in Section 30, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, being part of Summer Street and being more particularly described as follows:

**BEGINNING** at the intersection of the south line of Gest Street and the east line of Summer Street;

Thence along said east line of Summer Street, South 06°30'40" West, 257.91 feet to the northwest corner of a tract conveyed to RWG South Street, LLC, recorded in Official Record 12326, Page 1585 of the Hamilton County Recorder's Office;

Thence through said Summer Street, along new division lines, North 84°06'22" West, 2.34 feet to a set cross notch **AND** along a curve deflecting to the left, having a radius of 41.00 feet, an arc length of 57.57 feet, a delta angle of 80°27'05" and being subtended by a chord bearing North 57°38'05" West, 52.96 feet to an existing iron pin and cap stamped City of Cincinnati Engineering in the west line of Summer Street;

Thence along said west line of Summer Street, North 06°30'40" East, 234.39 feet to an existing MAG nail in the south line of aforesaid Gest Street;

Thence along said south line of Gest Street, South 84°00'41" East, 50.00 feet to the **POINT OF BEGINNING**.

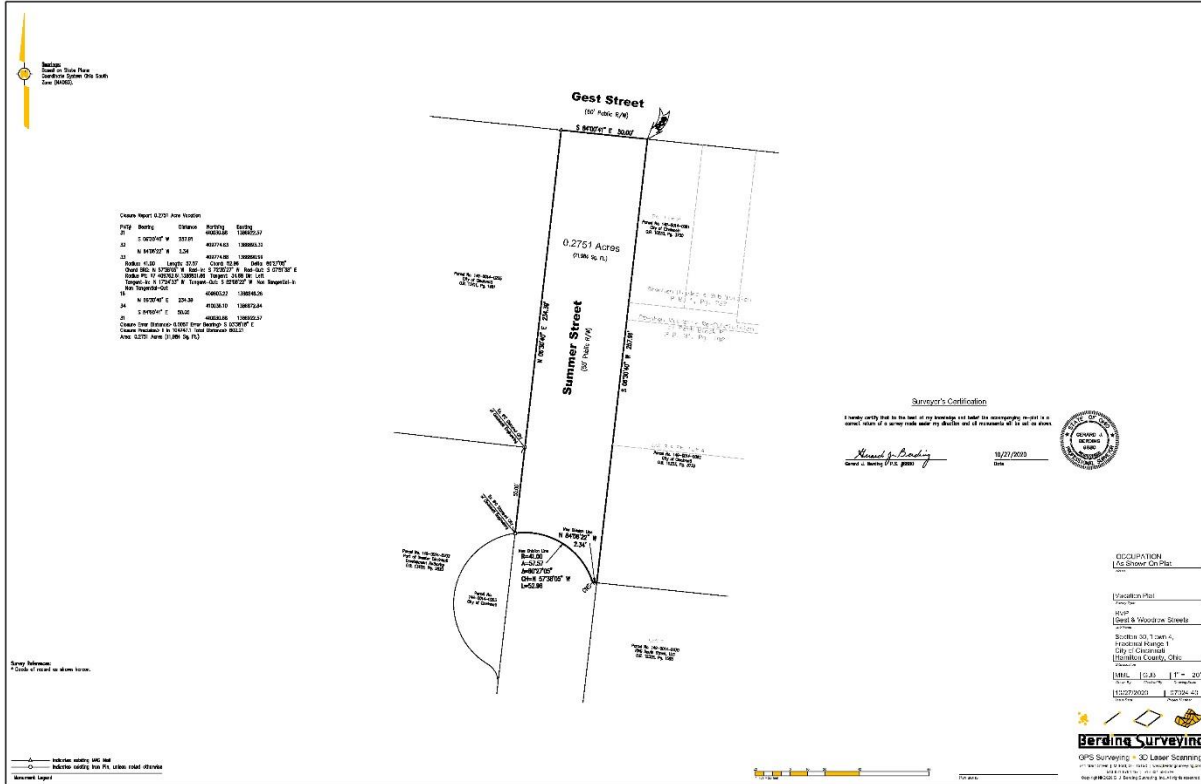
**CONTAINING 0.2751 ACRES.** Together with and subject to all easements of record.

Bearings are based on State Plane Coordinate System, Ohio South Zone (NAD83).

Prepared by G.J. BERDING SURVEYING, INC. on October 27, 2020. Based on a Vacation Plat prepared by G.J. BERDING SURVEYING, INC. on October 27, 2020

# EXHIBIT C to Quitclaim Deed

## Vacation Plat- Vacated Portion of Summer Street



**EXHIBIT C**  
to Property Sale and Development Agreement

***ADDITIONAL CITY REQUIREMENTS***

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

This Exhibit serves two functions:

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

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

(A) Construction Workforce.

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

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

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

in Developer and its general contractor's aggregate workforce in Hamilton County, to be achieved at least halfway through the construction contract (or in the case of a construction contract of six months or more, within 60 days of beginning the construction contract) (collectively, the "**Construction Workforce Goals**").

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering with Trade Unions.

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

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

(ii) Contracts and Subcontracts; Competitive Bidding.

(a) Applicability. This clause (ii) is applicable to "construction contracts" under Cincinnati Municipal Code Chapter 321. Municipal Code Chapter 321 defines "construction" as "any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by (00326366-6)

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

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

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

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

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

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

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

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

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

(F) Small Business Enterprise Program.

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

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

- (1) Including qualified SBEs on solicitation lists.
- (2) Assuring that SBEs are solicited whenever they are potential sources. Contractor must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials or to bid on construction contracts for the Project. Contractor is encouraged to use the internet and similar types of advertising to reach a broader audience, but these additional types of advertising cannot be used as substitutes for the above.
- (3) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.
- (4) When needs permit, establishing delivery schedules that will encourage participation by SBEs.

(iii) Subject to clause (i) above, if any subcontracts are to be let, Developer shall require the prime contractor to take the above affirmative steps.

(iv) Subject to clause (i) above, Developer shall provide to the City, prior to commencement of the Project, a report listing all of the contractors and subcontractors for the Project, including information as to the owners, dollar amount of the contract or subcontract, and other information that may be deemed necessary by the City Manager. Developer or its general contractor shall update the report monthly by the 15<sup>th</sup>. Developer or its general contractor shall enter all reports required in this subsection via the City's web page referred to in clause (i) above or any successor site or system the City uses for this purpose. Upon execution of this Agreement, Developer and its general contractor shall contact the Department of Economic Inclusion to obtain instructions, the proper internet link, login information, and password to access the site and set up the necessary reports.

(v) Subject to clause (i) above, Developer and its general contractor shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by notarized affidavits executed in a form acceptable to the City, submitted upon the written request of the City. The City shall have the right to review records and documentation relevant to the affidavits. If affidavits are found to contain false statements, the City may prosecute the affiant pursuant to Section 2921.12, Ohio Revised Code.

(vi) Subject to clause (i) above, failure of Developer or its general contractor to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach the minimum percentage goals for SBE participation as set forth in Cincinnati Municipal Code Chapter 323, may be construed by the City as failure of Developer to use best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this section.

(G) Equal Employment Opportunity.

(i) Applicability. Chapter 325 of the Cincinnati Municipal Code (Equal Employment Opportunity) applies (a) where the City expends more than \$5,000 under a non-construction contract, or (b) where the City spends or receives over \$5,000 to (1) employ another party to construct public improvements, (2) purchase services, or (3) lease any real or personal property to or from another party. Chapter 325 of the Municipal Code does not apply where the contract is (a) for the purchase of real or personal property to or from another party, (b) for the provision by the City of services to another party, (c) between the City and another governmental agency, or (d) for commodities such as utilities.

(ii) Requirement. If this Agreement is subject to the provisions of Chapter 325 of the Cincinnati Municipal Code (the City of Cincinnati's Equal Employment Opportunity Program), the provisions thereof are hereby incorporated by reference into this Agreement.

(H) Prevailing Wage. Developer shall comply, and shall cause all contractors working on the Project to comply, with all any prevailing wage requirements that may be applicable to the Project. In the event that the City is directed by the State of Ohio to make payments to construction workers based on violations of such requirements, Developer shall make such payments or reimburse the City for such payments within twenty (20) days of demand therefor.

(I) Compliance with the Immigration and Nationality Act. In the performance of its construction obligations under this Agreement, Developer shall comply with the following provisions of the federal Immigration and Nationality Act: 8 U.S.C.A. 1324a(a)(1)(A) and 8 U.S.C.A. 1324a(a)(2). Compliance or noncompliance with those provisions shall be solely determined by final determinations resulting from the actions by the federal agencies authorized to enforce the Immigration and Nationality Act, or by determinations of the U.S.

(J) Prompt Payment. The provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System", may apply to this Agreement. Municipal Code Chapter 319 {00326366-6}



also (i) provides certain requirements for invoices from contractors with respect to the Prompt Payment System, and (ii) obligates contractors to pay subcontractors for satisfactory work in a timely fashion as provided therein.

(K) Conflict of Interest. Pursuant to Ohio Revised Code 102.03, no officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the Project may have any personal financial interest, direct or indirect, in Developer or in the Project, and Developer shall take appropriate steps to assure compliance.

(L) Ohio Means Jobs. If this Agreement constitutes a construction contract (pursuant to the guidance with respect to the definition of that term provided in Section (A) above), then, pursuant to Ordinance No. 238-2010: To the extent allowable by law, Developer and its general contractor shall use its best efforts to post available employment opportunities with Developer, the general contractor's organization, or the organization of any subcontractor working with Developer or its general contractor with the OhioMeansJobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

(M) 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.

(N) Americans With Disabilities Act; Accessibility.

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

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