

Contract No: \_\_\_\_\_

**DEVELOPMENT AGREEMENT**

*between the*

**CITY OF CINCINNATI,**  
an Ohio municipal corporation

*and*

**7 WEST 7TH PROPERTY LLC,**  
an Ohio limited liability company

Project Name: Macy's HQ Redevelopment

Dated: \_\_\_\_\_, 202\_\_

**DEVELOPMENT AGREEMENT**  
(Macy's HQ Redevelopment)

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into effective as of the Effective Date (as defined on the signature page hereof) between the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and **7 WEST 7TH PROPERTY LLC**, an Ohio limited liability company, 150 E. Fourth Street, 4<sup>th</sup> Floor, Cincinnati, Ohio 45202 ("**Developer**"), an affiliate of Victrix Investments LLC, a Delaware limited liability company ("**Victrix**").

Recitals:

A. Developer is under contract to purchase and develop a portion of the real property located at 7 W. 7<sup>th</sup> Street in the Central Business District of Cincinnati, which site consists of floors 8-21 of a skyscraper previously occupied as the corporate headquarters of Macy's Corporate Services, Inc., which property is depicted and more particularly described on Exhibit A (*Site Plan; Legal Description*) hereto (the "**Property**").

B. Developer desires to renovate the Property into approximately 338 residential rental units, which could be reduced in the event that Developer desires to construct office space in the Property, at an estimated total project cost (including hard construction costs and soft costs) of approximately \$72,800,000, as described more particularly on Exhibit B (*Scope of Work, Budget, and Source of Funds*) hereto (the "**Project**").

C. The Project is expected to commence construction by April 1, 2023 (the "**Commencement Deadline**"), and be substantially completed by March 31, 2025 (the "**Completion Deadline**"). Developer has estimated that the Project will result in approximately 500 full-time temporary construction jobs with a total payroll of \$10,000,000, together with approximately 11 full-time permanent jobs upon completion with an estimated annual payroll of approximately \$702,000.

D. In furtherance of the City's urban redevelopment goals, the City intends to provide an incentive to facilitate the creation of housing units and jobs within the City limits. Namely, the City intends to exempt improvements to the Property from real estate taxation under Section 5709.41 of the Ohio Revised Code for 30 years by ordinance (the "**TIF Exemption**" and the "**TIF Ordinance**", respectively), whereby (a) Developer will pay (or cause to be paid) statutory service payments ("**Service Payments**") to the Hamilton County Treasurer, pursuant to a service agreement to be entered into by and between the City and Developer following the Effective Date, which shall be substantially in the form of Exhibit C (*Form of Service Agreement*) hereto (the "**Service Agreement**"), in the same manner and amount as real property taxes on the Property would be paid had the project-based TIF Exemption not been established, and (b) the Service Payments, less applicable Hamilton County Auditor fees, will be distributed by the Hamilton County Treasurer to the City and placed in Fund No. 763, Urban Redevelopment Tax Increment Equivalent Fund II, established by Cincinnati City Council Ord. No. 217-2015.

E. City Council passed Motion No. 201401368 on November 19, 2014 and Motion No. 201501592 on December 16, 2015 (collectively, the "**VTICA Motions**"), which VTICA Motions (i) direct the Department of Community and Economic Development ("**DCED**") to treat contributions by developers in the vicinity of the streetcar project to streetcar operations ("**VTICA**") to be a major factor in its analysis of the appropriateness of providing tax incentives to developers' projects, and (ii) establish that a contribution of at least 15% of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement is the threshold for whether such a contribution is to be considered by DCED. Developer is willing to make a VTICA in an amount equal to 15% of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement in each year of the TIF Exemption (the "**VTICA Contribution**"). To facilitate the VTICA Contribution in as convenient a manner as possible, the City will withhold the VTICA Contribution from the Service Payments and direct them appropriately in accordance with this Agreement.

F. Prior to any rebate of Service Payments to Developer as described herein, (i) a portion of the applicable Service Payments will be retained by the Hamilton County, Ohio Auditor as a fee, (ii) 33% of the applicable Service Payment will be paid to the Board of Education of the Cincinnati City School District (the “**School Board**”) to satisfy the City’s obligations with respect to the Project under that certain *Tax Incentive Agreement* by and between the City and the School Board effective as of April 28, 2020, as the same may be hereafter amended, modified, and restated, (iii) the City will retain the fees described in Section 11(B) of this Agreement, and (iv) the City will retain the VTICA Contribution. The proceeds of any Service Payment actually received by the City with respect to the Property, net of the payments described in clauses (i) through (iv), are referred to in this Agreement as the “**Excess Service Payments**”. Subject to the terms and conditions of this Agreement, (i) during years 1 through 25 of the TIF Exemption, the City will provide a rebate to Developer of 100% of the Excess Service Payments to Developer and (ii) during years 26 through 30, the City will retain all Excess Service Payments. Any Excess Service Payments retained by the City pursuant to the terms of the Project Documents (as defined below) (the “**Residual Service Payments**”) may be used for certain urban redevelopment purposes as established in the TIF Ordinance and in accordance with State law.

G. In order to create a project-based TIF Exemption for the Project under Section 5709.41 of the Ohio Revised Code, the City must have held fee title to the Property prior to the enactment of the TIF Ordinance. Accordingly, Developer will convey or cause to be conveyed fee title to the Property to the City for \$1.00 at Closing (as defined below), and the City will immediately re-convey the Property to Developer thereafter for \$1.00, in each case on, and subject to, the terms of this Agreement.

H. The City has determined that re-conveying the Property to Developer for \$1.00 is appropriate because the City will receive the Property for the same amount, and the conveyance of the Property back to Developer is necessary to facilitate the Project.

I. The City has determined that eliminating competitive bidding in connection with the re-conveyance of the Property to Developer is appropriate because the Property is under contract to be acquired by Developer and Developer’s willingness to initially convey the Property to the City is contingent upon the City’s agreement to promptly re-convey the Property to Developer and to no other party.

J. The Property is currently included in the tax increment financing district known as District 3 – Downtown/OTR West District Incentive District (the “**OTR West TIF District**”). The City will “layer” the exemption provided pursuant to the TIF Ordinance over the OTR West TIF District, as it does not intend to remove the Property from the OTR West TIF District, provided, however, that should it become necessary to remove the Property from the OTR West TIF District in order to effect the TIF Exemption, the City is willing to remove the Property from the OTR West TIF District since the Property is not contributing to the OTR West TIF District.

K. As used herein, the term “**Project Documents**” means, collectively, this Agreement, the Service Agreement, the Completion Guaranties (as defined below), the Indemnity Agreement (as defined below), the Restrictive Covenant (as defined below), and any and all other agreements pertaining to the Project entered into by the City, on the one hand, and Developer or a Guarantor (as defined below), on the other hand, or any instruments or other documents pertaining to the Project made by the City in favor of Developer or by Developer in favor of the City.

L. 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.

M. Section 16 of Article VIII of the Ohio Constitution provides that, to enhance the availability of adequate housing in the state and to improve the economic and general welfare of the people of the state, it is in the public interest and a proper public purpose for the state or its political subdivisions, directly or through a public authority, agency, or instrumentality, to provide grants, loans or other financial

assistance for housing in the state, for individuals and families, by the acquisition, financing, construction, leasing, rehabilitation, remodeling, improvement, or equipping of publicly- or privately-owned housing.

N. The City, upon recommendation of DCED, 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 and for this reason the City desires to facilitate the Project by providing the Rebate Payments (as defined below) as described herein and in the Service Agreement.

O. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the conveyances described in this Agreement at its meeting on November 5, 2021.

P. The execution of this Agreement and the other Project Documents, as applicable, was authorized by City Council by Ordinance No. [\_\_\_\_], passed by City Council on [\_\_\_\_] (the "**Authorizing Date**"). Notwithstanding anything to the contrary in this Agreement, the parties' obligations hereunder are conditioned upon the passage of the TIF Ordinance.

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

#### **1. DUE DILIGENCE INVESTIGATIONS.**

(A) Developer's Delivery of Due Diligence Materials to the City. Following the Effective Date and at such time as such documents become available, Developer, at its sole expense, shall obtain and deliver (or cause to be obtained and delivered) to the City the following items:

- (i) *Title:* A copy of Developer's Owner's Policy of Title Insurance or other evidence satisfactory to the City showing that Developer owns good and marketable fee simple title to the Property;
- (ii) *Survey:* An ALTA survey of the Property showing all easements and other matters of record that can be shown on a survey;
- (iii) *Site Plan:* A detailed site plan showing the proposed location of the Project and approved by DCED;
- (iv) *Appraisal:* A projected "as built" appraisal of the Project (but only if such an appraisal is required by Developer's lender);
- (v) *Construction Schedules:* A detailed construction timeline showing significant construction milestones for the Project;
- (vi) *Budget:* A detailed and updated development budget for the Project (for the avoidance of doubt, the parties acknowledge that the initial budget supplied to the City by the Developer was prepared during the COVID-19 pandemic, which is making estimation of construction costs particularly difficult, and the final budget delivered pursuant to this Section may contain significant differences in costs for the scope anticipated);
- (vii) *Guaranteed Maximum Price Contract:* A fully executed Guaranteed Maximum Price contract sufficient to complete construction of the Project;
- (viii) *Building Permit & Zoning Approvals:* evidence that Developer has obtained all building permits issued by the City's Department of Buildings and Inspections for the construction of the Project, including any and all zoning approvals that may be required;
- (ix) *Guaranty:* Evidence satisfactory to the City that the Guarantors (as defined below) have sufficient assets and liquidity in the event that the City seeks payment under the Completion Guaranties or the Indemnity Agreement, in accordance with the terms thereof; and
- (x) *Environmental:* A copy of whatever environmental reports Developer may obtain or cause to be created in connection with the Project, including, at a minimum, in addition to the Phase I environmental site assessments Developer has provided,

such other evidence and documentation as is deemed necessary or desirable by the City's Office of Environment and Sustainability to confirm that environmental conditions on the site are adequate for the City to take title, and such agreements or other documentation as may be necessary to provide the City with the legal right to rely on any applicable environmental reports; and

- (xi) *Financing*: Evidence satisfactory to the City that Developer has or has obtained sufficient financial resources in order to commence and complete the Project, including, without limitation, pursuant to the Guaranteed Maximum Price contract.
- (xii) *Port Authority Documents*: Such other information and documentation as may be obtained by Developer from the Port Authority (as defined below) and/or as required by the Port Authority.

(B) Copies of Due Diligence Materials to be Provided to City. Without limitation of Developer's other obligations under this Agreement, prior to Closing and as such reports and materials are obtained by Developer, Developer, at no cost to the City, and upon request, 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.

(C) Contingency for City's Satisfaction with Due Diligence Investigations. All reports and the like obtained by Developer from third parties and delivered (or caused to be delivered) to the City shall be recent (*i.e.*, prepared or updated, as the case may be, within three (3) months preceding the date that the item is delivered to the City or such longer period of time as the City may, in its sole discretion, deem reasonable) and shall be prepared by properly licensed and qualified companies or individuals acceptable to the City. In addition to the above due diligence items, the parties may conduct whatever additional investigations concerning the Project as they deem necessary, including without limitation investigations into the feasibility and likelihood of Developer obtaining all building, zoning and other approvals from the Department of Buildings and Inspections, the City Planning Commission, and any other applicable City departments, agencies or boards. If, during or at the conclusion of the due diligence investigations, any party reasonably determines that any part of the Project is not feasible, then, notwithstanding anything in this Agreement to the contrary, such party may terminate this Agreement by giving the other party written notice thereof, whereupon this Agreement shall terminate and neither party shall thereafter have any rights or obligations hereunder except as may expressly survive termination. Notwithstanding Section 7 hereof, unless otherwise directed by the DCED Director, Developer shall deliver (or cause to be delivered) all due diligence materials to be provided to the City under this Agreement to the DCED Director (for review by DCED and other City departments as deemed necessary or appropriate by DCED) and shall generally coordinate all aspects of the Project (as they relate to the City) through DCED. Upon Closing, the termination rights of the parties under this Section 1(C) shall automatically terminate and thereafter shall be null and void.

(D) Contingency for Developer's Acquisition of the Property and Delivery of Proof of Financing. Developer hereby represents that it has entered into a [*Purchase and Sale Agreement*], effective on or about December 3, 2021 (the "**PSA**"), with Macy's Corporate Services, LLC, an Ohio limited liability company ("**Seller**"), pursuant to which Developer intends to obtain fee title to the Property. Prior to Developer's acquisition of the Property, Developer shall deliver to the City proof of financing sufficient to complete construction of the Project, as determined by the City in its sole and absolute discretion. In the event that (i) Developer does not deliver satisfactory proof of financing as contemplated pursuant to this Section, (ii) Developer does not acquire title to the Property by April 30, 2022, or (iii) Developer's ability to acquire the Property from Seller expires or is otherwise terminated pursuant to the terms of the PSA, then, notwithstanding anything in this Agreement to the contrary, either party may terminate this Agreement by giving the other party written notice thereof, whereupon this Agreement shall terminate and neither party shall thereafter have any rights or obligations hereunder. The termination rights under this Section 1(D) shall automatically terminate upon the later of (x) the acquisition of the Property by or on behalf of Developer and (y) delivery of Developer's proof of financing for construction of the Project, as deemed satisfactory by the City in its sole and absolute discretion.

## **2. CLOSING.**

(A) Closing Date. The closing of the transactions described in this Section 2 (the “**Closing**”) is anticipated to take place on [\_\_\_\_], or such other date as the parties may agree upon (the “**Closing Date**”); *provided, however* that the Closing shall occur prior to the passage of the TIF Ordinance. It is the intention of the parties that all of the transactions contemplated in this Section 2 will occur on the same date in as immediate of a sequence as is possible. The occurrence of the Closing is subject to (i) the parties’ satisfaction with the various due diligence matters described in Section 1 above, and (ii) the prior execution and delivery to the City of the Service Agreement and each of the other Project Documents.

(B) Initial Conveyance. On the Closing Date, Developer shall transfer or cause to be transferred title to the Property to the City for \$1.00 (the “**Initial Conveyance**”) by Quitclaim Deed in substantially the form of Exhibit D-1 (*Form of Quitclaim Deed - Initial Conveyance*) hereto. Developer shall pay all customary closing costs relating to the Initial Conveyance (e.g., County transfer tax and County recording fees). The City agrees to neither make, nor permit to be made, any material changes to the condition of the Property or the title thereto during the period in which it owns the Property, which the parties intend to be for as short a period as practicable. During the period in which the City owns the Property, Developer, and its employees and agents, are permitted to enter upon the Property for the purpose of conducting activities associated with the Project at no cost to the City, provided that such entry shall be at the sole risk of Developer, its employees and agents, and provided, further, for the avoidance of doubt, that the activities described in this sentence are subject to the indemnification provisions in Sections 3(H) and 5(C) of this Agreement.

(C) City Conveyance. Immediately following the Initial Conveyance, the City shall re-convey the Property to Developer for \$1.00 (the “**City Conveyance**”), by a Quitclaim Deed in substantially the form of Exhibit D-2 (*Form of Quitclaim Deed – City Conveyance*) hereto. Developer shall pay all customary closing costs relating to the City Conveyance (e.g., County transfer tax and County recording fees). The deed effecting the Initial Conveyance shall be recorded prior to the deed effecting the City Conveyance.

(D) Miscellaneous Closing Provisions. 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 related to the Property to the City. There shall be no proration of real estate taxes and assessments at Closing, and it is understood that the City shall in no way be responsible for the payment of any real estate taxes, service payments in lieu of taxes and assessments due or thereafter becoming due. At Closing, the City and Developer shall execute a closing statement, County exempt transfer forms and any and all other customary closing documents that may be deemed necessary for the Closing by the City.

### **3. COMPLETION OF THE PROJECT.**

(A) Preparation of Plans and Specifications. Promptly following the Effective Date, Developer shall prepare plans and specifications for the Project and shall submit the same to DCED for review and approval; *provided* that DCED may only withhold approval if such plans and specifications (i) materially reduce or diminish the size, scope, quality, or site plan of the Project, (ii) could reasonably be expected to materially reduce the projected hard construction cost of the Project, or (iii) are otherwise inconsistent with zoning laws or any planned development approved by City Council with respect to the Project or are materially inconsistent with Exhibit B, in each case as determined in DCED’s judgment, exercised in good faith. The approved plans and specifications for the Project (including any and all changes thereto, subject to the City’s review and approval solely on the criteria provided in the immediately preceding sentence) are referred to herein as the “**Final Plans**” with respect to the Project.

(B) Construction Bids. Following Closing, Developer shall obtain construction bids for the Project. Upon Developer’s selection of the bids, Developer shall submit to the City an updated construction budget for the Project.

(C) Completion and Commencement of Construction. Developer shall (i)(a) apply for and receive the required building permits from the City’s Department of Buildings and Inspections for construction of the Project and (b) Developer shall commence construction of the Project in accordance with the Final Plans no later than the Commencement Deadline and (ii) complete construction of the

{00353859-5}

Project (as evidenced by a certificate of occupancy for the Project) in substantial accordance with the Final Plans, as determined by the City in good faith, no later the Completion Deadline. The foregoing notwithstanding, the City may, upon Developer's written request and at the City's sole discretion, permit the Commencement Deadline and the Completion Deadline to each be extended twice in six (6) month increments.

(D) Completion Guaranties. On or before Closing, Developer shall cause Anoop Davé and Timothy Gordon, or another person or entity satisfactory to the City in its sole and absolute discretion (collectively, the "**Guarantors**"), to each execute a *Completion Guaranty* which shall be in substantially the form of Exhibit E (Form of Completion Guaranty) hereto (each a "**Completion Guaranty**" and collectively, the "**Completion Guaranties**"). In the event that the TIF Ordinance is presented to City Council and the TIF Ordinance is not approved by City Council, then the Completion Guaranties shall automatically terminate. Furthermore, in the event the City exercises its option to purchase the Property under Section 3(J) hereof, then upon the closing of such purchase, the Completion Guaranties shall also automatically terminate.

(E) Inspection of Work. During construction of the Project, the City, its employees and agents shall have the right at all reasonable times, and upon reasonable notice, to enter upon the construction site to examine and inspect the progress of construction to determine whether Developer is complying with the requirements of this Agreement.

(F) Mechanics Liens. Developer shall not permit any mechanics' or other liens to be filed against the Property during construction. If a mechanics' lien shall at any time be filed, Developer shall within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record. Notwithstanding the foregoing, Developer may contest the validity of any claim or demand in good faith and in accordance with such rights to contest as may be permitted by Developer's construction lender and with diligence and continuity to the City's reasonable satisfaction.

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

(H) Neighborhood Engagement. Prior to the Commencement Deadline, Developer shall attend one meeting with the neighborhood group, Downtown Residents' Council, to engage in discussions and thereafter, Developer shall provide timely notifications to residential neighbors about material activities (i.e., utility service interruptions, sidewalk closures) associated with the Project.

(I) 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, Developer shall (i) at no expense to the City, promptly take all steps necessary to remediate such pre-existing environmental condition in accordance with applicable laws and regulations, 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.

(J) Purchase Option.

(i) Generally. If Developer (a) fails to commence construction of the Project by the Commencement Deadline, inclusive of any extensions approved by the City in accordance with Section 3(C) above, or (b) if the City determines, in its sole and absolute discretion, that the Project is not feasible because Developer has not obtained all financing necessary to complete the Project as of April 1, 2023 (each a "**Failure**"), then the City shall have the option to, in the City's sole and absolute discretion and exercisable no later than the date that is 365 days after the date that the City has actual knowledge of a Failure, purchase the Property, together with any improvements thereon and appurtenant rights, for the Purchase Price (as defined below), on and subject to the terms of this Section 3(J). If the City determines that a Failure has occurred, the City may elect to exercise its option to purchase the Property, by delivering to Developer a written notice of the occurrence of a Failure and require that the Developer convey the Property to the City or its designee on a specified date in accordance with this Section 3(J) (the "**Purchase Notice**"). Upon Developer's acquisition of the Property, Developer shall execute a *Restrictive Covenant* substantially in the form of Exhibit F (Form of Restrictive Covenant) hereto (the "**Restrictive Covenant**"), which reflects the City's purchase option for the Property pursuant to this Section 3(J). This provision shall remain executory until Developer commences construction of the Project, as evidenced by both (1) the City's Department of Buildings and Inspections issuing the primary building permit for the Project, and (2) commencement of on-site construction of the Project and Developer's delivery to the City of the recorded notice of commencement for the Project within the meaning of Ohio Revised Code Section 1311.04. Upon written request by Developer following the expiration or termination of the City's rights with respect to the Property under this Section 3(J), the City agrees that it shall promptly execute and deliver to Developer a document in recordable form releasing its purchase option hereunder. Exercise of the City's option to purchase shall in no way limit the City's right to avail itself of any remedies it may have pursuant to this Agreement or otherwise.

(ii) Exercise of Option to Purchase. The closing of the conveyance of the Property shall take place on the date designated in the Purchase Notice, which date will be at least ten (10) business days after the date of the Purchase Notice. Developer shall pay all closing costs associated with such conveyance. All real estate taxes and assessments shall be prorated as of the date of the closing. At the closing, Developer shall convey marketable title to the Property, to the City by limited warranty deed, free and clear of all liens and encumbrances, except for those encumbrances that Developer, in good faith, established as part of the anticipated development of the Project and which do not materially impair the City's rights or interests under this Section 3(J). If requested by Developer, the City will direct the Purchase Price to the mortgagee with respect to the Mortgage (as defined below). It is expressly acknowledged that if the Purchase Price is insufficient to pay off the Mortgage in full, Developer will be solely responsible for discharging any excess obligations on the Mortgage, over and above the Purchase Price and causing the Mortgage, together with any other mortgages, liens or other encumbrances not permitted by this clause (ii), to be released of record at or before the closing of the conveyance of the Property pursuant to this Section 3(J). As used herein, the term "**Mortgage**" means a mortgage loan from a lending or other financial institution with respect to which financing is provided for the Project.

(iii) Inspection; Assignment. Without in any way limiting any other rights the City has under this Agreement to inspect the Property or any of the inspection rights the City otherwise legally possesses, whether in connection with its police powers, permitting, or otherwise, Developer hereby agrees that the City and its designees may enter upon the Property to conduct reasonable due diligence regarding the condition of the Property at reasonable times following delivery of the Purchase Notice in connection with the exercise of the purchase option hereunder by the City or its designee. For the avoidance of doubt, Developer expressly agrees that the City may assign its rights under this Section 3(J) to any other party, in the City's sole and absolute discretion.

(iv) Purchase Price. The term "**Purchase Price**" means: \$10,000,000 plus actual, documented out-of-pocket soft and hard construction costs related to Developer's demolition work prior to commencement of construction of the Project incurred on and after the Authorizing Date (such soft costs

{00353859-5}



not to exceed 20% of the total demolition cost), as itemized on Exhibit B and such amount not to exceed \$1,750,000, *provided however*, this amount shall increase on the one-year anniversary of Developer's acquisition of the Property and each year thereafter by 3% per annum.

#### **4. CITY ASSISTANCE.**

(A) Service Payment Rebate. Subject to Developer's compliance with the terms and conditions of this Agreement and all other Project Documents, the City shall apply the proceeds of the Service Payments other than Excess Service Payments as described in Recital F of this Agreement, and shall apply Excess Service Payments with respect to years 1 through 25 of the TIF Exemption by remitting 100% of such Excess Service Payments to Developer (the "**Rebate Payments**"). With respect to years 26 through 30 of the TIF Exemption, the City will retain 100% of those Excess Service Payments and Developer acknowledges and agrees it is in no event entitled to any portion of the Excess Service Payments with respect to such years of the TIF Exemption. Developer acknowledges and agrees for years 1-25 of the TIF Exemption, the Rebate Payments will not exceed 52% of the Service Payments. The Residual Service Payments may be used by the City for such purposes as are authorized in the TIF Ordinance and this Agreement. Developer acknowledges and agrees that (i) Developer will not receive any Rebate Payments other than with respect to Excess Service Payments for years falling within the applicable period of the TIF Exemption that are actually made in accordance with the Service Agreement and are actually received by the City, and (ii) notwithstanding anything to the contrary in this Agreement or any other Project Document, (a) Developer shall have no right or standing to dispute or contest the City's use of the Residual Service Payments, and Developer hereby expressly waives any such right or standing, (b) as it respects Developer, the City may use the Residual Service Payments in any manner whatsoever, and (c) as it respects Developer, any description of what the City may or may not do with the Residual Service Payments, including any description in this Agreement and the TIF Ordinance, is for informational purposes only and is not enforceable by Developer at law or in equity, whether as a taxpayer, as a party to this Agreement, or otherwise. The City shall endeavor to make each applicable Rebate Payment as soon as is practicable upon receipt of the proceeds of each Service Payment (which the City acknowledges will generally occur not later than 45 business days following its receipt of the settlement pertaining to such Service Payment from the Hamilton County, Ohio Treasurer).

(B) No Other City Assistance. Except for the City's agreement to provide the Rebate Payments as described in this Agreement and the Service Agreement (as applicable), the City shall not be responsible for any costs associated with the Project and Developer agrees that it shall not request or expect to receive any additional funding, real estate tax abatements, or income tax credits or other financial assistance from the City in connection with the Project in the future, either for itself, for the benefit of the tenants or other occupants of the Property or for the benefit of any other third-party.

#### **5. INSURANCE; INDEMNITY.**

(A) Insurance during Construction. From the time that construction associated with the Project commences, until such time as all construction work associated with the Project has been completed, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$5,000,000 per occurrence, combined single limit/\$5,000,000 aggregate, naming the City as an additional insured with respect to the Project, (ii) builder's risk insurance in the amount of one-hundred percent (100%) of the value of the improvements constructed as part of the Project, (iii) worker's compensation insurance in such amount as required by law, and (iv) all insurance as may be required by Developer's construction lenders, if any. 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. Prior to commencement of construction of the Project, Developer shall send proof of all such insurance to the City at 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202, Attention: Monitoring and Compliance Division, or such other address as may be specified by the City from time to time; *provided* that if the City requests an additional insured endorsement with respect to the Commercial General Liability insurance described above, Developer shall have 6 months following the date of the

City's request to obtain such an endorsement from its insurer and provide the original endorsement 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 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) Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, (i) 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 Claims (as defined below) suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Developer and its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at its request in connection with the Project, and (ii) Developer shall defend, indemnify and hold the Indemnified Parties harmless from and against any and all Claims as a result of or arising from the City's involvement in the Initial Conveyance and the City Conveyance, including the City's ownership of the Property during the period between the Initial Conveyance and the City Conveyance. Further, Developer shall cause the Guarantors to execute an Indemnity Agreement in a form acceptable to the City prior to Closing (the "**Indemnity Agreement**") whereby each Guarantor agrees to defend, indemnify and hold the Indemnified Parties harmless with respect to Claims described in the preceding clause (ii). The obligations of Developer under this paragraph shall survive termination of the Agreement with respect to Claims suffered, incurred, asserted or arising prior to the date of termination. As used herein, "**Claims**" means, collectively, any and all actions, suits, claims, losses, costs (including without limitation attorneys' fees), demands, judgments, liability and damages.

## **6. DEFAULT; REMEDIES.**

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

(i) Prior to the expiration of the TIF Exemption:

(a) the dissolution of Developer or the death of a Guarantor (during the term of the applicable Completion Guaranty), the filing of any bankruptcy or insolvency proceedings by Developer or a Guarantor (during the term of the applicable Completion Guaranty), or the making by Developer or a Guarantor (during the term of the applicable Completion Guaranty) of an assignment for the benefit of creditors; provided, however, that if the event of default is solely because of the death of a Guarantor, such death shall not be an event of default hereunder if the Developer is able to provide a substitute Guarantor satisfactory to the City, within thirty (30) days of the death in question (it being understood that if such Guarantor is acceptable to the construction lender for the Project as a substitute completion guarantor under the lender's completion guaranty, such successor will be acceptable to the City hereunder); or

(b) the filing of any bankruptcy or insolvency proceedings by or against Developer or a Guarantor (during the term of the applicable Completion Guaranty), the appointment of a receiver (temporary or permanent) for any such entity or person, the attachment of, levy upon, or seizure by legal process of any property of any such entity or person, or the insolvency of any such entity or person, unless such appointment, attachment, levy, seizure or insolvency is cured, dismissed or otherwise resolved to the City's satisfaction within sixty (60) days following the date thereof; or

(ii) The occurrence of a Specified Default (as defined below), or a failure of Developer to perform or observe any obligation, duty, or responsibility under this Agreement or any other Project Document (provided that a failure of a Guarantor to perform under the applicable Completion Guaranty or the Indemnity Agreement shall be deemed a failure of Developer to perform under this Agreement), and failure by the defaulting party to correct such default within thirty (30) days after the receipt by Developer of written notice thereof from the City (the "**Cure Period**"), other than a Payment Default (as described below), in which case there shall be a Cure Period of 5 business days after the defaulting party's receipt of written notice thereof from the City; *provided, however*, that if the nature of the default (other than a Payment 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 the defaulting party commences to cure the default within such Cure Period and thereafter diligently completes such cure within sixty (60) days after 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 in good faith, an event of default shall be deemed to have occurred if the defaulting party fails to take reasonable corrective action immediately upon discovering such dangerous condition or emergency. As used in this section, "**Specified Default**" means the occurrence of any of the following:

- (a) Payment Default. Any Service Payment is not made when due under the Service Agreement, subject to the 5-day Cure Period described above (a "**Payment Default**"). Developer acknowledges that time is of the essence with respect to the making of each Service Payment and that delays in the making of a Service Payment may result in a delay in the City's ability to make Rebate Payments.
- (b) Development Default. Developer (1) fails to comply with Section 3 of this Agreement or (2) abandons the Project, including without limitation the Project is vacated, demolished, and/or abandoned.
- (c) Misrepresentation. Any representation, warranty or certification of Developer or the Guarantors made in connection with this Agreement or any other Project Document, shall prove to have been false or materially misleading when made.

(B) Remedies. Upon the occurrence of an event of default under this Agreement which is not cured or corrected within any applicable Cure Period, the City shall be entitled to (i) terminate this Agreement with respect to a defaulting party by giving the defaulting party 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 sole expense of the defaulting party, (iii) withhold Rebate Payments until such default or defaults are cured (it being acknowledged and agreed by Developer that any Rebate Payments withheld by the City pursuant to this clause for a period longer than 12 months shall be deemed forfeit by Developer and the City shall be entitled to retain such Service Payments and to treat them as Residual Service Payments with respect to which Developer has no right or interest), (iv) exercise or assign to another entity for the exercise of the purchase option contemplated in Section 3(J), to the extent still applicable, and (v) 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. The defaulting party 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 or event of default under this Agreement or the City's 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 or any other Project Document 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 Manager  
City of Cincinnati  
801 Plum Street  
Cincinnati, OH 45202

To Developer:  
7 West 7<sup>th</sup> Property LLC  
c/o Victrix Investments LLC  
441 Lexington Avenue, 9<sup>th</sup> Floor  
New York, New York 10017  
Attn: Anoop Davé, CEO and Timothy  
Gordon, President

With a copy to:

Director, Dept. of Community and  
Economic Development  
City of Cincinnati  
805 Central Avenue, Suite 700  
Cincinnati, OH 45202

Notwithstanding anything to the contrary herein, if Developer sends a notice to the City alleging that the City is in default under this Agreement or any other Project Document, Developer 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 the City as follows:

(A) Developer is a limited liability company duly organized and validly existing under the laws of the State of Ohio, is qualified to conduct business in the State of Ohio, has properly filed all certificates and reports required to be filed by it in order to have the right to conduct its business 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 or any other Project Document to which it is a party.

(B) Developer has full power and authority to execute and deliver this Agreement and every other Project Document to which it is a party or will be a party and to carry out the transactions provided for herein and therein. This Agreement and each other Project Document to which Developer is a party has by proper action been duly authorized, executed and delivered by Developer and all actions necessary have been taken to constitute this Agreement and the other Project Documents to which Developer is a party, when executed and delivered, valid and binding obligations of Developer.

(C) The execution, delivery and performance by Developer of this Agreement and each other Project Document to which it is a party 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 in any manner relevant to the transactions contemplated by this Agreement or which may in any way affect Developer's ability to perform its obligations under this Agreement or the other Project Documents.

(D) There are no actions, suits, proceedings or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting it, at law or in equity or before or by any governmental authority that, if determined adversely to it, would impair its financial condition or its ability to perform its obligations under this Agreement or any other Project Documents.

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

{00353859-5}

(F) The statements made in the documentation provided by Developer to the City that are descriptive of Developer, the financial assets of Guarantors, 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, or, if any such documentation contained such a misleading or untrue omission or statement, further documentation correcting such omissions or statements was subsequently provided to the City prior to Developer's execution of this Agreement.

(G) With reference to Section 301-20 (*Delinquencies in Accounts Receivable and Loans Receivable; Policy*) of the Cincinnati Municipal Code, to the best of Developer's knowledge neither it nor any of its affiliates are in breach of any of its obligations to the City under any existing agreements with the City nor does it nor any of its affiliates owe any fines, penalties, judgment awards or any 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 audited financial statements, bank statements, income tax returns, information pertinent to the determination of finances of the Project, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (collectively, "**Records and Reports**"). All Records and Reports compiled by Developer and furnished to the City shall be in such form as the City may from time to time require. Developer shall retain all Records and Reports until the date that is 3 years following expiration of the TIF Exemption, or such later time as may be required by applicable law (the "**Retention Termination Date**").

(B) City's Right to Inspect and Audit. During construction of the Project and thereafter until the Retention Termination Date, Developer shall permit the City and its designees and auditors to have full access to and to inspect and audit Developer's Records and Reports, but no more frequently than twice in one calendar year (except as provided in the following sentence). Upon the occurrence of (i) an event that with the passage of time and the giving of notice constitutes an event of default or (ii) an active event of default, the City may audit and inspect the Developer's Records and Reports as frequently as the City requests to do so, in its sole and absolute discretion. 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.

(C) Annual Jobs & Investment Report. Developer shall provide an annual report, in a form specified by DCED from time to time, regarding total real property, personal property, and employment, including jobs created and retained, at the Property.

## **10. GENERAL PROVISIONS.**

(A) Assignment; Change of Control.

(i) Developer shall not, without the prior written consent of the City Manager, (a) assign its rights or interests under this Agreement, or (b) permit a Change of Control (as defined below); *provided, however* that the City hereby consents to Developer's collateral assignment of its rights under this Agreement to the lender(s) that are providing financing to Developer for the Project (including any mezzanine lender pledges).

(ii) Solely for the purposes of this Section 10(A), "**Change of Control**" means a change in the ownership of Developer such that Victrix or any entity directly or indirectly controlled by, or under common control with, Victrix has less than a 50.1% direct or indirect voting interest in Developer and lack the power to direct or cause the direction of the management and policies of Developer, whether through the ownership of ownership interests in Developer, by contract, or otherwise.

{00353859-5}

(iii) Notwithstanding clauses (i) and (ii) above, after the date of completion of construction of the Project, so long as no event of default has occurred and is continuing under this Agreement or any other Project Document, the City may, in good faith, withhold consent to a Change of Control only if (a) the proposed transfer is prohibited by applicable law or (b) the proposed transferee is, in the City's reasonable judgment, not capable of performing the obligations of Developer under this Agreement and the other Project Documents, which judgment shall exclusively be based on the following factors: (1) the experience of the proposed transferee in operating assets and facilities of the same type as, and otherwise comparable in size and nature to, the Project and performing other projects, and (2) the past performance history and reputation of the proposed transferee and its direct or indirect controlling beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective affiliates (including the absence of criminal, civil or regulatory claims or actions against any such entity or person). The City Manager shall have 30 business days from the date on which he or she receives written notice in accordance with this Agreement of the proposed assignment or Change of Control (the "**City Manager Review Period**") to determine whether he or she intends to consent thereto. The City Manager shall provide written notice to Developer of any decision to refuse to consent, including all material supporting information (the "**Rejection Notice**"), within the City Manager Review Period. In the event the City Manager fails to do so, he or she shall be deemed to have consented to such assignment or Change of Control. In the aforementioned notice of the proposed assignment or Change of Control, the Developer may also, with the City's consent, substitute an indemnitor in the stead of Guarantors, and the City will, in accordance with the same process for approving or disapproving the Change of Control specified in this clause (iii), either approve or disapprove such proposed substitution; *provided, however* that the City may, in good faith, withhold consent to such proposed substitution only if (I) the proposed substitution is prohibited by applicable law, (II) the City has withheld its consent to the proposed Change of Control in accordance with this Agreement, or (III) the proposed indemnitor is, in the City's reasonable judgment, not capable of performing the obligations under the Indemnity Agreement, which judgment shall exclusively be based on (x) the factors enumerated in clause (b)(2) of this clause (iii) with respect to the proposed indemnitor, and (y) an assessment of the proposed indemnitor's assets and liabilities. If the City consents (or is deemed to have consented pursuant to this Agreement) to such substitution, the City shall take such steps as are reasonably necessary to effect such substitution.

(B) Entire Agreement; Conflicting Provisions. This Agreement and the other Project Documents contain the entire agreement between the parties with respect to the subject matter hereof and supersede any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof. In the event that any of the provisions of this Agreement purporting to describe specific provisions of other Project Documents are in conflict with the specific provisions of such other agreements, the provisions of such other agreements shall control.

(C) Amendments and Waivers. The provisions of this Agreement may be amended, waived or otherwise modified only by a written agreement signed by the 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. Each party 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. The parties hereby agree that no third-party beneficiary rights are intended to be created by this Agreement.

(K) No Brokers. Developer represents to the City that Developer has not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation from the City as a result of the parties' execution of 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, and likewise, none of the representations, warranties, covenants, agreements or obligations made by Developer herein shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of Developer in other than his or her official capacity.

(M) 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 any of the laws and regulations described on Exhibit G (Additional Requirements) hereto which are applicable to the Project.

(N) Counterparts. The parties may execute this Agreement in multiple counterparts, each of which shall be deemed an original, and all of which shall, collectively, constitute only one agreement. The signatures of all parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or electronic mail is as effective as executing and delivering this Agreement in the presence of the other parties.

(O) 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 and shall not be required to provide the Rebate Payments described in this Agreement if for any reason City Council does not pass any and all necessary legislation for the Project, including, without limitation, the TIF Ordinance. If all necessary legislative authorizations are not obtained, the City may terminate this Agreement by giving written notice thereof to Developer, whereupon neither party shall thereafter have any rights or obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, this Agreement and any and all obligations of the parties except those that expressly survive termination shall automatically terminate and cease if the TIF Ordinance is not passed by City Council by December 31, 2023.

(P) Transfer of fee title to Port Authority. Nothing in this Agreement shall be construed to prohibit Developer from entering into a sale and leaseback arrangement with respect to the Property (the "**Port Authority Arrangement**") in which fee title to the Property is held by the Port of Greater Cincinnati Development Authority (the "**Port Authority**"); *provided, however*, that (a) the purpose for the Port Authority Arrangement is to take advantage of the sales tax exemption on the purchase of Project building materials and (b) Developer shall provide the City with such documents and other information with respect to this arrangement as the City may reasonably request, including the final form of agreements for the Port Authority Arrangement, at least 10 business days prior to any conveyance of the Property to the Port Authority. Developer may not assign its rights, obligations, or any other interest under this Agreement to any other party except as in accordance with Section 10(A), but at any time, subject to the provisions of this paragraph, once Developer has obtained the fee interest in the Property, Developer may convey the same fee interest to the Port Authority, in the manner, and subject to the terms

described, above. It is also understood and agreed that the Port Authority may convey interest back to Developer pursuant to the terms contained in the Port Authority Arrangement.

(Q) Recognition of City Support. In connection with the construction and opening of the Project, Developer shall acknowledge the support of the City with respect to the Project in all printed promotional materials (including but not limited to informational releases, pamphlets and brochures, construction signs, project and identification signage and stationary) and any publicity (such as but not limited to materials appearing on the Internet, television, cable television, radio or in the press or any other printed media) relating to the Project. In identifying the City as a Project partner, Developer shall use either the phrase "Project Assistance by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City.

(R) TIF Backed Bonds. Developer acknowledges and agrees that in the event that Developer decides to pursue bond financing backed by the Rebate Payments, then an amendment to this Agreement and additional legislation is necessary prior to the City agreeing to such use of the Rebate Payments. Such bonds would contain customary provisions used by the City in other tax increment bond financings issued through the Port Authority, including but not limited to provisions providing for the payment from bond proceeds of the costs of City's outside counsel employed in connection with any such issuance. Subject to such future approvals, such bond financing would likely entail a pledge by the City of the Rebate Payments actually received by the City (i.e. a pledge of the Rebate Payments that would have otherwise gone to the Developer under this Agreement) towards bonds that would be issued by the Port Authority and the proceeds of which would be used for the purpose of constructing the Project. The parties acknowledge that modifications to the Service Agreement may also be necessary to allow for the issuance and sale of any TIF backed bonds and agree to work in good faith to make any necessary modifications to the Service Agreement.

## 11. FEES AND EXPENSES.

(A) Initial Administrative Fee. Prior to the execution of this Agreement, Developer paid a non-refundable administrative fee of \$15,000 to cover the City's out-of-pocket and administrative costs and expenses in establishing the project-based TIF, preparing this Agreement and other documents relating hereto, and effecting the transactions contemplated hereby.

(B) Monitoring and Servicing Fee; Out-of-Pocket Expenses. The City shall withhold and retain from the Service Payments an annual monitoring and servicing fee equal to the greater of (i) 1.0% of the Service Payments paid (or due, if unpaid) with respect to the Property the prior calendar year, and (ii) the documented, reasonable out-of-pocket fees, costs, charges and expenses incurred by the City in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the other Project Documents, together with the City's monitoring and servicing costs and expenses with respect to the transactions contemplated thereby. To the extent Service Payments are not made or are ineligible to be made under the Service Agreement for any reason, the City may elect to require Developer to pay such monitoring and servicing fees in another manner. This Section 11(B) shall terminate and cease to be effective in the event the Rebate Payments permanently cease to be payable in accordance with the provisions of this Agreement and the other Project Documents. For the avoidance of doubt, suspension (without permanent termination) of the making of Rebate Payments shall not cause the provisions of this Section 11(B) of this Agreement to cease or be modified in any way (either permanently or during the period of any such suspension). The fees described in this Section 11(B) are not refundable once withheld by the City or otherwise paid.

## 12. EXHIBITS. The following exhibits are attached hereto and made a part hereof:

- Exhibit A - *Site Plan; Legal Description*
- Exhibit B - *Scope of Work, Budget and Source of Funds*
- Exhibit C - *Form of Service Agreement*
- Exhibit D-1 - *Form of Quitclaim Deed - Initial Conveyance*
- Exhibit D-2 - *Form of Quitclaim Deed - City Conveyance*
- Exhibit E - *Form of Completion Guaranty*
- Exhibit F - *Form of Restrictive Covenant*



Exhibit G - *Additional Requirements* (incl. Addendum I - Prevailing Wage Determination)

*SIGNATURES ON FOLLOWING PAGE*

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

**7 WEST 7TH PROPERTY LLC**

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

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

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

Date: \_\_\_\_\_, 202\_\_

**CITY OF CINCINNATI**

By: \_\_\_\_\_  
John P. Curp, Interim City Manager

Date: \_\_\_\_\_, 202\_\_

Approved as to Form:

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

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

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

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

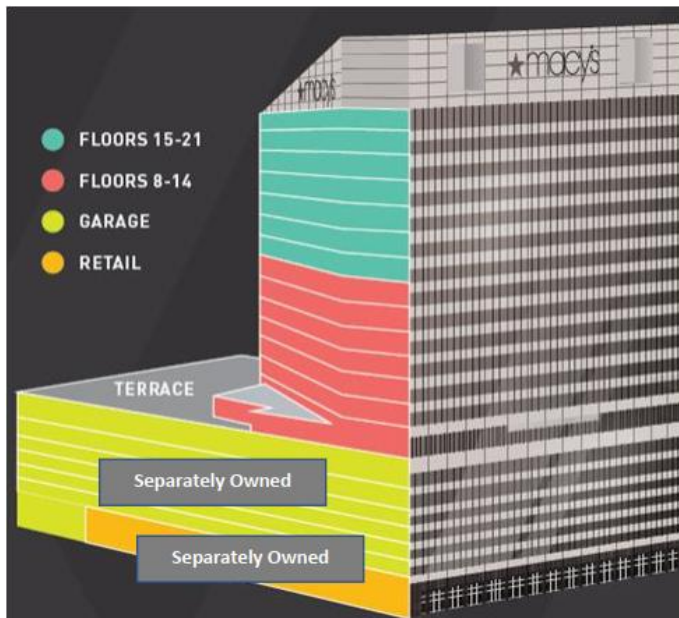
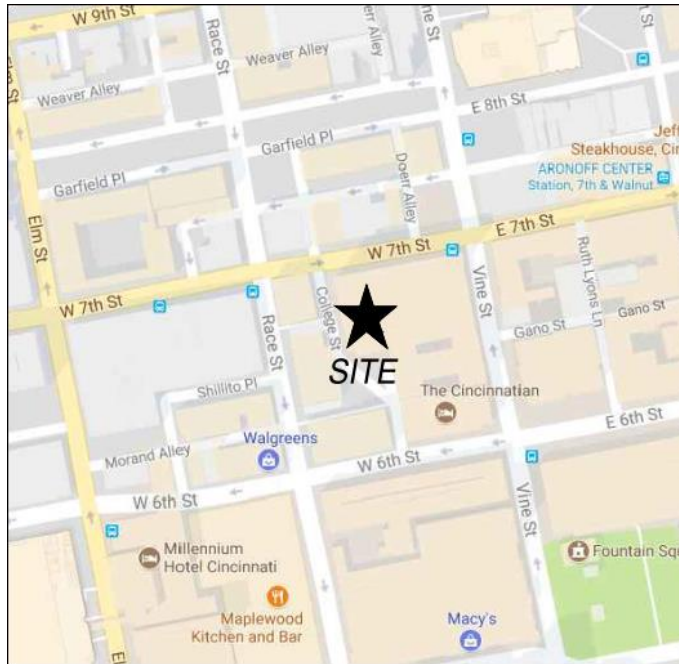
By: \_\_\_\_\_  
Karen Alder, City Finance Director

EXHIBIT A

to Development Agreement

**SITE PLAN; LEGAL DESCRIPTION**

**Site Plan**



Legal Description

**LEGAL DESCRIPTION:**

*SITUATED IN SECTION 18, TOWN 4, FRACTIONAL RANGE 1, BTM, AND IN THE CITY OF CINCINNATI, HAMILTON COUNTY, OHIO, AND BEING ALL OF LOT 2 OF SEVEN WEST SEVENTH SUBDIVISION, AS SET FORTH ON THE RECORD PLAT RECORDED IN PLAT BOOK 463, PAGE 65 OF THE HAMILTON COUNTY, OHIO RECORDER'S OFFICE.*

Address: 7 W. 7<sup>th</sup> Street, Cincinnati, Ohio 45202  
Parcel No.: 077-0002-0301-00

EXHIBIT B

to Development Agreement

**SCOPE OF WORK, BUDGET, AND SOURCE OF FUNDS**

I. **SCOPE OF WORK**

Developer will redevelop 7 W. 7<sup>th</sup> Street, the former global headquarters of Macy's into a Class-A apartment community consisting approximately 338 apartments on floors 8 through 21, including a 19,100 square foot outdoor terrace on floor 8. Based on market demand, there is potential for the top two floors being redeveloped into penthouse(s), and/or office space.

II. **BUDGET, SOURCES & USES**

a. Sources of Funds

Bank Loan	\$42,100,000
Developer Equity	\$30,700,000
<b>TOTAL SOURCES</b>	<b>\$72,800,000</b>

b. Uses of Funds

ITEM	COST
<b>ACQUISITION</b>	
Land Acquisition	\$10,000,000
Transaction Cost	\$750,000
Demolition (Demolition work prior to commencement of construction)	\$1,750,000
<b>HARD COSTS</b>	
Appliances	\$2,000,000
Carpentry	\$10,000,000
Electrical	\$7,000,000
Elevator	\$600,000
Exterior/Roof	\$1,000,000
HVAC	\$11,000,000
Plumbing	\$7,500,000
Windows	\$250,000
General Conditions	\$2,500,000
GC Fee	\$1,500,000
Other Hard Costs	\$1,350,000
<b>SOFT COSTS</b>	
Architect & Engineering	\$2,000,000
Amenities	\$1,500,000

FF&E	\$1,000,000
Zoning	\$500,000
Permits	\$500,000
Marketing	\$200,000
Operating Carry	\$4,000,000
Financing Costs	\$1,000,000
CONTINGENCIES	
Hard+Soft Cost Contingency	\$2,770,000
RESERVES	
Interest Reserve	\$2,130,000
TOTAL DEVELOPMENT COST	\$72,800,000

- If the Rebate Payment structure is converted into a TIF backed bond structure as contemplated under Section 10(R) of the Development Agreement, this sources and uses will be modified to include the TIF backed bonds as a Source of Funds and accordingly change the Bank Loan and Developer Equity components.

EXHIBIT C

to Development Agreement

**FORM OF SERVICE AGREEMENT**

----- space above for Hamilton County Recorder -----

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

**SERVICE AGREEMENT**  
(Macy's HQ Redevelopment)

This Service Agreement ("**Agreement**") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 202\_\_ (the "**Effective Date**"), by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and **7 WEST 7TH PROPERTY LLC**, an Ohio limited liability company, having an address of [\_\_\_\_], Cincinnati, Ohio 452[\_\_\_] ("**Owner**").

Recitals:

A. Owner is the fee owner of the property located at floors 8-21 at 7 W. 7<sup>th</sup> Street, Cincinnati, Ohio 45202, as described more fully in Exhibit A (*Legal Description*) hereto (the "**Property**").

B. As described in the *Development Agreement* between the City and Owner dated [\_\_\_\_], 202[\_\_\_] (the "**Development Agreement**"), Owner intends to make or cause to be made certain improvements to the Property (as described in the Development Agreement, the "**Project**"). Capitalized terms used, but not defined, herein shall have the meanings ascribed thereto in the Development Agreement.

C. 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.

D. In furtherance of the public purpose and to facilitate the Project, and as authorized by Ordinance No. [\_\_\_\_], passed by Cincinnati City Council on [\_\_\_\_] (the "**TIF Ordinance**"), the City has established a so-called project-based TIF Exemption for the Property under Section 5709.41, Ohio Revised Code ("**ORC**").

E. Under the TIF Ordinance and in accordance with ORC Section 5709.41, et seq. and this Agreement, the increased value of the Property shall be exempt from real property taxes, and all present and future owners of the Property, or any portion thereof, shall be required to make service payments in lieu of taxes, in semi-annual installments, in an amount equal to the amount of real property taxes that

would have been paid on the Exempt Improvements (as defined below) had an exemption not been granted (“**Service Payments**”).

F. The Property is located within the Cincinnati City School District, and the Board of Education of the Cincinnati City School District (“**Board of Education**”) has, by resolution adopted on April 27, 2020, and by a *Tax Incentive Agreement* with the City effective as of April 28, 2020, approved an exemption of 100% of the assessed valuation of the Exempt Improvements for thirty (30) years (subject to the obligation of the City to make payments to the Board of Education as provided in Section II.C.2 of that agreement, which payments are referred to herein as the “**School Board Payments**”).

G. As provided in the Development Agreement, the City intends to use the Service Payments to (i) pay any fees due to the Hamilton County Auditor with respect to the Service Payments, (ii) make the School Board Payments, (iii) cover certain fees to the City provided in the Development Agreement, (iv) retain the VTICA Contribution, (v) provide Owner with certain Rebate Payments to promote the economic viability of the Project and thereby contributing to the urban redevelopment of Central Business District, (vi) retain the Residual Service Payments to further urban redevelopment throughout the corporate boundaries of the City of Cincinnati and (vii) support such urban redevelopment purposes as are provided in the Development Agreement and the TIF Ordinance, in each case in the amounts identified herein and subject to the terms hereof.

H. The parties intend that this Agreement, as amended and supplemented from time to time, shall constitute the agreement contemplated by ORC Section 5709.41, et seq. and shall define the respective rights and obligations of Owner and the City with respect to the Service Payments.

I. Execution of this Agreement has been authorized by City Council by the TIF Ordinance.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the City and Owner agree as follows:

1. **COMPLETION OF PROJECT.** Owner shall cause the Project to be completed in accordance with the terms of the Development Agreement. Failure to use and operate the Project in the manner contemplated by the Development Agreement shall not relieve Owner of its obligations to make Service Payments as required hereunder. Owner shall use, develop, and redevelop the Project in accordance with the Development Agreement throughout the Exemption Period (as hereinafter defined), and shall comply with the terms of the Development Agreement in all respects.

2. **OBLIGATION TO MAKE SERVICE PAYMENTS.**

A. Declaration that Exempt Improvements are a Public Purpose. The City hereby confirms that, pursuant to ORC Chapter 5709.41, et seq. and the TIF Ordinance, the City declared that 100% of the assessed value of the improvements (as defined in ORC Chapter 5709.41) to the Property, including the Project (collectively, the “**Exempt Improvements**”) constitutes a public purpose and is entitled to exemption from real property taxes for a period of thirty (30) years for a period currently expected to commence in tax year 2025, subject to the terms of the TIF Ordinance (the “**Exemption Period**”).

B. Commencement of Service Payments. Owner shall commence paying Service Payments no later than the final date for payment (the last day that payment can be made without penalty or interest) of the first semi-annual installment of real property taxes in the first calendar year after the first tax year in which any Exempt Improvements appear on the Hamilton County Auditor’s tax duplicate. (For example, if any Exempt Improvements first appear on the tax rolls on January 1, 2025, Owner’s first semi-annual tax payment will be for the tax bill for the First Half 2025, which will become due and payable to the County Treasurer on or about January 2026.) Owner shall pay Service Payments in semi-annual installments (i) on the earlier of such final date for payment of the first semi-annual installment of real property taxes, or February 1, in each year, and (ii) on the earlier of such final date for payment of the second semi-annual installment of real property taxes, or August 1, in each year (each such final date for payment is referred to herein as a “**Service Payment Date**”). Owner shall continue to make Service



Payments until such time as Owner has paid the final Service Payment applicable to the Exemption Period.

C. Amount of Service Payments. Each semi-annual Service Payment shall be paid to the Hamilton County Treasurer in an amount equal to one-half ( $\frac{1}{2}$ ) of the annual amount that would have been payable in that year as real property taxes with respect to the Exempt Improvements had an exemption not been granted. However, if after the first semi-annual Service Payment has been determined and paid, the total annual amount for that year is adjusted by the taxing authorities, the amount of the second semi-annual Service Payment shall be adjusted accordingly. The Service Payments shall vary as the assessed value of the Exempt Improvements and the applicable tax rate vary from time to time.

D. Estimation. If, as of the date any Service Payment is due, the amount of the real property taxes that would have been payable on the Exempt Improvements (if not exempt) cannot be or has not been finally determined, the amount of such taxes shall be estimated by the Hamilton County Auditor or by the City (even though such taxes may be subject to contest, later determination, or adjustment because of revaluation of the Exempt Improvements) for the applicable tax year. If the sum of Service Payments so calculated and paid in any year is subsequently determined not to be equal to the total amount of real property taxes that would have been paid in that year with respect to the Exempt Improvements (if not exempt), Owner or the City shall promptly pay or repay any deficiency or excess, as appropriate, to the other within thirty (30) days after written demand; provided, however, that nothing in this sentence shall be construed to require the City to repay to Owner any amount that would reduce the total payments in any year to an amount less than the Service Payments required to be paid in that year.

E. Late Payment. If any Service Payment, or any installment thereof, is not paid when due under this Agreement, then, in addition to Hamilton County's late fee or delinquency charge, if any, Owner shall pay to the City, as a late payment charge, the amount of the charges for late payment of real property taxes, including penalty and interest, payable pursuant to ORC Section 323.121 on the delinquent amount. In addition, if Owner fails to make any Service Payment required hereunder, Owner shall pay, in addition to the Service Payment Owner was required to pay and any late payment charges as stated above, such amount as is required to reimburse the City for all costs and other amounts (including without limitation attorneys' fees) paid or incurred by the City to enforce the Service Payment obligations against Owner or against the Property. Owner acknowledges that delays in the making of Service Payments may, among other things, result in delays in the City's ability to timely make Rebate Payments.

### **3. APPLICATION OF SERVICE PAYMENTS.**

A. Rebate Payments. Rebate Payments shall be made in the amounts described in, and subject to all terms and conditions of, the Development Agreement.

B. Timing of Rebate Payments. Rebate Payments shall be made at the times described in the Development Agreement.

#### **C. Change in Use: Subdivision or Ownership by Multiple Legal Entities.**

(i) Change in Use. Notwithstanding the foregoing, and without limiting any of the City's remedies under this Agreement or the Development Agreement, if the Project is no longer to be used for commercial and multi-family residential purposes (unless the City has otherwise agreed in accordance with the terms of this Agreement), the City shall no longer be obligated to make the Rebate Payments and the portion of the Service Payments which would otherwise have been applied to the Rebate Payments shall be deemed to be Residual Service Payments to which Owner is in no way entitled.

(ii) Subdivision or Ownership by Multiple Legal Entities. Without the City's prior written consent in the form of an amendment to this Agreement making such administrative and

ministerial changes as may be deemed reasonably necessary by the City, title to the Property shall not be held by more than one legal entity at a time (it being acknowledged and agreed by the City that ownership of the fee title through one legal entity, which is itself owned by multiple entities, is not ownership of the fee title to the Property by multiple entities as contemplated hereby). The City will not unreasonably withhold its agreement to such an amendment so long as the proposed amendment is otherwise consistent with this Agreement and the Development Agreement. For the avoidance of doubt, the City shall be under no obligation to enter into such an amendment if Owner seeks to include terms in such amendment that are unrelated or in addition to the division of ownership of the Property as described in this clause (ii); *provided, however*, that the City may include, as a term of such amendment, that the City will solely be required to provide notices or otherwise negotiate with one "Owner" entity as an agent for others which may succeed to Owner's rights hereunder. The City shall in no event be required to divide the Rebate Payments and pay portions of the Rebate Payments to various entities unless the City expressly agrees to do so in writing.

D. No Other Source. The City is in no way obligated under this Agreement or any other Project Document to provide Owner with any funds other than the Rebate Payments, nor is the City in any way obligated to provide the Rebate Payments from any source other than the Service Payments it actually receives in respect of the Exempt Improvements. Owner acknowledges and agrees that if the application of Service Payment proceeds to the Rebate Payments is deemed illegal or impermissible by a court of law following a non-appealable final adjudication thereof (it being agreed by the City that it shall not object to Owner's participation, at Owner's own expense, in any such legal proceedings), the Rebate Payments shall not be made and the portion of the Service Payments which would otherwise have been applied to the Rebate Payments shall be deemed to be Residual Service Payments to which Owner is in no way entitled. In such a circumstance, the City shall be under no obligation to provide compensation or reimbursement to Owner for the loss of the Rebate Payments or otherwise make equivalent payments to Owner from alternative sources.

4. **PAYMENT OBLIGATIONS TO HAVE LIEN PRIORITY**. To the extent permitted by law, the Service Payments shall be treated as a tax lien in the same manner as real property taxes and will have the same lien, rights and priority as all other real property taxes. Such a lien shall attach, and may be perfected, collected and enforced as provided by law, including enforcement by foreclosure upon such lien pursuant to the procedures and requirements of Ohio law relating to mortgages, liens, and delinquent real estate taxes. Owner hereby agrees that the obligation to make Service Payments shall have the same priority as the obligation to pay real estate taxes in the event of any bankruptcy or other like proceeding instituted by or against Owner. Owner agrees not to contest the lien, rights or priority of the Service Payments with respect to the Property.

5. **RECORDING; OBLIGATIONS TO RUN WITH THE LAND; ASSIGNMENT**.

A. Recording. Promptly after the execution of this Agreement, Owner shall cause this Agreement to be recorded in the Hamilton County, Ohio Recorder's Office, at its expense, prior to any mortgage, assignment or other conveyance of any part of the Property. All instruments of conveyance of the Property or Owner's ownership of the Property (or portions thereof) to subsequent mortgagees, successors, assigns or transferees shall be subject to this Agreement.

B. Covenants Running with the Land. The obligation to perform and observe the agreements on Owner's part contained herein shall be covenants running with the land and shall be binding and enforceable by the City against Owner and its successors-in-interest and transferees as owners from time to time of the fee simple interest in the Property.

C. Obligations are Absolute and Unconditional. The obligations of Owner to make Service Payments under this Agreement will not be terminated for any cause including, without limitation, failure to commence or complete the Project; any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Exempt Improvements; commercial frustration of purpose; or any change in the constitution, tax or other laws or judicial decisions or administrative rulings of or administrative actions by or under authority of the United States of America or of the State or any political subdivision thereof.

**6. PAYMENT OF TAXES; CONTESTS.**

A. Payment of Taxes. With respect to real property taxes that are not exempted under this Agreement, Owner shall pay or cause to be paid, as the same become due (but subject to the 5 day Cure Period for Payment Defaults described in the Development Agreement), all such taxes, assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Property and/or the non-exempt improvements or any personal property or fixtures of Owner installed or brought thereon (including, without limitation, any taxes levied against Owner with respect to income or profits from operations at the Property and which, if not paid, may become or be made a lien on the Property or the Exempt Improvements). The Owner acknowledges that it, and not the City, is responsible for the payment of all utility and other charges incurred in the operation, maintenance, use and occupancy of the Property and Exempt Improvements.

B. Contests. Owner, its successors, assigns and transferees hereby agree that, during the term of this Agreement it will not seek any other real property tax exemption for the Exempt Improvements. Nothing in this Agreement is intended to prevent Owner, at its expense and in good faith, from applying for exemption of any non-exempt improvements, or contesting the amount or validity of any such taxes, assessments or other charges, including contesting the real estate valuation of the Property and Exempt Improvements. Nothing in this paragraph shall be construed to relieve Owner of the duty to make the Service Payments as required by this Agreement.

**7. NOTICES.** All notices or other communications under this Agreement shall be deemed given on receipt when personally delivered, or 48 hours after being mailed by U.S. registered or certified mail, postage prepaid, addressed to the City at 801 Plum Street, Cincinnati, OH 45202, Attention: City Manager, with a copy to the Director of the Department of Community and Economic Development, City of Cincinnati, 805 Central Avenue, Suite 700, Cincinnati, OH 45202; and to Owner at its address set forth in the introductory paragraph hereof. If Owner sends a notice to the City alleging that the City is in default under this Agreement, Owner 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. The City and Owner may, by notice given under this Agreement, designate any further or different addresses to which subsequent notices or other communications shall be sent.

**8. COVENANTS AND REPRESENTATIONS.** Owner hereby reaffirms its representations and warranties contained in the Development Agreement and any other Project Documents as of the Effective Date of this Agreement.

**9. EXEMPTION APPLICATION.** Owner shall prepare, execute and (following the City's prior receipt of copies for review and approval in the City's sole discretion) file, in a timely fashion after the Effective Date, such applications, documents and other information with the appropriate officials of the State of Ohio and Hamilton County, or other public body as may be required to effect and maintain during the Exemption Period as described in ORC Chapter 5709 the exemption from real property taxation as contemplated by said Chapter. Owner and the City currently expect that such exemption from real property taxation shall apply initially to the 2025 tax year. Owner shall continuously use due diligence and employ commercially reasonable efforts to keep such exemption in force, not permitting the same to lapse or be suspended or revoked for any reason within Owner's control. In the event that subsequent to the allowance of such exemption, the same is at any time revoked or suspended due to the act or omission of Owner, Owner shall nevertheless continue to make Service Payments throughout the Exemption Period; *provided, however* that such Service Payments shall only be required during any period of revocation or suspension to the extent (and in the amounts) necessary to cover debt service and other financing costs related to any bonds the City has issued prior to the date of revocation or suspension of the exemption which are secured by the City to be repaid, in whole or in part, by the Service Payments (or such portion of the Service Payments as the City may be entitled to pledge as collateral or utilize for repayment of debt under the terms of this Agreement).

**10. DEFAULTS AND REMEDIES.** If Owner fails to make any Service Payment when due (but subject to the 5 day Cure Period for Payment Defaults described in the Development Agreement) (time being of the essence), or if Owner fails to observe or perform any other obligation hereunder (including Owner's obligation to comply with the terms of the Development Agreement) and such other failure continues for more than thirty (30) days after the City notifies Owner in writing thereof, the City shall be entitled to exercise and pursue any and all rights and remedies available to it hereunder, at law or in equity, including, without limitation, (i) foreclosure of the lien created hereby, and (ii) terminating this Agreement without modifying or abrogating Owner's obligation to make Service Payments; *provided, however,* that if the nature of the default (other than a Payment Default) is such that it cannot reasonably be cured during an applicable cure period, Owner shall not be in default under this Agreement so long as Owner commences to cure the default within such cure period and thereafter diligently completes such cure within sixty (60) days after Owner's receipt of the City's initial notice of default. Owner shall pay to the City upon demand an amount equal to all costs and damages suffered or incurred by the City in connection with such default, including, without limitation, attorneys' fees. Waiver by the City of any default shall not be deemed to extend to any subsequent or other default under this Agreement. All rights and remedies hereunder are cumulative.

**11. DURATION OF AGREEMENT.** This Agreement shall become effective on the Effective Date and, except with respect to those provisions expressly stated to survive the expiration of this Agreement, shall expire on the later of (i) the day following the date of payment of the final Rebate Payment to be made under the Development Agreement, and (ii) the day following the date of payment of the final Service Payment applicable to the Exemption Period. This Agreement shall survive any foreclosures, bankruptcy, or lien enforcement proceedings. Upon such expiration, the City shall deliver to Owner such documents and instruments as Owner may reasonably request to evidence such expiration.

**12. TRUSTEE.** Owner hereby acknowledges and agrees that the City may, following the Effective Date, enter into a trust agreement or other like agreement with a trustee selected by the City for the purposes of carrying out and/or administering some or all of the City's obligations under this Agreement, as determined by the City. If the City generally implements such an arrangement for transactions, such as those contemplated by this Agreement, involving tax increment financing under Ohio Revised Code Section 5709.41 or tax increment financing generally, then Owner agrees to (i) execute such documents or acknowledgments as may be reasonably required in order for the City to procure the services of such trustee, including, if applicable, a trust agreement, and (ii) pay the fees and expenses of the trustee (or, at the City's option, reimburse the City for the fees and expenses of the trustee paid by the City).

**13. GENERAL PROVISIONS.**

A. Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same Agreement.

B. Captions. Captions have been provided herein for the convenience of the reader and shall not affect the construction of this Agreement.

C. Governing Law and Choice of Forum. This Agreement shall be governed by the laws of the State of Ohio and the City of Cincinnati and shall be interpreted and enforced in accordance with the laws of this State and City without regard to the principles of conflicts of laws. All unresolved claims and other matters in question between the City and Owner shall be decided in the Hamilton County Court of Common Pleas. The parties hereby waive trial by jury.

D. Severability. If any provision of this Agreement is determined to be illegal, invalid or unenforceable, it is the intention of the parties that the remainder of this Agreement shall not be affected thereby, and in lieu of each provision that is illegal, invalid or unenforceable, there shall be added as a part of this Agreement provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

E. Additional Documents. The City and Owner agree to execute any further agreements, documents or instruments as may be reasonably necessary to fully effectuate the purpose and intent of this Agreement to the extent permitted by this Agreement and in compliance with all laws and ordinances controlling this Agreement.

F. Entire Agreement; Amendments. This Agreement, together with the Development Agreement, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior understandings and agreements of the parties. This Agreement may be amended only by a written amendment signed by all parties.

G. Exhibit. The following exhibit is attached hereto and made a part hereof:  
Exhibit A - Legal Description

*SIGNATURES ON FOLLOWING PAGE*

This Service Agreement is executed by the City and Owner by their duly-authorized officers or representatives as of the Effective Date.

**7 WEST 7TH PROPERTY LLC**

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

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

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

Date: \_\_\_\_\_, 202\_\_

**CITY OF CINCINNATI**

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

John P. Curp, Interim City Manager

Date: \_\_\_\_\_, 202\_\_

Approved as to Form:

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

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

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

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

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

Karen Alder, City Finance Director

*NOTARY BLOCKS ON FOLLOWING PAGE*

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_ (name), \_\_\_\_\_ (title) of 7 WEST 7TH PROPERTY LLC, an Ohio limited liability company, on behalf of the company. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

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

STATE OF OHIO )  
 ) SS:  
COUNTY OF HAMILTON )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_, \_\_\_\_\_ of the CITY OF CINCINNATI, an Ohio municipal corporation, on behalf of the corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

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

This instrument prepared by:  
Kaitlyn M. Geiger, Esq.  
City of Cincinnati  
Office of the City Solicitor  
801 Plum Street, Room 214  
Cincinnati, OH 45202

**EXHIBIT A  
TO  
SERVICE AGREEMENT**

**LEGAL DESCRIPTION**

[INTENTIONALLY OMITTED]



EXHIBIT D-1

to Development Agreement

**FORM OF QUITCLAIM DEED – INITIAL CONVEYANCE**

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

**QUITCLAIM DEED**

**7 WEST 7TH PROPERTY LLC**, an Ohio limited liability company, the address of which is 150 E. Fourth Street, 4<sup>th</sup> Floor, Cincinnati, Ohio 45202 (“**Grantor**”), for valuable consideration paid, hereby grants and conveys to the **CITY OF CINCINNATI**, an Ohio municipal corporation (“**Grantee**”), having an address at 801 Plum Street, Cincinnati, Ohio 45202, all Grantor’s right, title and interest in and to the real property described on Exhibit A (Legal Description) hereto.

The City’s acceptance of the Property was authorized by Ordinance No. \_\_\_\_-2021, passed by City Council on \_\_\_\_\_, 2021.

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

Executed on \_\_\_\_\_, 202\_\_\_\_.

**7 WEST 7TH PROPERTY LLC**

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

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

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

Date: \_\_\_\_\_, 202\_\_

*NOTARY BLOCK FOLLOWS*

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_ (name), \_\_\_\_\_ (title) of 7 WEST 7TH PROPERTY LLC, an Ohio limited liability company, on behalf of the company. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

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

Approved as to Form:

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

This instrument prepared by: Kaitlyn M. Geiger, Esq.; City of Cincinnati, Office of the City Solicitor;  
801 Plum Street, Room 214; Cincinnati, Ohio 45202

**Exhibit A to Quitclaim Deed**

Legal Description

[INTENTIONALLY OMITTED]

EXHIBIT D-2  
to Development Agreement

**FORM OF QUITCLAIM DEED – CITY CONVEYANCE**

----- 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 **7 WEST 7TH PROPERTY LLC**, an Ohio limited liability company, the address of which is 150 E. Fourth Street, 4<sup>th</sup> Floor, 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.

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 \_\_\_\_\_, 202\_\_.

CITY OF CINCINNATI

By: \_\_\_\_\_  
John P. Curp, Interim City Manager

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF HAMILTON        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_, \_\_\_\_\_ of the CITY OF CINCINNATI, an Ohio municipal corporation, on behalf of the corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

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

Approved as to Form:

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

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

**Exhibit A to Quitclaim Deed**

Legal Description

[INTENTIONALLY OMITTED]

EXHIBIT E  
to Development Agreement

**FORM OF COMPLETION GUARANTY**

SEE ATTACHED

## COMPLETION GUARANTY

This Completion Guaranty ("**Guaranty**") is made as of the Effective Date (as defined on the signature page hereof) by [\_\_\_\_], an individual and resident of the State of [\_\_\_\_], whose address is [\_\_\_\_] ("**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. The City and 7 West 7th Property LLC, an Ohio limited liability company ("**Obligor**"), [being an affiliate of Guarantor], are parties to a *Development Agreement* dated [\_\_\_\_], 202[\_\_\_\_] (the "**Agreement**"). Capitalized terms used, but not defined, herein shall have the meanings ascribed thereto in the Agreement.

B. Pursuant to the Agreement, among other things, Obligor is obligated to renovate the Property into approximately 338 residential rental units, which amount could be reduced in the event Obligor desires to construct office space at the Property (as more fully set forth and defined 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 construction of the Project in substantial accordance with the Final Plans, as determined by the City in good faith, 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.

{00353859-5}

(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) Waivers. 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 the Guaranteed 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 the Guaranteed 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 and] is an affiliate of Obligor; (ii) is an individual residing in the State of [\_\_\_\_]; (iii) has full power, authority and legal right to execute, acknowledge and deliver this 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) TIF Ordinance / Purchase Option Termination. This Guaranty shall automatically terminate (i) in the event that the TIF Ordinance is presented to City Council and City Council does not approve the TIF Ordinance, or (ii) in the event the City exercises its option to purchase the Property under Section 3(J) of the Agreement, then upon the closing of such purchase.

*[Signature Page Follows]*

Executed and effective as of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”).

GUARANTOR:

\_\_\_\_\_  
[ ]

Approved as to Form:

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

This instrument prepared by:      City of Cincinnati, Office of the City Solicitor  
801 Plum Street, Room 214  
Cincinnati, Ohio 45202

EXHIBIT F  
to Development Agreement

**FORM OF RESTRICTIVE COVENANT**

TO BE ATTACHED TO EXECUTION VERSION

## EXHIBIT G

to 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, {00353859-5}

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

{00353859-5}

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

**REQUEST FOR PROJECT WAGE DETERMINATION**

**DATE RECEIVED:** 11/15/21

**ORIGINAL ASSIGNED NUMBER:** 2021-259

**REQUESTING AGENCY OR DEPT:**  
Economic Development

**DEI USE ONLY**

Fillout and Circle all that Apply Below:

**CONTACT PERSON AND PHONE NUMBER:**  
Rob Denham ext. 6253

**FUNDING GUIDELINES:**  
(State or Federal)

**RATES THAT APPLY:**  
(Building, Heavy, Highway, Residential)

**Requested Date:** 11/15/2021  
**Estimated Advertising Date:** 01/01/2022  
**Estimated Bid Opening Date:** 02/01/2022  
**Estimated Starting Date:** 01/01/2023

[Prevailing Wage Does Not Apply]

**DECISION NUMBER:** n/a

**SOURCE AND FUND NUMBER**

**MODIFICATIONS:** n/a

**CITY**                      **FUND**

**DECISION DATE:** n/a

**STATE**                      **FUND**

**EXPIRATION DATE:** n/a

**COUNTY**                      **FUND**

**SUPERSEDES DECISION NUMBER:**

**FEDERAL**                      **FUND**

**DETERMINATION BY:**

**PROJECT ACCOUNT NUMBER:**

Name: Lydgia Sartor

**AMT. OF PUB. FUNDING \$:** 0

Title: Development Manager

**TOTAL PROJECT DOLLARS:** 72,800,000

Date: 11/17/21

**APPROVED BY:**

**NAME OF PROJECT**

*Edgar De Veyra*, Interim Director  
DIRECTOR, DEPARTMENT OF ECONOMIC  
INCLUSION

Macy's Corporate HQ Redevelopment

**COMMENTS:**

As described, no direct public funds will be used on the project. Therefore, neither State nor Federal prevailing wage will apply.

Further, local prevailing wage does not apply as the project does not meet the definition of a "Development Agreement" under CMC 321-1-D2(b)(1).

Note: Any changes to the scope, funding or developer on the project, or the failure of the project to start within 90 days of the determination will require revisions to this wage determination.

**TYPE OF WORK**

- |               |   |                |   |
|---------------|---|----------------|---|
| 1. Building   | X | 2. Heavy       |   |
| 3. Highway    |   | 4. Residential | X |
| 5. Demolition |   |                |   |
| 6. Other      |   |                |   |

**PROJECT LOCATION**

Developer will redevelop 7 W. 7th Street, the former global headquarters of Macy's into a Class-A apartment community consisting of a 21-story building, with 383 apartments on floors 9 through 21, including a 19,100 square foot outdoor terrace. The development will also include 394 on-site parking spaces, which are privately owned but as a part of the transaction a Reciprocal Easement Agreement was executed in the parking agreement. The attached parking garage and ground floor retail are owned and operated separately, by Parking Corporation of America.

**PROJECT FUNDING SOURCE**

No direct funding is being awarded. City incentive is 5709.41 TIF for a term of 30 years.

**PROJECT SCOPE OF WORK AND BUDGET**

Victrix Investment, LLC. proposes the redevelopment and conversion of the former Macy's corporate HQ building into approximately 383 residential apartment units, with three hundred and ninety-four (394) attached garage parking spaces and commercial space that are both separately owned. The project will cost an estimated \$72,762,877.

DEI 217 Form  
REV: 6/12/2017