

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

**PROPERTY SALE AND DEVELOPMENT AGREEMENT**

*between the*

**CITY OF CINCINNATI**

*and*

**8K Development Company, LLC**  
**("Developer")**

Project: 129 and 131 W. Elder Street

creation of 1st floor commercial lot at (to be retained by the City),  
creation of residential air lot for upper floors for sale and redevelopment as residential  
multifamily units

## PROPERTY SALE AND DEVELOPMENT AGREEMENT

THIS PROPERTY SALE AND DEVELOPMENT AGREEMENT (“**Agreement**”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, having an address of 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”), and **8K Development Company, LLC**, an Ohio limited liability company, whose address for purposes of this Agreement is 60 E. McMicken Avenue, Cincinnati, Ohio 45202 (“**Developer**”).

### Recitals:

A. The City owns the land and two adjoining 4-story buildings thereon located at 129 W. Elder Street (the “**129 Building**”) and 131 W. Elder Street (the “**131 Building**”), more particularly identified as Hamilton County, Ohio Auditor’s Parcel ID No. 094-0008-0145, in Over-the-Rhine in Cincinnati as shown on Exhibit A (*Site Survey*) hereto (the “**Buildings**”), which are under the management and control of the City’s Department of Community and Economic Development (“**DCED**”).

B. Pursuant to a *Lease and Management Agreement* between the City and the Corporation for Findlay Market of Cincinnati, an Ohio non-profit corporation (“**CFFM**”), dated April 12, 2022 (the “**CFFM Lease & Management Agreement**”), the City leases to CFFM various properties at Findlay Market, including the Buildings for the management and operation thereof.

D. A commercial restaurant known as *The Arepa Place* currently occupies the first-floor commercial space of the 129 Building, and a commercial tenant known as *Maverick Chocolate* currently occupies the first-floor commercial space of the 131 Building, each under a license agreement between CFFM and the tenant (the “**Commercial Tenant License Agreements**” and the “**Commercial Tenants**”, respectively). The upper floors of the Buildings are currently vacant and need substantial renovation.

E. Pursuant to a Request for Proposals solicited by DCED, the City determined that Developer’s proposed redevelopment plan for the Buildings is the most advantageous to the City. Developer’s proposal is as follows (the “**Project**”):

(i) *Pre-Closing Title & Survey Work*: Following the Effective Date, Developer shall engage [a] a title company to conduct a title examination to determine whether there are any liens or other encumbrances that may impair the proposed redevelopment of the Buildings; and [b] a professional surveyor to prepare proposed subdivision plats and any and all other engineering drawings and other documents as may be required by the City’s Department of City Planning and Engagement, the Hamilton County, Ohio Engineer, the Hamilton County, Ohio Auditor, and the Hamilton County, Ohio Recorder to subdivide Hamilton County, Ohio Auditor’s Parcel ID No. 094-0008-0145 into two lots (the “**Lots**”); namely:

[x] One upper-level residential air lot comprising the upper floors of the Buildings, including access from the ground floor (the “**Residential Air Lot**”, and also the “**Property**”), to be sold by the City to Developer under this Agreement for redevelopment into 10 residential multi-family units of which Developer will lease and make affordable six residential dwelling units for a period of 15 years (the “**Affordability Period**”) to families earning between 50% to 60% of the area median income (“**AMI**”) as established by United States Department of Housing and Urban Development (“**HUD**”) for the Cincinnati metropolitan area, adjusted for household size, and as may be updated from time to time (the “**Affordable Units**”); and

[y] one street-level commercial lot (including a basement and any and all residual space and land rights not part of the Residential Air Lot) of the Buildings (the “**Commercial Air Lots**”) which will remain under the City’s ownership and which the parties anticipate will remain occupied by the Commercial Tenants under the terms of the Commercial Tenant License Agreements.

- (ii) *Declaration of Covenants, Easements, and Restrictions:* Upon the parties’ approval of title, the proposed subdivision plats, engineering drawings, and other documents prepared under subparagraph (i) above, the City, Developer and CFFM shall work jointly to prepare and mutually approve a proposed *Declaration of Covenants, Easements and Restrictions* (the “**Declaration**”) that will set forth the respective rights and obligations of the owner of the Residential Air Lot and the Commercial Lot, including without limitation: [a] creating any necessary cross easements (including, if applicable, easements that may be necessary through the Commercial Lot in order for the owner of the Residential Air Lot to access mechanicals and utilities located in the basements of the Commercial Lots that provide service to the Residential Air Lot); and [b] self-help rights in favor of the owner of the Commercial Lot if the owner of the Residential Air Lot fails to fulfill their maintenance and repair obligations under the Declaration (e.g., roof or structural repairs) to the detriment of the Commercial Lot. (The parties acknowledge that the Declaration will not allocate off-street parking space between the Lots because there is no such off-site parking space behind the Buildings.);
- (iii) *Creation of Lots:* Upon the parties’ approval of the proposed Declaration, the parties shall take all steps necessary to [a] subdivide Hamilton County, Ohio Auditor’s Parcel ID No. 094-0008-0145 into the Lots as aforesaid, and [b] record the Declaration in the Hamilton County, Ohio Recorder’s office;
- (iv) *Closing:* Upon the creation of the Lots, the City shall transfer title to the Residential Air Lot to Developer (the “**Closing**”), and the City shall retain ownership of the Commercial Lot; and
- (v) *Construction:* Following the Closing, Developer shall [a] perform all work required to functionally separate the Residential Air Lot from the Commercial Lot (including, without limitation, performing all fire code separation work required by the City’s Department of Buildings and Inspections as a condition of receiving a certificate of occupancy for the Residential Air Lot), [b] construct the 10 residential multi-family dwelling units within the Residential Air Lot, and [c] make certain other improvements to the Buildings (collectively, the “**Improvements**”); with a target construction completion date (as evidenced by a certificate of occupancy for the residential improvements) no later than 24 months following the Effective Date.

F. Developer anticipates that the hard and soft costs associated with creating the Lots and constructing the Improvements (including the purchase price) will be approximately \$1,056,840 as shown on Exhibit B (*Scope of Work; Preliminary Budget; Source of Funds*) hereto.

G. Developer anticipates that the construction of the Improvements will create approximately 12 temporary construction jobs and 0 permanent jobs.

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

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

J. The City believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements.

K. The City's Real Estate Services Division has determined that the fair market value of the Residential Air Lot, as determined by a professional appraisal, is \$100,000; however, the City is agreeable to convey the Property for less than fair market value, namely, for \$1.00 because the City will receive economic and non-economic benefits from the Project that equal or exceed the fair market value of the Property because it is anticipated that the Project will create new jobs, stimulate economic growth in the Over-the-Rhine neighborhood, will create additional 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 restore the Property to productive use.

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

M. The City has determined that eliminating competitive bidding in connection with the City's sale of the Property is in the best interest of the City because the City issued a request for proposals to solicit offers to develop the Property, and the City finds that Developer's development proposal is the most suitable and advantageous to the City.

N. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's sale of the Property to Developer at its meeting on September 16, 2022.

O. Execution of this Agreement was authorized by Cincinnati City Council by Ordinance No. \_\_\_\_-2023, passed by City Council on \_\_\_\_\_, 2023.

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

**1. Due Diligence Period.**

(A) Due Diligence Materials. Following the Effective Date, Developer shall prepare and deliver the following items to DCED for its review and approval (the "**Due Diligence Materials**"):

- (i) Title: a recent 40-year title exam for the Buildings, prepared by a reputable title company acceptable to the City;
- (ii) Subdivision Plat: a proposed subdivision plat and, if needed, engineering drawings, to create the Residential Air Lot and Commercial Lot, prepared by a reputable surveyor or engineering firm acceptable to the City;
- (iii) Plans and Specifications: plans and specifications for the Improvements;

- (iv) Construction Schedule: The proposed construction schedule for the Project;
- (v) Building Permit: evidence that Developer has obtained or is ready to obtain a building permit issued by the City's Department of Buildings and Inspections for the construction of the Improvements (including a Certificate of Appropriateness by the Historic Conservation Board and, if required, a Certificate of Compliance by the Urban Conservator);
- (vi) Financing, Tax Credits, and Incentives: Evidence of a satisfactory loan commitment or letter from Developer's lender evidencing that Developer has secured or will be able to secure all financing necessary to complete the Project. Developer having satisfied itself that it will qualify for and ultimately obtain tax credits, abatements, and/or other incentives and financing to support the Project, including but not limited to, the CRA Agreement;
- (vii) Appraisal: an appraisal showing the prospective "as built" fair market value of the Residential Air Lot following renovation; and
- (viii) Other Information: such other information and documents pertaining to Developer or the Project as the City may reasonably require.

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

(B) Right to Terminate Agreement Upon Expiration of Due Diligence Period (6 months). The parties acknowledge that Developer intends to conduct various due diligence investigations with respect to the Project, including, without limitation, investigations pertaining to title, survey, physical condition, environmental, zoning, utilities, and permitting requirements. Notwithstanding anything in this Agreement to the contrary, if, after exercising good faith efforts, Developer is not satisfied with the results of its due diligence investigations, or if the Due Diligence Materials have not been finalized and approved by both parties, in either case within **six (6) months** after the Effective Date (the "**Due Diligence Period**"), the parties shall each have the right to terminate this Agreement by delivering a written notice of termination to the other party upon the expiration of the Due Diligence Period, whereupon neither party shall thereafter have any rights or obligations hereunder. During the Due Diligence Period and at Developer's request, the City shall give Developer the right to enter upon the Property from time to time in connection with its due diligence investigations by executing a written right-of-entry. Developer shall complete all its due diligence investigations at no cost to the City.

(C) Right to Terminate if City is Unable to Remove Property from CFFM Lease and Management Agreement. Notwithstanding anything in this Agreement to the contrary, the parties' obligations under this Agreement shall be contingent upon the City's ability to remove the Property from the CFFM Lease and Management Agreement, pursuant to which the City has the right to remove the Residential Air Lot from the terms of the CFFM Lease and Management Agreement (including without limitation causing CFFM to (i) terminate any existing license agreements or other agreements with third parties affecting the Residential Air Lot, and (ii) amend its existing Commercial Tenant License Agreements with the Commercial Tenants, if necessary, to address any impact of the proposed redevelopment on the Commercial Tenant License Agreements). The City shall use reasonable efforts to provide such notice to CFFM during the Due Diligence Period. If the City has not provided such written notice to CFFM or CFFM has failed to wind up all operational matters pertaining to the Property before the expiration of the Due Diligence Period, either party may terminate this Agreement by giving written notice thereof to the other party at any time thereafter (but prior to the date that the City notifies Developer that the City and CFFM have removed the Property from the CFFM Lease and Management Agreement).

(D) Copies of Due Diligence Materials to be Provided to City. Without limitation of Developer's other obligations under this Agreement, periodically throughout the Due Diligence Period and as such reports and materials are obtained by Developer, Developer, at no cost to the City, shall provide the City's Department of Community and Economic Development with copies of the inspection, engineering, and environmental reports, title reports, surveys, and other materials prepared by third party professionals obtained by Developer during the Due Diligence Period that pertain to the Project.

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

(A) Purchase Price. Subject to the terms and conditions set forth herein, the City hereby agrees to sell the 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 the 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.

(B) Closing Date. Provided this Agreement has not been terminated under paragraphs 1(B) or 1(C) above, the Closing shall take place **thirty (30) days** after the expiration of the Due Diligence Period or on such earlier or later date as the parties may agree upon.

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

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

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

(vi) Coordinated Report Conditions (CR #03-2022) :

(a) GCWW:

(1) There are two existing water service line servicing these properties: 3/4", H-305704 (131 W Elder St.) and 1.5", H-309503 (129 W. Elder St.).

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

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

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

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

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

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

(8) If in the future, the petitioner or their agents determine the existing water system does not meet their fire and/or domestic water demands, then the petitioner may need to upgrade the water main(s) in their area to meet their fixture water demands. GCWW approval of this Coordinated Report for the subject sale in no way relieves the petitioner of their responsibility to potentially upgrade the water system to meet their future fire and domestic water demands. This work will be performed at the expense of the petitioner and not at the expense of GCWW.

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

(b) Department of City Planning and Engagement:

(1) Developer should make an appointment with the Urban Conservator for evaluation of the proposed exterior changes prior to sale: 513-352-4848. If the project potentially includes the significant rear addition or other significant exterior alterations, we will request that the project be granted a Certificate of Appropriateness from the Historic Conservation Board prior to the sale of property. If no COA is sought prior to closing, the City should stipulate with the sale that the buyer cannot infer that the City must approve any and all exterior changes to the building, regardless of whether such an addition is in keeping with the district guidelines

(2) If residential is desired on upper floors, the base zoning of CC-P would permit up to 6 residential units over both addresses as the addresses have been consolidated into one parcel. Any residential units in excess of 6 units would be required to get a Density Variance from the Historic Conservation Board. Applicant is encouraged to consult with Urban Conservator on desired uses of upper floors to determine their compliance with the Zoning Code.

(c) Buildings and Inspections:

(1) Water supplies may be inadequate in this alley for enhanced fire suppression, triggered by potential redevelopment/change of occupancy of the site.

(2) Any alterations triggering ADA compliance should be accomplished within the perimeter of property and not within the right-of-way.

(d) Altafiber: Altafiber has underground utility facilities in the area. Such facilities must remain in place, in service, and able to be accessed. Any damage done to the facilities or any work done to relocate the facilities as a result of this sale will be handled entirely at Developer's expense.

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

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

(E) Closing Costs and Closing Documents. At the Closing, (i) Developer shall pay the Purchase Price in full, and (ii) the City shall convey all its right, title, and interest in and to the Property to Developer by Quitclaim Deed in the form of Exhibit C (Quitclaim Deed) hereto (the "**City's Deed**"). Developer shall pay all conveyance fees, recording fees, title exam fees, title insurance premiums, settlement fees, and any and all other closing costs associated with the Closing such that the City shall



not be required to come up with any funds for the Closing (except that the City shall be responsible for discharging any monetary liens on the Property, other than real estate taxes and assessments). There shall be no proration of real estate taxes and assessments at Closing, and from and after the Closing, Developer shall pay all real estate taxes and assessments allocable to the Property 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). 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.

(F) Re-conveyance of Property to City for Failure to Timely Commence Construction. Developer acknowledges that Developer's agreement to timely commence and complete construction, which will provide economic benefits to the City, is of utmost importance to the City. Accordingly, if Developer fails to obtain a building permit and commence on-site construction at the Property within **180 days** after the Closing, then, notwithstanding anything to the contrary in this Agreement, Developer shall re-convey 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 immediately prior to the date and time of the 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) (the "**Re-conveyance**"), whereupon the City shall refund the Purchase Price to Developer (minus any and all out-of-pocket costs incurred by the City in connection with the Closing, including without limitation the fee payable to the City's Real Estate Services Division for services provided in connection with the Closing). Real estate taxes and assessments shall be prorated at Closing in accordance with local custom. Developer shall pay any and all closing costs associated with the Re-conveyance such that the City shall not be required to come up with any funds for the Re-conveyance. The obligation to re-convey the Property to the City shall be set forth in the City's Deed.

### **3. Construction.**

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

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

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

(D) Inspection of Work. During construction, the City, its employees, and agents shall have the right at all reasonable times to inspect the progress of construction to determine whether Developer is complying with its obligations hereunder.

(E) Mechanics Liens. Developer shall not permit any mechanics' or other similar liens to remain on the Property during construction.

(F) Project Information. During construction, Developer shall provide the City with such additional pertinent information pertaining to the Project as the City may reasonably request.

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

(H) Affordability Requirements. Following construction completion of the Residential Air Lots, as evidenced by a certificate of occupancy issued by the City's Department of Buildings and Inspections, Developer shall ensure that the Affordable Units of the Residential Air Lot are rented in accordance with the requirements set forth in Exhibit E (Affordability Requirements) hereto (the "**Affordability Requirements**") for the Affordability Period.

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

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

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

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

contractors, subcontractors, licensees, invitees or anyone else acting at its request in connection with each such Project.

**5. Casualty.** If the Property is damaged or destroyed by fire or other casualty during construction, Developer shall cause the damage to be repaired, as expeditiously as possible, and to the extent practicable, to substantially the same condition that existed immediately prior to such occurrence. If the insurance proceeds are insufficient to fully repair and restore the affected property, the City shall not be required to make up the deficiency. Developer shall handle all reconstruction in accordance with the applicable requirements set forth herein. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the damage is being repaired.

**6. Default; Remedies.**

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

(i) The failure of Developer to perform any obligation under this Agreement, and failure to correct such failure within thirty (30) days after their receipt of written notice thereof from the City; *provided, however*, that if the nature of the default is such that it cannot reasonably be cured 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 the filing of any bankruptcy or insolvency proceedings by or against Developer, the making by Developer of an assignment for the benefit of creditors, the appointment of a receiver (temporary or permanent) for Developer, or the attachment of, levy upon, or seizure by legal process of any property of Developer; or

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

(B) Remedies. Upon the occurrence of an event of default under this Agreement, the City shall be entitled to: (i) terminate this Agreement by giving Developer written notice thereof and, without limitation of its other rights and remedies, and with or without terminating this Agreement, demand repayment of any and all loan or grant funds previously disbursed by the City under this Agreement, (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 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. Developer shall be liable for all costs and damages, including without limitation attorneys’ fees, suffered, or incurred by the City as a result of a default of Developer under this Agreement or the City’s enforcement or termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

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

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

To Developer:  
8K Development Company, LLC  
60 E. McMicken Avenue  
Cincinnati, OH 45202

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

**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 of the State of Ohio relevant to the transactions contemplated by this Agreement.

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

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

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

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

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

(vii) With reference to Section 301-20 of the Cincinnati Municipal Code, neither Developer (nor its affiliates, if applicable) owes any outstanding fines, penalties, judgments, water or other utility charges or other amounts to the City.

**9. Reporting Requirements.**

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

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

## **10. General Provisions.**

(A) Assignment. Developer shall not assign its rights or interests under this Agreement or any ancillary agreements with the City without the prior written consent of the City; provided that a collateral assignment of its rights under this Agreement to its lender for the Project (and subsequent assignments by such lender) shall be permitted. Developer's assignment of its rights or interests under this Agreement to an affiliate of Developer that is owned or controlled by Developer shall be subject to the City's prior written approval, not to be unreasonably withheld; however, no such assignment between Developer and its affiliated assignee shall release Developer from its obligations to the City under this Agreement.

(B) Entire Agreement; Conflicting Provisions. This Agreement (including the exhibits hereto) and the other agreements referred to herein contain the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof. If any of the provisions of this Agreement purporting to describe specific provisions of other agreements are in conflict with the specific provisions of such other agreements, the provisions of such other agreements shall control.

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

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

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

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

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

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

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

(J) No Third-Party Beneficiaries. Except as otherwise provided herein, no third-party beneficiary rights are created by this Agreement.

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

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

(M) Contingency for Legislative Authorization from City Council. Notwithstanding anything to the contrary in this Agreement, the City shall not be in breach of this Agreement if for any reason City Council does not pass any and all additional ordinances as may be necessary for the City to carry out the terms of this Agreement.

(N) 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.

(O) 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.

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

Exhibit A - *Site Survey*

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

Exhibit C - *Quitclaim Deed*

Exhibit D - *Additional Requirements*

Exhibit E - *Affordability Requirements*

SIGNATURE PAGE FOLLOWS

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

**DEVELOPER:**

**8K DEVELOPMENT COMPANY, LLC,**  
an Ohio limited liability company

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

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

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

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

*[ Remainder of Page Intentionally Blank; City Signature Page Follows ]*

**CITY OF CINCINNATI**

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

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

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

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

Recommended by:

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

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  
Site Survey

113MAY-7 AM 9:58

DUSTY RHODES  
AUDITOR  
HAMILTON COUNTY



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**EXHIBIT B**

to Property Sale and Development Agreement

***Scope of Work; Preliminary Budget; Source of Funds***

**I. SCOPE OF WORK**

Developer will be redeveloping the Property into 10 new residential rental units.

**II. BUDGET, SOURCES & USES**

a. Sources of Funds

Bank Loan	\$650,000
Developer Equity	\$191,840
State Historic Tax Credit Equity	\$215,000
<b>TOTAL SOURCES</b>	<b>\$1,056,840</b>

b. Uses of Funds

<b>ITEM</b>	<b>COST</b>
<b>ACQUISITION</b>	
Building Acquisition	\$1
<b>HARD COSTS</b>	
Rehabilitation	\$880,600
<b>SOFT COSTS</b>	
Architect & Engineering	\$29,500
Developer Fee	\$73,733
Environmental	\$3,850
Survey	\$850
Property Taxes	\$7,650
Construction Insurance	\$5,000
<b>CONSTRUCTION FINANCE</b>	
Title and Recording	\$5,656
Construction Interest	\$32,500
Appraisal	\$2,500
<b>CONTINGENCIES</b>	
Hard Cost Contingency	\$15,000
<b>TOTAL DEVELOPMENT COST</b>	<b>\$1,056,840</b>

**EXHIBIT C**

to Property Sale and Development Agreement

QUITCLAIM DEED

*SEE ATTACHED*

-----  
[SPACE ABOVE FOR RECORDER'S OFFICE]

### QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), for valuable consideration paid, hereby grants and conveys to **8K Development Company, LLC**, as tenants in common, whose address is 60 E. McMicken Avenue, 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: 129 & 131 W. Elder St, Cincinnati, OH 45202 (newly-created residential air lots)  
Auditor's parcel No.: 094-0008-[\_\_\_\_]  
Prior Instrument: OR [\_\_\_\_], Page [\_\_\_\_], Hamilton County, Ohio Records

Re-conveyance of Property to City for Failure to Timely Commence Construction. The City and Grantee are parties to a *Property Sale and Development Agreement* dated \_\_\_\_\_, 2023 (the "**Development Agreement**"). As provided in the Development Agreement, if Grantee fails to obtain a building permit and commence on-site construction at the Property on or before \_\_\_\_\_, 2023, Grantee shall re-convey the Property to the City free and clear of all liens and encumbrances, as more particularly described in the Development Agreement. At such time as Grantee is no longer required to re-convey the Property to the City under the Development Agreement, the City shall execute and deliver to Grantee a recordable release, for recording in the Hamilton County Recorder's office, at Grantee's cost.

This conveyance was authorized by Ordinance No. \_\_\_\_-2023, passed by Cincinnati City Council on \_\_\_\_\_, 2023.

[ Signature and Acknowledgement Page Follows ]

Executed on the date of acknowledgment below.

**CITY OF CINCINNATI**

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

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

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

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

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF HAMILTON         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, the \_\_\_\_\_ of the **CITY OF CINCINNATI**, an Ohio municipal corporation, on behalf of the corporation. This is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereto.

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

Approved as to Form:

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

This instrument prepared by:

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

Exhibits:  
Exhibit A – *Legal Description*

EXHIBIT A  
to Quitclaim Deed

*LEGAL DESCRIPTION*

**LEGAL DESCRIPTION  
129-131 WEST ELDER STREET  
RESIDENTIAL AIR LOT—AIR LOT [\_\_\_]**

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

Being all of Air Lot [\_\_\_] of the [\_\_\_\_\_] Subdivision as recorded in Plat Book [\_\_\_], Page [\_\_\_], Hamilton County, Ohio Recorder's Office.

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

## EXHIBIT D

to Property Sale and Development Agreement

### *Additional Requirements*

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

This Exhibit serves two functions:

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

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

(ii) Affirmatively Imposing Contractual Obligations.

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

(A) Construction Workforce.

(i) Applicability.

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

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

(ii) Requirement.

In furtherance of the policy enumerated in City Resolutions No. 32-1983 and 21-1998 concerning the inclusion of minorities and women in City construction work, if Developer is performing construction work for the City under a construction contract to which the City is a party, Developer shall use Best Efforts to achieve a standard of no less than 11.8% Minority Persons (as

defined below) and 6.9% females (of whom at least one-half shall be Minority Persons) in each craft trade in Developer and its general contractor's aggregate workforce in Hamilton County, to be achieved at least halfway through the construction contract (or in the case of a construction contract of six months or more, within 60 days of beginning the construction contract) (collectively, the "**Construction Workforce Goals**").

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and 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.

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

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

(1) Including qualified SBEs on solicitation lists.

(2) Assuring that SBEs are solicited whenever they are potential sources. Contractor must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to

supply materials or to bid on construction contracts for the Project. Contractor is encouraged to use the internet and similar types of advertising to reach a broader audience, but these additional types of advertising cannot be used as substitutes for the above.

(3) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.

(4) When needs permit, establishing delivery schedules that will encourage participation by SBEs.

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

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

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

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

(G) Equal Employment Opportunity.

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

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

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

payments within twenty (20) days of demand therefor. A copy of the City's prevailing wage determination may be attached to this Exhibit as Addendum I to Additional Requirements Exhibit (City's Prevailing Wage Determination) hereto.

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

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

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

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

(M) Wage Enforcement.

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

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

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

(b) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to include provisions in solicitations and contracts regarding a Development Site that all employers, Contractors or

Subcontractors performing or proposing to perform work on a Development Site provide an initial sworn and notarized "Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee and, within 30 days of an Adverse Determination or Complaint of Wage Theft or Payroll Fraud, shall provide an "Amended Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee.

(c) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to authorize, and does hereby specifically authorize, any local, state or federal agency, court, administrative body or other entity investigating a complaint of Wage Theft or Payroll Fraud against the Person (collectively "investigative bodies") to release to the City's Department of Economic Inclusion any and all evidence, findings, complaints and determinations associated with the allegations of Wage Theft or Payroll Fraud upon the City's request and further authorizes such investigative bodies to keep the City advised regarding the status of the investigation and ultimate determination. If the investigative bodies require the Person to provide additional authorization on a prescribed form or in another manner, the Person shall be required to provide such additional authorization within 14 days of a request by the City.

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

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

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

(N) Americans With Disabilities Act; Accessibility.

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

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

respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (2) if such accessible point of entry is not a building's primary point of entry, conspicuous signage directing persons to such accessible point of entry.

(O) Electric Vehicle Charging Stations in Garages.

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

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

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

Addendum I to Additional Requirements Exhibit

*City's Prevailing Wage Determination*

INTENTIONALLY OMITTED

**EXHIBIT E**  
to Property Sale Development Agreement  
*Affordability Requirements*

Following construction completion of the Residential Air Lots, as evidenced by a certificate of occupancy issued by the City's Department of Buildings and Inspections for the Residential Air Lots, and ending on the fifteenth (15<sup>th</sup>) anniversary thereof (the "**Affordability Period**"), Developer shall rent the Affordable Units or cause the Affordable Units to be rented on the Property in accordance with the requirements below. For the purposes of this Agreement, "**Monthly Rent**" shall mean the cumulative monthly amount that Developer charges to a tenant for residing in an Affordable Unit, including but not limited to any and all fees or other expenses paid by Developer and charged to a tenant on a monthly or annual basis. The Monthly Rent shall also include any amounts paid to Developer by third-parties or organizations on behalf of the tenant in exchange for tenant's occupancy of the subject Affordable Unit.

**I. Rent and Income Limits.**

A. 50% AMI or Below (three units). Developer, its successors, and assigns shall rent three (3) Affordable Units or cause three Affordable Units to be rented to tenants with an annual household income equal to or below 50% AMI, as established from time to time by HUD for the Cincinnati Metropolitan Area and based on the number of persons in the household ("**50% AMI Qualified Tenants**"). Developer, its successors, and assigns shall not charge a 50% AMI Qualified Tenant Monthly Rent for an Affordable Unit in an amount that exceeds the annual Low-Income Housing Tax Credit Rent and Income Rates for 50%, as published by the Ohio Housing Finance Agency, which rent limits may be adjusted from time to time, including adjustments for the number of bedrooms in the dwelling unit (the "**50% AMI Affordability Requirement**"). Developer shall ensure that three Affordable Units are rented to 50% AMI Qualified Tenants in compliance with the 50% AMI Affordability Requirement at the initial lease-up of the Property. If a 50% AMI Qualified Tenant's household income increases to an amount that exceeds the 50% AMI limit during the term of their lease, such increase in household income shall not prohibit Developer from extending or otherwise renewing the term of the tenant's lease agreement, so long as the tenant was a 50% AMI Qualified Tenant upon execution of their initial lease term.

B. 60% AMI or Below (three units). Developer, its successors, and assigns shall rent three (3) Affordable Units or cause three Affordable Units to be rented to tenants with an annual household income equal to or below 60% AMI, as established from time to time by HUD and based on the number of persons in the household ("**60% AMI Qualified Tenants**"). Developer, its successors, and assigns shall not charge a 60% AMI Qualified Tenant Monthly Rent for an Affordable Unit in an amount that exceeds the Low-Income Housing Tax Credit Rent and Income Rates for 60%, as published by the Ohio Housing Finance Agency, which rent limits may be adjusted from time to time, including adjustments for the number of bedrooms in the dwelling unit (the "**60% AMI Affordability Requirement**"). Developer shall ensure that three Affordable Units are rented to 60% AMI Qualified Tenants in compliance with the 60% AMI Affordability Requirement at the initial lease-up of the Property. If a 60% AMI Qualified Tenant's household income increases to an amount that exceeds the 60% AMI limit during the term of their lease, such increase in household income shall not prohibit Developer from extending or otherwise renewing the term of the tenant's lease agreement, so long as the tenant was a 60% AMI Qualified Tenant upon execution of their initial lease term.

**II. Documentation.** Pursuant to Section 9 of the Agreement, from the initial lease-up through the expiration of the Affordability Period, Developer shall collect, maintain, and furnish to the City upon the City's request such financial, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to the Project, this Agreement, and the Affordable Units including without limitation tenant household size, household income, and additional information pertinent to the determination of compliance with the affordability requirements and the Affordable Units.



