

EMERGENCY  
**City of Cincinnati**

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**An Ordinance No. \_\_\_\_\_ - 2021**

**AUTHORIZING** the City Manager to execute a *Property Sale and Development Agreement* with Nassau Avenue Investments, LLC, an affiliate of The Model Group, Inc., for the sale of City-owned property located at 114-116 W. Elder Street in the Over-the-Rhine neighborhood of Cincinnati, for a mixed-use development consisting of first floor commercial space and approximately 16 residential units.

WHEREAS, the City owns certain real property located at 114-116 W. Elder Street in Cincinnati, as described and depicted in the *Property Sale and Development Agreement* attached to this ordinance as Attachment A (the “Property”), which is under the management and control of the City’s Department of Community and Economic Development; and

WHEREAS, the City currently leases the Property, together with other properties, to the Corporation For Findlay Market of Cincinnati, which manages the properties for the City; and

WHEREAS, Nassau Avenue Investments, LLC (“Developer”) submitted a development proposal to the City pursuant to an RFP issued by the City, pursuant to which Developer desires to purchase the Property from the City and renovate the existing building located thereon into a mixed-use development consisting of a first floor commercial space and approximately 16 residential units at an estimated project cost of \$4,628,162 (the “Project”); and

WHEREAS, Developer estimates that the Project will create approximately (i) 57 full-time temporary construction jobs during the construction period with an approximate annual payroll of \$1,300,000; and (ii) approximately 14 full-time equivalent permanent jobs following completion of construction of the Project with an approximate annual payroll of \$495,000; and

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

WHEREAS, the City’s Real Estate Services Division has determined, by appraisal, that the fair market value of the Property is approximately \$150,000; however, facilitate the Project and promote its economic feasibility, the City desires to sell the Property to Developer for less than fair market value; namely, for \$1.00, because the Project will create additional affordable housing in Over-the-Rhine and stimulate other economic development in the area, for the benefit of the City; and

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

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

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

WHEREAS, City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's sale of the Property at its meeting on September 17, 2021; now, therefore,

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

Section 1. That the City Manager is hereby authorized to execute a *Property Sale and Development Agreement*, in substantially the form attached to this ordinance as Attachment A (the "Agreement"), pursuant to which the City will sell to Nassau Avenue Investments, LLC ("Developer") certain real property located at 114-116 W. Elder Street in Cincinnati (the "Property"), for Developer to renovate the existing building located thereon into a mixed-use development consisting of first floor commercial space and approximately 16 residential units (the "Project").

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

Section 3. That the fair market value of the Property, as determined by appraisal by the City's Real Estate Services Division, is approximately \$150,000; however, the City is justified in selling the Property to Developer for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits that equal or exceed the fair market value of the Property because the Project will create additional housing and stimulate other economic development in the area, for the benefit of the City.

Section 4. That proceeds from the sale of the Property shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City's Real Estate Services Division in connection with the sale, and that the City's Finance Director is hereby authorized to deposit amounts in excess thereof into Miscellaneous Permanent Improvement Fund 757.

Section 5. That the City Manager and other City officials are authorized to take all necessary and proper actions to carry out the provisions of this ordinance and the Agreement, including, without limitation, executing any and all ancillary agreements, amendments, deeds, plats, terminations, releases, and other documents.

Section 6. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to expedite the City's execution of the Agreement, so that Developer can move forward with the Project without delay, thereby creating jobs and additional housing in Cincinnati, stimulating economic growth in the area and enabling the Property to be put to its highest and best use, all for the economic benefit of the City, at the earliest possible time.

Passed: \_\_\_\_\_, 2021

\_\_\_\_\_  
John Cranley, Mayor

Attest: \_\_\_\_\_  
Clerk

**ATTACHMENT A**

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

**PROPERTY SALE AND DEVELOPMENT AGREEMENT**

*between the*

**CITY OF CINCINNATI**

*and*

**NASSAU AVENUE INVESTMENTS, LLC**

Project Name: 114-116 W. Elder Street

(sale of City-owned real property and renovation into a mixed-use development  
consisting of first floor commercial space and 16 residential rental units)

## PROPERTY SALE AND DEVELOPMENT AGREEMENT

This Property Sale and Development Agreement (this "**Agreement**") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and **NASSAU AVENUE INVESTMENTS, LLC**, an Ohio limited liability company, the address of which is 1826 Race Street, Cincinnati, Ohio 45202 ("**Developer**"), an affiliate of The Model Group, Inc. ("**Guarantor**").

### Recitals:

A. The City owns certain real property located at 114-116 W. Elder Street in the Over-the-Rhine neighborhood of Cincinnati, which property is more particularly described on Exhibit A (Legal Description) hereto (the "**Property**"). The Property is under the management and control of the City's Department of Community and Economic Development ("**DCED**").

B. Pursuant to a *Lease Agreement* dated July 1, 2004 (as amended, the "**Lease**") and *Findlay Market Management Agreement* dated July 1, 2004 (as amended, the "**Management Agreement**"), each between the City and the Corporation For Findlay Market of Cincinnati ("**CFFM**"), the City leases to CFFM and CFFM manages on behalf of the City various properties at Findlay Market, including the Property.

C. Developer submitted a development proposal to the City pursuant to an RFP issued by the City, pursuant to which Developer desires to purchase the Property and renovate the existing building located thereon into (i) a first floor commercial space, and (ii) 16 residential rental units, 4 of which will be affordable to gross household incomes at or below 80% of area median income, all as more particularly described on Exhibit B (Statement of Work, Budget, and Sources of Funds) hereto, at an estimated total project cost of approximately \$4,628,162 (the "**Project**").

D. Developer has committed to commence on-site construction at the Property no later than December 31, 2022 (the "**Outside Construction Commencement Date**"), and to complete construction at the Property no later than June 30, 2024 (the "**Outside Construction Completion Date**").

E. Developer estimates that the Project will create approximately (i) 57 full-time temporary construction jobs during the construction period with an approximate annual payroll of \$1,300,000, and (ii) 14 full-time equivalent permanent jobs following completion of construction of the Project with an approximate annual payroll of \$495,000.

F. The City's Real Estate Services Division has determined, by appraisal, that the fair market value of the Property is approximately \$150,000; however, to facilitate the Project and promote its economic feasibility, the City is agreeable to selling the Property to Developer for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits that equal or exceed the fair market value of the Property because the Project will create additional affordable housing in Over-the-Rhine.

G. 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.

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

I. The City has determined that (i) the Property is not needed for a municipal purpose, (ii) upon the recommendation of DCED, the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and (iii) the City's sale of the Property to Developer to construct the  
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Project will create, among other things, additional affordable housing in Cincinnati and is consistent with the City's objective of creating good quality housing options within the Over-the-Rhine neighborhood, thereby contributing to the social and economic viability and stability of the neighborhood.

J. The parties acknowledge that the City will need to amend the Lease and Management Agreement to remove the Property from the same prior to the City's transfer of the Property to Developer.

K. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Property to Developer at its meeting on September 17, 2021.

L. Execution of this Agreement was authorized by Cincinnati City Council by Ordinance No. \_\_\_\_\_-2021, passed on \_\_\_\_\_, 2021.

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

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

2. **Closing; Conditions to Closing.**

(A) **Conditions.** The Closing shall not occur unless and until each of the following conditions, including any and all other conditions as may be identified in the City's Coordinated Report (the "Conditions") have been satisfied or waived in writing by the City, at the City's sole and absolute discretion; provided, however, that if the City, in its sole and absolute discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City's Deed (as defined below) to Developer or handle such Conditions post-Closing:

- (i) **Title & Survey:** Developer shall have approved the title to the Property as set forth in a commitment of title insurance obtained by Developer and, if obtained by Developer, an ALTA property survey of the Property;
- (ii) **Geotechnical & Environmental Condition:** Developer shall be satisfied that the geotechnical and environmental condition of the Property is acceptable for development of the Project;
- (iii) **Developer Inspections:** Developer shall have determined from any inspections and investigations made pursuant to this Section 2, including marketing studies, traffic studies, feasibility studies, and any other studies and investigations related to the Property or the Project that Developer may elect to conduct or have conducted, that the Property and the conditions and circumstances surrounding the Property are suitable for development, construction, and use of the Project in an economically feasible manner;
- (iv) **Financing:** The City's receipt of a satisfactory loan commitment or letter from Developer's lender or other documentation evidencing that Developer has secured or will be able to secure all financing or other funds necessary to complete the Project;
- (v) **Conceptual Drawings:** Developer shall have submitted to the City conceptual drawings, followed by preliminary plans and specifications for the Project;

- (vi) *Final Budget & Construction Contract:* The City's receipt of final construction bids and a final budget for construction of the Project and an executed copy of Developer's construction contract with Developer's general contractor for the Project;
- (vii) *Construction Schedule:* Developer shall have provided the proposed construction schedule for the Project;
- (viii) *Coordinated Report Conditions:* Developer shall have satisfied the conditions of the sale set forth in the City's Coordinated Report associated with the sale of the Property, some of which are summarized in Section 11 below;
- (ix) *Developer-CFFM Lease:* Developer shall have delivered a proposed form lease agreement between Developer and CFFM for the commercial space on the ground floor of the Property (the "**Developer-CFFM Lease**") to the City for approval; once the City has approved of the Developer-CFFM Lease, Developer shall not make any material changes thereto without the City's prior written consent;
- (x) *Completion Guaranty:* Developer shall have caused Guarantor to execute and deliver to the City a guaranty of completion with respect to Developer's obligation to complete the Project, which shall be substantially in the form of Exhibit C (Form of Completion Guaranty) hereto (the "**Guaranty**");
- (xi) *Removal of Property from Lease and Management Agreement:* The Property shall have been removed from the Lease and Management Agreement;
- (xii) *Final Plans:* Developer shall have submitted its final plans for the Project to DCED and the City's Department of Transportation and Engineering ("**DOT**") and received approval of the same from DCED and DOTE;
- (xiii) *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;
- (xiv) *Continued Compliance:* Developer shall be in compliance with all obligations under this Agreement and all representations made by Developer under this Agreement or any other document executed between Developer and the City related to the Project shall continue to be true and accurate; and
- (xv) *Other Information:* Developer shall have provided such other information and documents pertaining to Developer or the Project as the City may reasonably require.

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

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



required approvals (it being acknowledged by Developer that the City makes no representations or assurances regarding the granting of any required approvals).

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

(D) Right to Terminate. If prior to Closing, either party determines, after exercising reasonable good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period of time, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all of the Conditions have not been satisfied to the satisfaction of both parties or waived in writing and for that reason the Closing has not occurred as of December 31, 2021, the City, in its sole and absolute discretion, may terminate this Agreement and all rights and obligations of the parties hereunder by giving written notice thereof to Developer.

(E) Closing Date. Subject to the terms and conditions of this Agreement, the purchase of the Property by Developer and the sale and conveyance of the Property by the City to Developer (the "Closing") shall take place on September 27, 2021, or such earlier or later date upon which the parties mutually agree.

(F) Closing Costs and Closing Documents. At the Closing, (i) Developer shall pay the Purchase Price, and (ii) the City shall convey all of its right, title, and interest in and to the Property to Developer by Quitclaim Deed substantially in the form of Exhibit D (Form of Quitclaim Deed) hereto (the "City's Deed"). Developer shall pay all Hamilton County, Ohio, recording fees and any and all other customary closing costs associated with the Closing such that the City shall not be required to come up with any funds for the Closing. There shall be no proration of real estate taxes and assessments at Closing, and from and after the Closing, Developer shall pay all real estate taxes and assessments thereafter becoming due. At Closing, the parties shall execute a closing statement and any and all other customary closing documents that are necessary for the Closing (except that the City shall not be required to execute a title affidavit or the like). Developer shall not transfer title to the Property prior to the completion of construction without the City's prior written consent. Pursuant to Section 301-20, Cincinnati Municipal Code, at Closing, Developer shall pay to the City any and all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed to the City by Developer or any of its affiliated entities. The provisions of this Agreement shall survive the City's execution and delivery of the City's Deed and shall not be deemed to have been merged therein.

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

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

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(l) Execution of Developer-CFFM Lease. No later than the date that is 60 days from Closing, Developer shall deliver to the City a fully-executed copy of the Developer-CFFM Lease entered into by Developer and CFFM, which shall be substantially in the form approved by the City prior to Closing.

**3. Commencement and Completion of Project; Re-Conveyance of Property to City upon Failure to Timely Commence Project.**

(A) Commencement and Completion of Construction. Following Closing, Developer shall (i) (a) apply for and receive the required building permits from the City's Department of Buildings and Inspections ("B&I") for construction of the Project, (b) close on financing sufficient to complete the Project (as evidenced by documentation satisfactory to the City), and (c) commence on-site construction of the Project in accordance with the City-approved plans (the "Construction Commencement") no later than the Outside Construction Commencement Date; and (ii) complete construction of the Project (as evidenced by a certificate of occupancy for the Project) in accordance with the City-approved plans and specifications and all other City approvals (the "Construction Completion") no later than the Outside Construction Completion Date.

(B) Repurchase Option for Failure to Execute Developer-CFFM Lease or Commence Construction by Outside Construction Commencement Date. As memorialized in the City's Deed, if Developer has not entered into the Developer-CFFM Lease in accordance with Section 2(l), or if Construction Commencement has not occurred on or before the Outside Construction Commencement Date, the City shall have the option to repurchase the Property for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the "Repurchase Option"), exercisable by giving written notice thereof to Developer at any time after the Outside Construction Commencement Date, but prior to the date of Construction Commencement. At such time as the City no longer has the right of the Repurchase Option and after written request by Developer, the City shall execute and deliver to Developer a recordable release of the Repurchase Option.

(C) Repurchase Option Closing. If the City elects to exercise the Repurchase Option, the re-conveyance shall take place on the date specified in the City's notice of election (not to exceed 6 months after the date of the City's notice). At the closing on such re-conveyance of the Property from Developer to the City: (i) Developer shall re-convey marketable title to the Property to the City or its designee, by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of Closing, and in the same condition as presently exists, reasonable wear and tear and damage by the elements excepted (and under no circumstances shall the City be required to pay for the value of any improvements made by Developer to the Property), (ii) real estate taxes and assessments shall be prorated in accordance with local custom, and (iii) Developer shall pay any and all closing costs associated therewith such that the City shall not be required to come up with any funds at the closing for such re-conveyance.

(D) Plans and Specifications. Developer shall complete the Project in accordance with City-approved plans and specifications that are consistent with Exhibit B. Once the City's DCED Director has approved Developer's plans, Developer shall not make any material changes thereto without the Director's prior written consent.

(E) Contractors and Subcontractors. In performing work on the Property, 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.

(F) 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 Project, including, without limitation, those set forth on Exhibit E (Additional Requirements) hereto. The City makes no representations or other assurances to Developer that Developer will be able to obtain whatever

variances, permits, or other approvals from B&I, DOTE, other City departments, City Planning Commission, or City Council that may be required in connection with the Project.

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

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

(I) Reporting During Construction. Upon the City's request throughout construction, Developer shall provide the City with reports describing the status of the Project, including, without limitation, information about whether the Project is on budget and on schedule and containing such additional pertinent information thereto as the City may from time to time reasonably request. Developer shall submit a final report to the City upon completion of the Project.

(J) 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 construction has been completed.

#### **4. Insurance; Indemnity.**

(A) Insurance. Throughout construction, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$1,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of 100% of the value of the improvements constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Developer's construction lenders, and (v) such other insurance as may be reasonably required by the City's Division of Risk Management. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least 30 days prior written notice to the City.

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

(C) Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Developer shall defend, indemnify, and hold the City, its officers, council members, employees, and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including, without limitation, attorneys'

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

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

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 or observe any obligation, duty, or responsibility under this Agreement or any other agreement to which Developer and the City are parties (*provided that* a failure of Guarantor to perform under the Guaranty shall be deemed a failure of Developer to perform under this Agreement), and failure by Developer to correct such failure within 30 days after Developer's receipt of written notice thereof from the City (the "Cure Period"); *provided, however,* that if the nature of the default is such that it cannot reasonably be cured during the Cure period, Developer shall not be in default under this Agreement so long as Developer commences to cure the default within the Cure Period and thereafter diligently completes such cure within a reasonable period of time (but not exceeding 90 days) after Developer's receipt of the City's initial notice of default. Notwithstanding the foregoing, if Developer's failure to perform or observe any obligation, duty, or responsibility under this Agreement creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Developer fails to take corrective action immediately upon discovering such dangerous condition or emergency; or

(ii) the dissolution of Developer (or Guarantor during the term of the Guaranty), the filing of any bankruptcy or insolvency proceedings by or against Developer (or Guarantor during the term of the Guaranty), the making by Developer (or Guarantor during the term of the Guaranty) of an assignment for the benefit of creditors, the appointment of a receiver (temporary or permanent) for Developer (or Guarantor during the term of the Guaranty), or the attachment of, levy upon, or seizure by legal process of any of the property of Developer (or Guarantor during the term of the Guaranty); or

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

(B) **Remedies.** Upon the occurrence of an event of default under this Agreement that is not cured or corrected within the Cure Period, the City shall be entitled to: (i) if the default occurs prior to Closing, terminate this Agreement by giving Developer written notice thereof, (ii) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such event of default, all at the expense of Developer, and (iii) exercise any and all other rights

and remedies under this Agreement or available at law or in equity, including, without limitation, pursuing an action for specific performance. Developer shall be liable for all costs and damages, including, without limitation, attorneys' fees, suffered or incurred by the City as a result of a default of Developer under this Agreement or the City's enforcement or termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

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  
Attention: Director of the Department of  
Community and Economic Development  
Centennial Plaza Two, Suite 700  
805 Central Avenue,  
Cincinnati, Ohio 45202

**To Developer:**

Nassau Avenue Investments, LLC  
Attention: Bobby Maly  
1826 Race Street  
Cincinnati, Ohio 45202

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

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

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

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

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

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

(vi) The statements made 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  
{00347024-8}

statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.

(vii) With reference to Section 301-20 of the Cincinnati Municipal Code, neither Developer nor 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 Developer, the Project, or this Agreement, including, without limitation, financial statements, bank statements, income tax returns, information pertinent to the determination of finances of the Project, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (collectively, "**Records and Reports**"). All Records and Reports compiled by Developer and furnished to the City shall be in such form as the City may from time to time require. Developer shall retain all Records and Reports for a period of 3 years after the completion of the Project.

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

## **10. General Provisions.**

(A) Assignment. Developer shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which may be withheld in the City's sole and absolute discretion, and any attempt to do so without the City's consent shall, at the City's option, render this Agreement null and void.

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

(C) Amendments and Waivers. This Agreement may be amended, waived, or otherwise modified only by a written amendment signed by both parties.

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

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

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

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

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

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

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

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

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

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

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

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

11. **Coordinated Report Conditions**. Per Coordinated Report #61-2021, Developer shall abide by the following additional conditions:

(A) Greater Cincinnati Water Works (GCWW): There is an active 2" water service branch (H-284936) attached to the Property. A notice was served to the subject property due to a violation for an interconnection (takeoff) before the backflow prevention device. All water serving the Property must go through the backflow prevention device. Developer shall (i) ensure that backflow prevention device on the Property conforms to cross connection program requirements and (ii) correct violation. Developer shall contact Jermaine Bolton at [Jermaine.Bolton@gcww.cincinnati-oh.gov](mailto:Jermaine.Bolton@gcww.cincinnati-oh.gov) or at (513) 591-7876 for confirmation once the violation mentioned above has been corrected. Additionally, the backflow prevention device must be tested; schedule with the plumber should be coordinated with GCWW by contacting Jermaine Bolton.

(B) Cincinnati Bell: The existing facilities must remain in place, in service, and able to be accessed. Any damage done to the existing facilities, or any work done to relocate the existing facilities, will be at the sole expense of Developer.

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

Exhibit A – *Legal Description*

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

Exhibit C – *Form of Completion Guaranty*

Exhibit D – *Form of Quitclaim Deed*

**Exhibit E – *Additional Requirements***  
**(incl. Addendum I - City's Prevailing Wage Determination)**

**[SIGNATURE PAGE FOLLOWS]**



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,**  
an Ohio municipal corporation

**NASSAU AVENUE INVESTMENTS, LLC,**  
an Ohio limited liability company

By: \_\_\_\_\_  
Paula Boggs Muething, City Manager

Date: \_\_\_\_\_, 2021

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

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

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

Date: \_\_\_\_\_, 2021

Authorized by resolution dated \_\_\_\_\_.

Approved as to Form:

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

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

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

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

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

Karen Alder, City Finance Director

Exhibit A  
to Property Sale and Development Agreement

*Legal Description*

**Property Address:** 114-116 W. Elder Street, Cincinnati, Ohio 45202  
**Parcel ID Nos.:** 094-0008-0276-00, 094-0008-0277-00, & 094-0008-0278-00 (as consolidated)

**Situate in Section 13, Fractional Range 2, Town 3, Millcreek Township, City of Cincinnati, Hamilton County, Ohio and being all of Lots 7, 8 and 9 of Findlay and Garrard's Subdivision as recorded in Deed Book 45, Page 319 of the Hamilton County Recorder's Office and being more particularly described as follows:**

**Beginning at the intersection of the East line of Pleasant Street, 30' R/W and the North line of Elder Street, 45' R/W measure in said East line North 16° 32' 28" West, 80.31 feet to a point in the South line of Sellew Alley 12' R/W; thence with said South line North 73° 49' 45" East, 60.00 feet to a point in the West line of a tract of land belonging to Michael Luken as recorded in Deed Book 4312 Page 1353; thence with said West line South 16° 32' 28" East, 80.28 feet to a point in the North line of said Elder Street; thence, with said North line South 73° 47' 50" West, 60.00 feet to the Place of Beginning. Containing 4,818 square feet of land, more or less. Subject to all legal highways easements and restriction of record. Based on drawing G-44-10-80 of the City Engineer's Office. Bearings based on line survey #29-22 of the City Engineer's office.**

Exhibit B  
to Property Sale and Development Agreement

*Statement of Work, Budget, and Sources of Funds*

**I. STATEMENT OF WORK**

Developer shall conduct a comprehensive renovation of the building, rehabilitating it consistent with National Park Historic Standards. The Project will create 16 new residential rental apartments, including 4 units that will be affordable to gross household incomes at or below 80% of the Area Median Income (AMI), as established by the United States Department of Housing and Urban Development for the Cincinnati metropolitan area, adjusted for household size, as may be updated from time to time, for a period of 8 years from the Outside Construction Completion Date. Of the 16 apartments, 10 will be studio apartments and 6 will be one-bedroom apartments. In addition to the residential units, the Project will result in a build-out of the commercial space on the south side of the City Property fronting Elder Street and an update of the first-floor public restroom facilities.

**II. BUDGET**

<b>Acquisition</b>	
114-116 W Elder Street	1.00
<b>Total Acquisition</b>	<b>1.00</b>
<b>Construction Costs</b>	
Demo/Abatement	96,411.00
Site Work	41,319.00
Construction Costs	1,761,460.00
Public Restrooms	130,000.00
Commercial Space TI	70,000.00
General Requirements	113,951.00
Contractor Overhead	37,984.00
Contractor Profit	113,951.00
Contingency	189,919.00
<b>Total Construction Costs</b>	<b>2,554,995.00</b>
<b>Developer Fee</b>	
Developer Fee	494,709.00
<b>Total Developer Fee</b>	<b>494,709.00</b>
<b>Soft Costs</b>	
Architecture & Engineering	153,300.00
Permits & Tap Fees	20,992.00
Real Estate Taxes	55,000.00
Construction Insurance	10,880.00
Environmental	35,000.00
Appraisal	15,000.00
Survey	20,000.00
Title and Recording	20,087.00

Legal Costs	250,000.00
Accounting	75,000.00
Construction Period Tax Return	15,000.00
Cost Certification & GP Accounting	12,000.00
Construction Period Interest	118,489.00
Reasonableness Opinion	10,000.00
Loan Costs (Constr.)	21,198.00
Soft Cost Contingency	51,569.00
Historic Tax Credit Fees	6,942.00
Marketing Costs	10,000.00
NMTC Initial CDE Fee	184,500.00
NMTC Fee and Audit Reserves	143,500.00
NMTC & HTC Transaction Fees	350,000.00
<b>Total Soft Costs</b>	<b>1,578,457.00</b>
<b>Total Development Costs</b>	<b>4,628,162.00</b>

### III. SOURCES OF FUNDS

Bank Loan	1,000,000.00
OZ Equity	426,942.00
NMTC Equity	1,215,240.00
State NMTC Equity	650,000.00
Federal HTC Equity	617,711.00
State HTC Equity	718,269.00
<b>Total Sources of Funds</b>	<b>4,628,162.00</b>

Exhibit C  
to Property Sale and Development Agreement  
*Form of Completion Guaranty*

[SEE ATTACHED]

## COMPLETION GUARANTY

This Completion Guaranty (this "**Guaranty**") is made as the Effective Date (as defined on the signature page hereof), by **THE MODEL GROUP, INC.**, an Ohio corporation, the address of which is 1826 Race Street, Cincinnati, Ohio 45202 ("**Guarantor**"), in favor of the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**").

### Recitals:

A. Nassau Avenue Investments, LLC, an Ohio limited liability company, 1826 Race Street, Cincinnati, Ohio 45202 ("**Obligor**"), being an affiliate of Guarantor, and the City are parties to a *Property Sale and Development Agreement* dated \_\_\_\_\_, 2021 (the "**Agreement**"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

B. Pursuant to the Agreement, among other things, Obligor is obligated to complete the renovation of the real property located at 114-116 W. Elder Street, Cincinnati, Ohio 45202 (the "**Property**"), which includes the renovation of the Property's ground floor into commercial space and the upper floors of the Property into a minimum of 16 residential rental units, as further described in the Agreement (the "**Project**").

C. It is a condition of the Agreement that Guarantor provide this Guaranty to the City with respect to the Project.

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

### 1. Guaranty.

(A) Guarantor hereby absolutely, unconditionally, and irrevocably guarantees to the City the full and prompt performance by Obligor of Obligor's obligations under the Agreement to complete the Project in accordance with, and subject to, the terms and conditions of the Agreement, including payment to the City of any and all losses, damages and expenses (including, without limitation, attorneys' fees) suffered or incurred by the City and arising out of the failure by Obligor under the Agreement to do so, regardless of whether such losses, damages or expenses are expressly provided for under the Agreement or are then otherwise allowable by law (collectively, the "**Guaranteed Obligations**").

(B) If Obligor fails to fulfill one or more of the Guaranteed Obligations, resulting in a notice of default from the City to Obligor under the Agreement, the City may notify Guarantor thereof in writing, whereupon Guarantor, within ten (10) days after its receipt of such notice, shall take all steps necessary to cure the default (including, for example, providing additional funding for the Project if necessary). All rights and remedies of the City under this Guaranty are cumulative, and nothing in this Guaranty shall be construed as limiting the City's rights and remedies available under the Agreement or at law or in equity.

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

with Obligor and/or effect any release, compromise or settlement in connection therewith; and (iv) deal in all respects with Obligor as if this Guaranty were not in effect.

2. Liability of Guarantor.

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

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

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

(D) Guarantor hereby expressly waives: (i) presentment and demand for payment of any sum payable under the provisions of the Agreement, and protest of any nonpayment thereof; (ii) notice of acceptance of this Guaranty and of such presentment, demand and protest; (iii) notice of any default under this Guaranty or under the provisions of the Agreement, except as stated herein; (iv) demand for observance or performance, and enforcement, of any of the terms or conditions of this Guaranty, and/or of the Agreement, except as stated herein; (v) any and all other notices and demands that may otherwise be required by law to be given or made; and (vi) any and all rights that Guarantor may have to a trial by jury in any action brought on or with respect to this Guaranty, all rights and remedies accorded by applicable law to Guarantor, including, without limitation, any extension of time conferred by any law now or hereafter in effect, and all rights of redemption, homestead, dower and other rights or exemptions of every kind, whether common law or statutory. In addition, Guarantor hereby expressly agrees that, if this Guaranty is enforced by suit or otherwise, or if the City exercises any of its rights or remedies under the provisions of the Agreement upon any default by Obligor in performing any of Obligor's obligations thereunder, Guarantor shall reimburse the City, upon demand, for any and all expenses, including without limitation attorneys' fees, that the City incurs in connection therewith, payable within ten (10) days after the City's written demand.

3. Subrogation. No payment by Guarantor under this Guaranty shall give Guarantor any right of subrogation to any rights or remedies of the City against Obligor under the Agreement. Until Obligor has paid and performed all of its obligations under the Agreement, Guarantor hereby waives all rights of contribution, indemnity or subrogation with respect to Obligor that might otherwise arise from Guarantor's performance under this Guaranty.

4. Effect of this Guaranty. Guarantor hereby warrants to the City that: (a) Guarantor (i) has a financial interest in the Project; (ii) is duly organized, validly existing and in good standing under the laws of the State of Ohio; (iii) has full power, authority and legal right to execute, acknowledge, and deliver this {00347024-8}

Guaranty; and (iv) there are no actions, suits, or proceedings pending or to the knowledge of Guarantor, threatened against Guarantor, at law or in equity, or before any governmental department, commission, board, bureau, agency, or instrumentality which involve the possibility of any judgment or order that may result in any material adverse effect upon Guarantor; and (b) this Guaranty constitutes Guarantor's binding and enforceable legal obligation.

5. **Notices.** All notices or other written communications hereunder shall be deemed to have been properly given (a) upon delivery, if delivered in person; (b) upon receipt or refusal if delivered by overnight delivery with any reputable overnight courier service; or (c) upon receipt or refusal if sent by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to Guarantor and the City, as the case may be, at the addresses set forth in the introductory paragraph of this Guaranty or such other address as may be designated from time to time by notice given to the other party in the manner prescribed herein. Guarantor shall simultaneously send, by U.S. certified mail, a copy of each notice given by Guarantor to the City hereunder to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, Ohio 45202.

6. **General Provisions.**

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

(B) **Waiver.** Neither party hereto shall be deemed to have waived the exercise of any right that it holds under this Guaranty unless that waiver is made expressly and in writing (and no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right.

(C) **Applicable Law.** This instrument shall be given effect and construed by application of the laws of the City of Cincinnati and the State of Ohio, and any action or proceeding arising under this Guaranty shall be brought only in the Hamilton County Court of Common Pleas. Guarantor hereto agrees that the City shall have the right to join Obligor in any action or proceeding commenced by the City under this Guaranty.

(D) **Time of Essence.** Time shall be of the essence as to the performance of Guarantor's obligations pursuant to this Guaranty.

(E) **Headings.** The headings of the paragraphs and subparagraphs of this Guaranty are provided herein for and only for convenience of reference and shall not be considered in construing their contents.

(F) **Construction.** As used in this Guaranty, (i) the term "person" means a natural person, a trustee, a corporation, a partnership, a limited liability company, and any other form of legal entity; and (ii) all references made (a) in the neuter, masculine, or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to any paragraph or subparagraph shall, unless herein expressly indicated to the contrary, be deemed to have been made to such paragraph or subparagraph of this Guaranty, and (d) to Guarantor, the City, and Obligor shall be deemed to refer to each person hereinabove so named and their respective heirs, executors, personal representatives, successors and assigns.

(G) **Severability.** No determination by any court or governmental body that any provision of this Guaranty or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (i) any other such provision, or (ii) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with applicable law.



(H) Entire Agreement. This Guaranty represents the complete understanding between or among the parties hereto as to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, statements or agreements, either written or oral, between or among the parties hereto as to the same.

(I) Term. This Guaranty shall be effective upon the execution hereof and shall remain in effect until such time as the Guaranteed Obligations are satisfied and discharged in full. At such time, Guarantor may request, and the City will endeavor to promptly provide, a written statement from the City acknowledging the same and confirming that Guarantor has no further obligations hereunder.

(J) Assignment. Guarantor shall not assign its rights or interests or delegate its duties or obligations under this Guaranty to any third party without the prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion. Any non-permitted assignment shall be void.

*[Signature Page Follows]*

Executed and effective as of \_\_\_\_\_, 2021 (the "Effective Date").

OBLIGOR:

**THE MODEL GROUP, INC.,**

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

Printed name: \_\_\_\_\_

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

Approved as to Form:

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

Exhibit D  
to Property Sale and Development Agreement  
*Form of Quitclaim Deed*

[SEE ATTACHED]

----- space above for recorder -----

### QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), having an address of 801 Plum Street, for valuable consideration paid, hereby grants and conveys to **NASSAU AVENUE INVESTMENTS, LLC**, an Ohio limited liability company, the address of which is 1826 Race Street, Cincinnati, Ohio 45202 ("**Grantee**"), all of the City's right, title, and interest in and to the real property described on Exhibit A (Legal Description) hereto (the "**Property**").

Property Address: 114-116 W. Elder Street, Cincinnati, Ohio 45202

Auditor's Parcel No.: 094-0008-0276-00, 094-0008-0277-00, & 094-0008-0278-00 (*cons.*)

*Re-conveyance to City upon Failure to Execute Developer-CFFM Lease or Failure to Timely Commence Construction:* The City and Grantee are parties to a *Property Sale and Development Agreement* dated \_\_\_\_\_, 2021 (the "**Agreement**"), pursuant to which Grantee is required to redevelop the Property. If Grantee does not enter into the Developer-CFFM Lease (as defined in the Agreement) no later than the date that is 60 days from the date of the Closing (as defined in the Agreement) in accordance with the Agreement, or if Grantee does not commence construction at the Property on or before the Outside Construction Commencement Date (as defined in the Agreement) in accordance with the Agreement, Grantee shall re-convey the Property to the City as described in the Agreement. At such time as the City no longer has the right to reacquire the Property under the Agreement, the City, at Grantee's request, shall execute and deliver to Grantee a release of such rights for recording in the Hamilton County, Ohio Records. Until such time as the Property has been reconveyed to the City or the City has released or waived its rights to reacquire the Property thereunder, Grantee shall not sell or otherwise transfer title to the Property or any portion thereof without the prior written consent of the City.

*Covenants and Restrictions in favor of The Corporation For Findlay Market of Cincinnati, an Ohio nonprofit corporation ("CFFM"):* The City conveys the Property to Grantee subject to the covenants and restrictions set forth on Exhibit B (Covenants and Restrictions) hereto, which shall (i) "run with the land" and be binding upon Grantee and its successors-in-interest with respect to the Property, and (ii) be enforceable against Grantee by CFFM.

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

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

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

CITY OF CINCINNATI

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

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

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

STATE OF OHIO            )  
                                  ) SS:  
COUNTY OF HAMILTON )

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

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

Approved as to Form:

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

This instrument prepared by:

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

Exhibits. The following exhibits are attached hereto and made a part hereof:  
Exhibit A - *Legal Description*  
Exhibit B - *Covenants and Restrictions*

Exhibit A  
to Quitclaim Deed

*Legal Description*

**Property Address:** 114-116 W. Elder Street, Cincinnati, Ohio 45202  
**Parcel ID Nos.:** 094-0008-0276, 094-0008-0277 & 094-0008-0278 (*consolidated*)

**Situate in Section 13, Fractional Range 2, Town 3, Millcreek Township, City of Cincinnati, Hamilton County, Ohio and being all of Lots 7, 8 and 9 of Findlay and Garrard's Subdivision as recorded in Deed Book 45, Page 319 of the Hamilton County Recorder's Office and being more particularly described as follows:**

**Beginning at the intersection of the East line of Pleasant Street, 30' R/W and the North line of Elder Street, 45' R/W measure in said East line North 16° 32' 28" West, 80.31 feet to a point in the South line of Sellew Alley 12' R/W; thence with said South line North 73° 49' 45" East, 60.00 feet to a point in the West line of a tract of land belonging to Michael Luken as recorded in Deed Book 4312 Page 1353; thence with said West line South 16° 32' 28" East, 80.28 feet to a point in the North line of said Elder Street; thence, with said North line South 73° 47' 50" West, 60.00 feet to the Place of Beginning. Containing 4,818 square feet of land, more or less. Subject to all legal highways easements and restriction of record. Based on drawing G-44-10-80 of the City Engineer's Office. Bearings based on line survey #29-22 of the City Engineer's office.**

Exhibit B  
to Quitclaim Deed

*Covenants and Restrictions*

1. Hours of Operation. Any and all retail or commercial businesses operating on the Property (“**Merchants**”) shall maintain regular business hours for Findlay Market as established from time to time by CFFM. The current business hours are: Monday – closed; Tuesday thru Friday – 9 am-6 pm; Saturday – 8 am-6 pm; Sunday – 10 am-4 pm. During such hours, all Merchants shall (a) be open for business, (b) be staffed at all times, (c) be fully merchandised, and (d) offer a complete product mix.
2. First Floor for Retail or Commercial Use. The first floor of the building located on the Property shall be used solely for retail or commercial use (excluding the prohibited uses described in paragraph 4 below).
3. Annual Fee Payable to CFFM. In consideration of the benefits and services currently being provided by CFFM to Merchants, Grantee shall pay an annual fee to CFFM (the “**CFFM Fee**”) (pro-rated, if applicable, as hereinafter described), payable no later than January 31 of each year, in an annual amount equal to **\$1.75** per square foot of occupied retail space at the Property (with no such fee being payable with respect to any period of time that (i) the retail space is not actually occupied, or (ii) CFFM is not providing comparable benefits and services to Merchants). CFFM shall have the right from time to time, effective as of January 1<sup>st</sup> of any year, to increase the annual CFFM Fee upon no less than 60 days’ prior written notice sent to Grantee at Grantee’s tax-mailing address as set forth on the Hamilton County Auditor’s website, provided that no such increase in any given year shall exceed **10%**.
4. Prohibited Uses. The following uses are prohibited on the Property, unless consented to in writing by CFFM: Formula retail (chains); pay-day lenders; check cashing establishments; convenience stores; thrift stores; hair salons; tanning salons; nail salons; carryout beer, wine or liquor stores; churches, mosques, temples and other places of worship; pawn shops; cell phone stores; head shops; used appliance stores; purveyors of adult videos, magazines, books or toys; strip clubs, gentlemen’s clubs, or other similar adult entertainment establishments; pool halls, billiard halls; game arcades; dry cleaners or laundromats; bingo halls; health clinics; dental clinics; social service agencies; dollar stores.

\* \* \*

Exhibit E  
to Property Sale and Development Agreement

*Additional Requirements*

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

This Exhibit serves two functions:

(i) Serving as a Source of Information with Respect to Government Requirements.

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

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

(A) Construction Workforce.

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

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

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



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

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Conferring with Trade Unions.

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

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

(ii) Contracts and Subcontracts; Competitive Bidding.

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

as "all written agreements of the City of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction."

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

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

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

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

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

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

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

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

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

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

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

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

(F) Small Business Enterprise Program.<sup>1</sup>

(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.

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<sup>1</sup> Note: DCED is currently evaluating revisions to this SBE section due to recent legislative changes adopted by Council. If DCED implements these policy changes prior to the execution of this Agreement, this section will be revised.  
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(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. A copy of the City's prevailing wage determination may be attached to this Exhibit as Addendum I to Additional Requirements Exhibit (City's Prevailing Wage Determination) hereto.

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

(J) Prompt Payment. The provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System", may apply to this Agreement. Municipal Code Chapter 319 also (i) provides certain requirements for invoices from contractors with respect to the Prompt Payment System, and (ii) obligates contractors to pay subcontractors for satisfactory work in a timely fashion as provided therein.

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

(L) Ohio Means Jobs. If this Agreement constitutes a construction contract (pursuant to the guidance with respect to the definition of that term provided in Section (A) above), then, pursuant to Ordinance No. 238-2010: To the extent allowable by law, Developer and its general contractor shall use its best efforts to post available employment opportunities with Developer, the general contractor's organization, or the organization of any subcontractor working with Developer or its general contractor with the OhioMeansJobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-946-7200.

(M) Wage Enforcement.

(i) Applicability. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the Cincinnati Municipal Code (the "**Wage Enforcement Chapter**"). The Wage Enforcement Chapter was then amended by Ordinance No. 96-2017, passed May 17, 2017. As amended, the Wage Enforcement Chapter imposes certain requirements upon persons entering into agreements with the City whereby the City provides an incentive or benefit that is projected to exceed \$25,000, as described more particularly in the Wage Enforcement Chapter. Cincinnati Municipal Code Section 326-5 requires that the language below be included in contracts subject to the Wage Enforcement Chapter.

(ii) Required Contractual Language. Capitalized terms used, but not defined, in this clause (ii) have the meanings ascribed thereto in the Wage Enforcement Chapter.

(a) This contract is or may be subject to the Wage Enforcement provisions of the Cincinnati Municipal Code. These provisions require that any Person who has an Agreement with the city or with a Contractor or Subcontractor of that Person shall report all Complaints or Adverse Determinations of Wage Theft and Payroll Fraud (as each of those terms is defined in Chapter 326 of the Cincinnati Municipal Code) against the Contractor or Subcontractors to the Department of Economic Inclusion within 30 days of notification of the Complaint or Adverse Determination.

(b) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to include provisions in solicitations and contracts regarding a Development Site that all employers, Contractors or Subcontractors performing or proposing to perform work on a Development Site provide an initial sworn and notarized "Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee and, within 30 days of an Adverse Determination or Complaint of Wage Theft or Payroll Fraud, shall provide an "Amended Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee.

(c) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to authorize, and does hereby specifically authorize, any local, state or federal agency, court, administrative body or other entity investigating a complaint of Wage Theft or Payroll Fraud against the Person (collectively "investigative bodies") to release to the City's Department of Economic Inclusion any and all evidence, findings, complaints and determinations associated with the allegations of Wage Theft or Payroll Fraud upon the City's request and further authorizes such investigative bodies to keep the City advised regarding the status of the investigation and ultimate determination. If the investigative bodies require the Person to provide {00347024-8}

additional authorization on a prescribed form or in another manner, the Person shall be required to provide such additional authorization within 14 days of a request by the City.

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

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

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

(N) Americans With Disabilities Act; Accessibility.

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

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

(O) Electric Vehicle Charging Stations in Garages.

(i) Applicability. Cincinnati City Council passed Ordinance No. 89-2017 on May 10, 2017. This ordinance requires all agreements in which the City provides any amount of “qualifying incentives” for projects involving the construction of a parking garage to include a provision requiring the inclusion of certain features in the garage relating to electric vehicles. The ordinance defines “qualifying incentives” as the provision of incentives or support for the construction of a parking garage in the form of (a) the provision of any City monies or monies controlled by the City including, without limitation, the provision of funds in the form of loans or grants; (b) the provision of service payments in lieu of taxes in connection with tax increment financing, including rebates of service payments in lieu of taxes; and (c) the provision of the proceeds of bonds issued by the City or with respect to which the City has provided any source of collateral security or repayment, including, but not limited to, the pledge of assessment revenues

or service payments in lieu of taxes. For the avoidance of doubt, "qualifying incentives" does not include (1) tax abatements such as Community Reinvestment Area abatements pursuant to Ohio Revised Code 3735.67, et seq., or Job Creation Tax Credits pursuant to Ohio Revised Code 718.15; (2) the conveyance of City-owned real property for less than fair market value; and (3) any other type of City support in which the City provides non-monetary assistance to a project, regardless of value.

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

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

**Addendum I to Exhibit D**

*City's Prevailing Wage Determination*

[TO BE ATTACHED]