

Contract No: _____

Project: Vacation of a portion
of West 5th Street

PROPERTY SALE AGREEMENT

THIS PROPERTY SALE AGREEMENT is made and entered into effective as of the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**") and **101 WEST FIFTH LLC**, an Ohio limited liability company, the address of which is 1203 Walnut Street, 4th Floor, Cincinnati, Ohio 45202 ("**Developer**").

Recitals:

A. The City formerly owned certain real property located at 101 West Fifth Street in the Central Business District of Cincinnati, which property is more particularly described on Exhibit A (*Legal Description – the Property*) hereto (the "**Property**"). The Property was under the management of the City's Department of Community and Economic Development ("**DCED**").

B. Pursuant to a separate *Property Sale, Funding, and Development Agreement* (the "**Development Agreement**"), authorized by Ordinance No. 100-2024 passed by Cincinnati City Council on March 20, 2024, the City sold the Property to Developer, an affiliate or wholly owned subsidiary of Cincinnati Center City Development Corporation ("**3CDC**"), to facilitate the redevelopment of the vacant structure located on the Property into approximately 62,000 square feet of renovated office space and approximately 13,000 square feet of renovated commercial space, at an estimated total project cost of approximately \$28,031,300, including, without limitation, the undertaking of various public infrastructure improvements concerning the demolition of an existing skywalk over Race Street connecting the Property to the adjacent Carew Tower and certain streetscape improvements (the "**Project**").

C. The City owns the public rights-of-way adjoining the Property, namely, West Fifth Street and Race Street (the "**ROW Property**"), which ROW Property is under the management of the City's Department of Transportation and Engineering ("**DOTE**").

D. In furtherance of the Project, Developer has petitioned the City to vacate and sell to Developer certain portions of the ROW Property, as more particularly depicted on Exhibit B (*Vacation Plat*) and described on Exhibit C (*Quitclaim Deed – the Property*) hereto (the "**Sale Property**"). Additionally, Developer has petitioned the City to grant and convey to Developer certain easement rights upon certain portions of the ROW Property, as more particularly described and depicted on Exhibit D (*Form Grant of Easement*) hereto (the "**Encroachment Easement**"). The City is agreeable to convey the Sale Property and the Encroachment Easement to Developer, subject to the terms and conditions set forth herein.

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

F. The City Manager, in consultation with DOTE, has determined that (i) the Sale Property is not needed for transportation or any other municipal purposes, and that the City's vacation and sale of the Sale Property will not be detrimental to the public interest; (ii) the Encroachment Easement will not have an adverse effect on the City's retained interest in the ROW Property; (ii) the Encroachment Easement will not unreasonably interfere with the City's use of the ROW Property for municipal purposes; (iii) granting the Encroachment Easement will not have an adverse effect on the usability or accessibility of any existing public right-of-way facilities; and (iv) conveying the Sale Property and granting the

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Encroachment Easement to Developer without competitive bidding is in the best interest of the City because, the City has developed a comprehensive strategy for the redevelopment of the area generally surrounding the Duke Energy Convention Center along Race Street, Central Avenue, Fourth Street, and Sixth Street (the “**Convention Center Redevelopment District**”), and has engaged 3CDC, or an affiliate or subsidiary thereof, to provide general planning, development, and management services as it relates to the revitalization of certain properties located within the Convention Center Redevelopment District, and, as a practical matter, no one other than an adjoining property owner would have any use for the Sale Property and the Encroachment Easement.

G. Angela L. Hahn, Esq., a reputable attorney practicing in Hamilton County, Ohio, has provided an Attorney’s Certificate of Title dated [____], certifying that following the sale of the Property to Developer, Developer will own all real property abutting the Sale Property.

H. The City’s Real Estate Services Division has determined, by professional appraisal, that (i) the fair market value of the Sale Property is \$92,000, and (ii) the fair market value of the Encroachment Easement is \$2,900, however, the City is agreeable to convey the aforementioned real property interests for \$1.00 because the City will receive economic and non-economic benefits from the Project that are anticipated to equal or exceed the aggregate fair market value of the Sale Property and the Encroachment Easement because the City anticipates that the Project will stimulate economic activity and growth in the Central Business District through the renovation and reactivation of the vacant structure located at the Property and enhancing the streetscape surrounding the Property.

I. 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.

J. The City believes that the Project and associated vacation and sale of the Sale Property and grant of the Encroachment Easement is in the vital and best interests of the City and the health, safety, and welfare of their residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements.

K. Cincinnati City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City’s sale and vacation of the Sale Property to Developer, and the conveyance of the Encroachment Easement to Developer at its meeting on March 15, 2024.

L. Execution of this Agreement was authorized by Ordinance No. [____]-2024, passed by Cincinnati City Council on [____], 2024.

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

1. Purchase Price; Condition.

(A) Purchase Price. Subject to the terms and conditions set forth herein, the City hereby agrees to sell the Sale Property and grant and convey the Encroachment Easement to Developer, and Developer hereby agrees to purchase the Sale Property and the Encroachment Easement from the City. The purchase price of the transaction shall be \$1.00 (the “**Purchase Price**”).

(B) Condition of Sale Property and Encroachment Easement Area. Developer acknowledges that it is familiar with the condition of the Sale Property, and, at the Closing (as defined below), the City shall convey the Sale Property and the Encroachment Easement to Developer in “as is” condition with all

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faults and defects, known or unknown. The City makes no representations or warranties concerning the title, condition, or characteristics of the Sale Property and the Encroachment Easement area or the suitability or fitness of the same for any purpose. Developer acknowledges and agrees that it is not relying upon any such representations or warranties from the City and, from and after the Closing, the City shall have no liability of any kind to Developer for any defects, adverse environmental condition, or any other matters affecting the Sale Property and Encroachment Easement area.

2. Closing.

(A) Conditions. The closing on the City's conveyance of the Sale Property and Encroachment Easement to Developer (the "**Closing**") shall not occur unless and until the following conditions have been satisfied or waived (the "**Conditions**"); *provided, however*, that if the City, at its sole discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, then the City may, if appropriate, include such Conditions in the conveyance instruments to Developer or handle such Conditions post-Closing. Developer shall perform all work and investigations and obtain and prepare all necessary documents to satisfy the Conditions at no cost to the City.

- (i) Title & Survey: Developer's approval of title to the Sale Property and Encroachment Easement area, if obtained by Developer, an ALTA property survey of the Sale Property and Encroachment Easement area;
- (ii) Inspections, Utilities & Zoning/Building Code Requirements: Developer's approval of inspections of the Sale Property and Encroachment Easement area, including, without limitation, environmental assessments and soil assessments, all matters concerning utility service for the Sale Property and Encroachment Easement area, and all zoning and building code requirements that apply to the Sale Property and Encroachment Easement area;
- (iii) Certificate of Title: Developer shall have provided the City with an attorney's certificate of title certifying the names of all abutters to the Sale Property;
- (iv) Plats and Legal Descriptions: Developer shall have provided the City with all plats and legal descriptions as required by DOTE, the Department of City Planning and Engagement, and the Hamilton County Auditor, Engineer, and Recorder in connection with the City's vacation and sale of the Sale Property and conveyance of the Encroachment Easement area, including, but not limited to an acceptable survey plat and legal description with closure of the Sale Property and Encroachment Easement area to accompany the transfer and recording of the conveyance instruments;
- (v) Coordinated Report Conditions CR #4-2024 & CR #60-2023:
 - (a) DOTE:
 1. The construction of a new curb and sidewalk to replace the right turn lane from 5th Street to Race Street must be built by Developer. The sidewalk and infrastructure plan must be approved by DOTE and be built in compliance with DOTE standards. Traffic infrastructure approval is required prior to installation.
 2. The existing traffic signal, street lights, and traffic control poles, as well as all existing street trees and tree wells, the existing fire hydrant, and the existing stormwater inlet, and all associated infrastructure facilities shall be removed and relocated to the new sidewalk curb line so as to align with the plan

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design of the adjacent east and west blocks. DOTE will direct what infrastructure is needed in the right of way.

3. The note for the street grate of "adjust to grade" will need more information as it appears the curb runs through it. This may need to be relocated.
4. Ten feet minimum of clear pedestrian width is required for the public sidewalk (14 feet from the curb). This is to be clear of all obstructions, including but not limited to tree wells.
5. [Intentionally Omitted].

(b) Greater Cincinnati Water Works ("GCWW"): Developer must relocate or adjust the location of the existing fire hydrant with respect to the new curb. Developer's engineer must prepare plans for GCWW approval for the fire hydrant relocation and disconnection of two abandoned branches (5/8" branch no. 26927 and 3/4" branch no. 229923) and complete construction. Please submit plans to Phil Young. Approved plans and contractor's bond and letter of intent will be required before construction can start. An inspector must be on site for all work related to the fire hydrant relocation. Plan review and Inspection/Chlorination fees will apply. Any damage caused to the public water system during the proposed construction must be repaired to GCWW's satisfaction entirely at Developer's cost.

(c) Altafiber: The existing facilities must remain in place, in service and able to be accessed. Any damage done to the facilities, or any work required to relocate the facilities as a result of this request will be handled entirely at the Developer's expense.

(d) Parks:

1. A Public Tree Work Permit shall be required prior to proceeding work within 15 feet of a public street tree.
2. If proposed work requires removal of street trees, compensation shall be made prior to any removal.

(B) Right to Terminate. If either party determines, after exercising good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all the Conditions have not been satisfied to the satisfaction of both parties or waived in writing and for that reason the Closing has not occurred within **12 months** of the Effective Date, this Agreement and all rights and obligations of the parties hereunder shall automatically terminate.

(C) Closing Date. Provided the Conditions have been satisfied, the Closing shall take place **May 24, 2024** or on such earlier or later date as the parties may agree upon.

(D) Closing Costs and Closing Documents. At the Closing, (i) the City shall confirm that Developer has paid the Purchase Price in full, and (ii) the City shall convey all its right, title, and interest in and to the Sale Property in the form of Exhibit C and grant and convey the Encroachment Easement to Developer in the form of Exhibit D. Developer shall pay all Hamilton County, Ohio recording fees, transfer tax, and any and all other customary closing costs associated with the Closing. There shall be no proration of real estate taxes and assessments at Closing, and from and after the Closing, Developer

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shall pay all real estate taxes and assessments thereafter becoming due. At Closing, the parties shall execute a settlement statement and all other customary closing documents necessary for the Closing in such forms as approved by the City. The City shall not, however, be required to execute a title affidavit at Closing or other similar documents pertaining to title. Pursuant to Section 301-20, Cincinnati Municipal Code, at Closing, Developer shall pay to the City all unpaid related and unrelated fines, penalties, judgments, water, or other utility charges, and any and all other outstanding amounts owed by Developer to the City. The provisions of this Agreement shall survive the City's execution and delivery of the conveyance instruments and shall not be deemed to have been merged therein.

3. Improvements to Public Right-of-Way.

(A) Design and Construction of Improvements. Developer hereby agrees to design and construct the Project, as depicted in the Development Agreement, in accordance with plans and specifications approved in writing by DOTE. After Closing, Developer shall have applied for the required permits from DOTE to improve the dedicated public right-of-way. The parties acknowledge and agree that upon completion of construction on West Fifth Street the public improvements are subject to approvals and warranties as required by DOTE.

(B) Applicable Laws. Developer shall obtain, pay for, and maintain all necessary street opening permits and other permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances and other governmental requirements applicable to the construction of the improvements, including without limitation those set forth on Exhibit F (Additional City Requirements) hereto. The City makes no representations or other assurances to Developer that Developer will be able to obtain whatever variances, permits or other approvals from the City's Department of Planning and Engagement, DOTE, other City departments, the City Planning Commission, or City Council that may be required in connection with the improvement of the public right-of-way.

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

(D) Mechanics Liens. Developer shall not permit any mechanics' liens or other liens to be filed against the Dedication 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.

4. Insurance; Indemnification.

(A) Insurance. Throughout construction, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$1,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of one-hundred percent (100%) of the value of the improvements constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Developer's construction lenders, and (v) such other insurance as may be reasonably required by the City's Division of Risk Management prior to closing. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A

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VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City.

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

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

5. Default; Remedies.

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

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

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

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

(B) Remedies. Upon the occurrence of an event of default under this Agreement, the City shall be entitled to: (i) demand immediate repayment of all previously disbursed funds if this Agreement provides for City funding, (ii) terminate this Agreement by giving Developer written notice thereof, (iii) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Developer, and (iv) exercise any and all other rights and remedies under this Agreement or otherwise available at law or in equity. Developer shall be liable for all costs and damages, including without limitation attorneys' fees, suffered, or incurred by the City as a result of a default of Developer under this Agreement or the City's enforcement or termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant

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or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

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

To the City:

City of Cincinnati
805 Central Avenue, 7th Floor
Attn: DCED Director
Cincinnati, OH 45202

To Developer:

101 West Fifth LLC
1203 Walnut Street, 4th Floor
Cincinnati, Ohio 45202
Attn: Legal

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

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

(i) Developer is a limited liability company duly organized and validly existing under the laws of the State of Ohio, has been properly qualified to do business in the State of Ohio, and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement.

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

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

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

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

(vi) The statements made in the documentation provided by Developer to the City that are descriptive of Developer or the proposed development project have been reviewed by Developer and do not contain any untrue statement of a material fact or omit to state any material

fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.

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

8. Reporting Requirements.

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

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

9. General Provisions.

(A) Assignment. Developer shall not assign its rights or interests under this Agreement to any third party without the prior written consent of the City, which consent may be withheld in the City's sole discretion.

(B) Entire Agreement. This Agreement (including all exhibits), together with the Property Sale, Funding, and Development Agreement contain the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations, or agreements, written or oral, between them respecting the subject matter hereof. In the event that any of the provisions of this Agreement purporting to describe specific provisions of the Property Sale, Funding, and Development Agreement are in conflict with the specific provisions of the Property Sale, Funding, and Development Agreement, the specific provisions of the Property Sale, Funding, and Development Agreement shall control.

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

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

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

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

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

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

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

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

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

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

Exhibit A (*Legal Description – the Property*)

Exhibit B (*Vacation Plat*)

Exhibit C (*Quitclaim Deed – the Property*)

Exhibit D (*Form Grant of Easement*)

Exhibit E (*Additional City Requirements*)

[SIGNATURE PAGES FOLLOW]

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

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

Date: _____, 2024

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

[*Developer's Signature Page Follows*]

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101 WEST FIFTH LLC, an Ohio limited liability company

By: _____

Printed Name: _____

Title: _____

Date: _____, 2024

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Exhibit A

to Property Sale Agreement

Legal Description – the Property

Property Address: 101 West 5th Street, Cincinnati, Ohio 45202

Auditor's Parcel No.: 145-0001-B215-00, 145-0001-A215-00, 145-0001-0215-00

Situate, lying and being in Section 18, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being part of In Lots 265, 266, 267, 290, 291 and 292 by Israel Ludlow and Joel Williams as recorded in Deed Book E-2, Pages 66 and 67 Hamilton County, Ohio Recorder's Office, and being more particularly described as follows:

From the intersection of the South line of Fifth Street (now a 76-foot street) and the east line of Elm Street (now a 76-foot street) (as Fifth Street and Elm Street were widened by Ordinance No. 366-1985 of Cincinnati City Council, passed August 7, 1985); thence continuing along the south line of Fifth Street as widened North 81° 14' 40" East for a distance of 192.69 feet to the Place of Beginning; thence continuing along the south line of Fifth Street as widened North 81° 14' 40" East for a distance of 196.00 feet to the intersection of the south line of Fifth Street as widened and the west line of Race Street (now a 68 foot street as widened by the above Ordinance No. 366- 1985); thence along the west line of Race Street as widened South 8° 58' 50" East for a distance of 234.36 feet to a point in a line 154.00 feet north of and parallel with the north line of Fourth Street (a 66 foot street); thence along said line South 81° 11' West for a distance of 196.92 feet to a point in a line perpendicular to the south line of Fifth Street as widened at a point in the south line 196.00 feet West of Race Street as widened; thence along said perpendicular line North 8° 45' 20" West for a distance of 234.57 feet to the Place of Beginning.

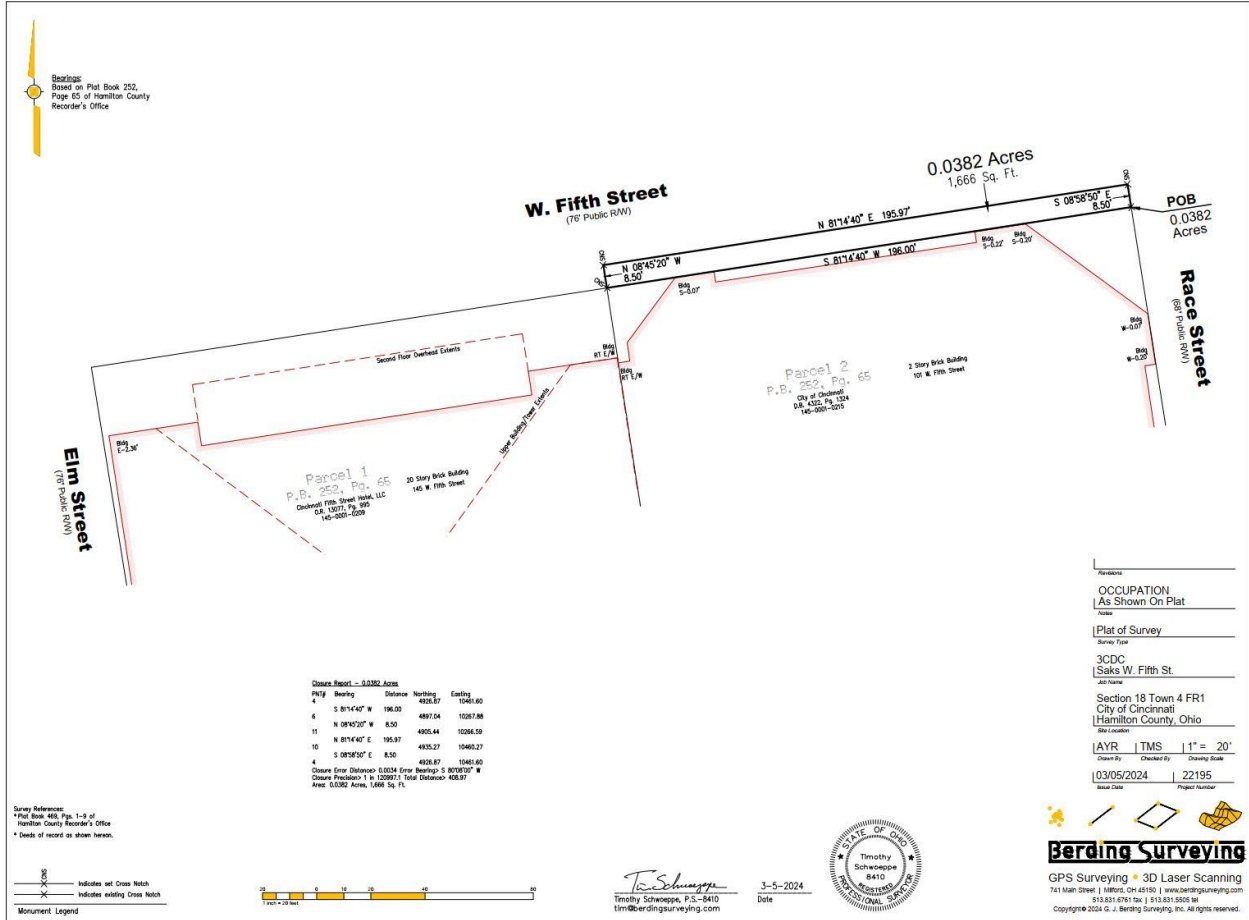
Containing an area of 46,063 square feet, more or less.

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Exhibit B

to Property Sale Agreement

Vacation Plat



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Exhibit C

to Property Sale Agreement

Quitclaim Deed – the Property

[SPACE ABOVE FOR RECORDER'S USE]

QUIT CLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the “**City**”), for valuable consideration paid, hereby grants and conveys to **101 WEST FIFTH LLC**, an Ohio limited liability company, the address of which is 1203 Walnut Street, 4th Floor, Cincinnati, Ohio 45202 (“**Grantee**”), all of the City’s right, title and interest in and to the real property depicted on Exhibit A (*Vacation Plat*) and described on Exhibit B (*Legal Description*) hereto (the “**Property**”).

Property Address: None; a portion of former public right-of-way designated as West Fifth Street
Auditor’s Parcel ID Nos.: None
Prior instrument reference: None

Pursuant to Ohio Revised Code Chapter 723 and Ordinance No. [____]-2024, passed by Cincinnati City Council on [____], 2024, the Property is hereby vacated as public right-of-way by the City.

Creation of Utility Easement. This conveyance is subject to R.C. Section 723.041 so that any affected public utility existing at the time of the conveyance shall be deemed to have a permanent easement in such vacated portions of West Fifth Street for the purpose of maintaining, operating, renewing, reconstructing, and removing said utility facilities and for purposes of access to said facilities, unless and until such time as the public utility is re-located such that access to the public utility is no longer affected by the Property.

This conveyance was authorized by Ordinance No. [____]-2024, passed by Cincinnati City Council on [____], 2024.

The following exhibits are attached hereto and made a part hereof:

- Exhibit A – *Vacation Plat*
- Exhibit B – *Legal Description*
- Exhibit C – *Ordinance No. [____]-2024*

[SIGNATURE PAGE FOLLOWS]

Executed on the date of acknowledgment.

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2024 by _____, the _____ of the **CITY OF CINCINNATI**, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

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

Exhibit A to Quitclaim Deed

Vacation Plat

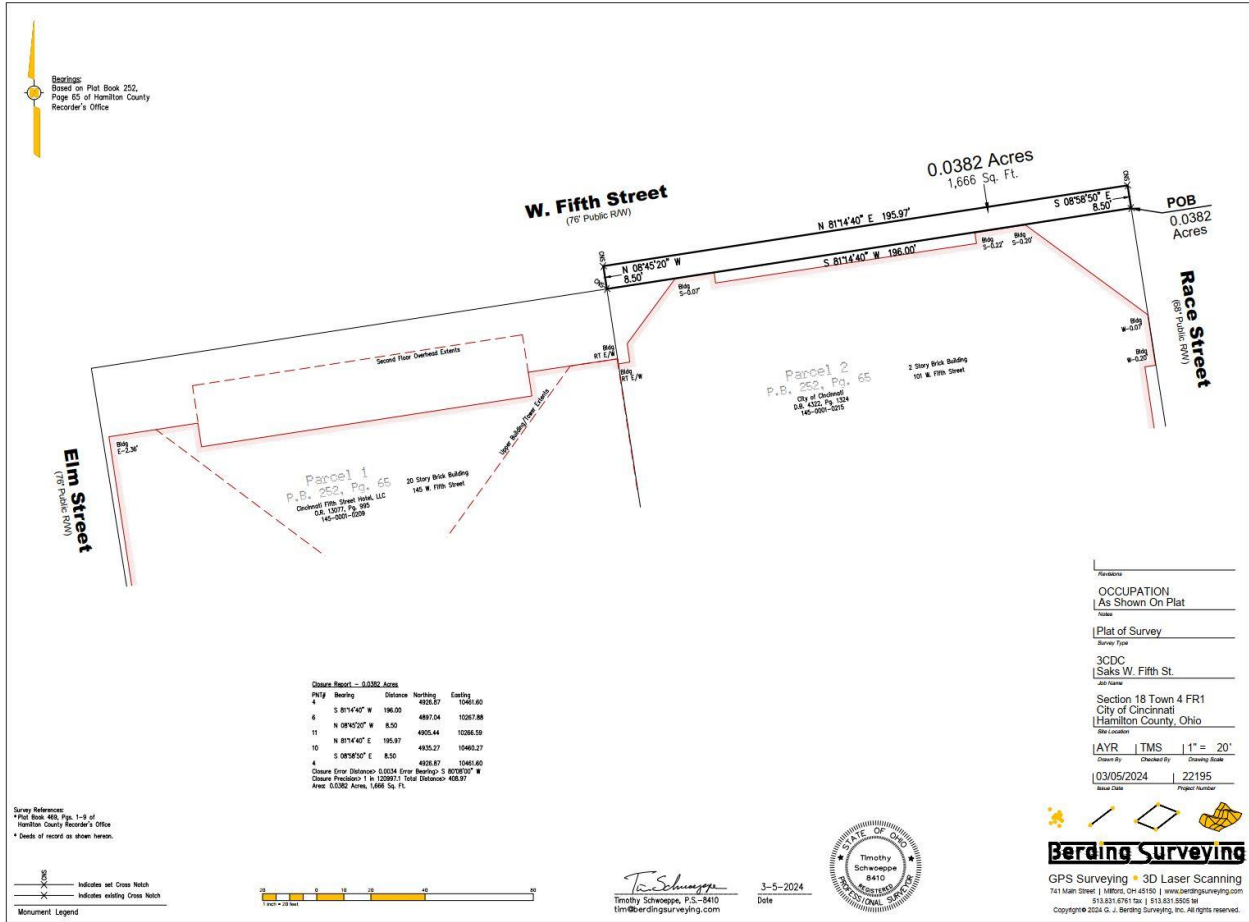
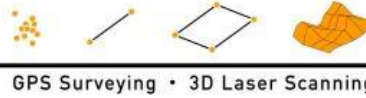


Exhibit B
to Quitclaim Deed

Legal Description

Berding Surveying



Description for: 3CDC – 0.0382 Acre Street Sale
Location: W. Fifth Street & Race Street, City of Cincinnati

Situated in Section 18, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

BEGINNING at an existing cross notch at the intersection of the west line of Race Street and the south line of W. Fifth Street, said point being the northeast corner of a tract conveyed to City of Cincinnati in Deed Book 4322, Page 1324 of the Hamilton County Recorder's Office;

Thence along the south line of said W. Fifth Street, South 81°14'40" West, 196.00 feet to a set cross notch;

Thence leaving said south line, North 08°45'20" West, 8.50 feet to a set cross notch;

Thence North 81°14'40" East, 195.97 feet to a set cross notch;

Thence South 08°58'50" East, 8.50 feet to the **POINT OF BEGINNING**.

CONTAINING 0.0382 ACRES. Together with and subject to all easements of record.

The bearings shown hereon are based on Plat book 252, Page 65 of the Hamilton County Recorder's Office.

Prepared by G.J. BERDING SURVEYING, INC. on March 5, 2024. Based on Plat of Survey prepared by G.J. BERDING SURVEYING, INC. on March 5, 2024.

The above-described area being part of W. Fifth Street right of way and is subject to additional easement area for utilities that may exist in the sale area.


Timothy Schwoeppe, P.S. 8410

3-5-2024
Date



G.J. Berding Surveying, Inc.

741 Main Street • Milford, OH 45150 • 513 831 5505 tel • 513 831 6761 fax • www.berdingsurveying.com

Exhibit C
to Quitclaim Deed

Ordinance No. []-2024

Exhibit C

to Property Sale Agreement

Form of Encroachment Easement

[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF EASEMENT

(encroachment upon a portion of Race Street)

This Grant of Easement is granted as of the Effective Date (as defined on the signature page hereof) by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in favor of **101 WEST FIFTH LLC**, an Ohio limited liability company, the address of which is 1203 Walnut Street, 4th Floor, Cincinnati, Ohio 45202 ("**Grantee**").

Recitals:

A. By virtue of a *Quitclaim Deed* recorded on [___], in Official Record [___], Page [___], Hamilton County, Ohio Recorder's Office, Grantee holds title to certain real property located at [___] West Fifth Street, Cincinnati, OH 45202, as more particularly described on Exhibit A (*Legal Description – Benefitted Property*) and depicted on Exhibit B (*Survey*) hereto (the "**Benefitted Property**").

B. The City owns certain real property abutting the Benefitted Property designated as the public right-of-way known as Race Street, as more particularly depicted on Exhibit B (*Survey*) hereto (the "**Property**"). The Property is under the management of the City's Department of Transportation and Engineering ("**DOT**").

C. Grantee has requested the City to grant an easement for an encroachment upon a portion of the Property, namely, a façade encroachment, as more particularly depicted on Exhibit B and described on Exhibit C (*Legal Description–Easement Area*) hereto (the "**Encroachment**").

D. The City Manager, in consultation with DOTE, has determined that (i) this easement will not have an adverse effect on the City's retained interest in the Property; (ii) this easement will not unreasonably interfere with the City's use of the Property for municipal purposes; (iii) granting this easement will not have an adverse effect on the usability or accessibility of any existing public right-of-way facilities; and (iv) granting this easement without competitive bidding is in the best interest of the City because, as a practical matter, no one other than Grantee, an adjoining property owner, would have any use for this easement.

E. The City's Real Estate Services Division has determined that this easement's fair market value, as determined by professional appraisal, is \$2,900, however, the City is agreeable to convey this easement for \$1.00 because the City will receive economic and non-economic benefits from this conveyance that is anticipated to equal or exceed the fair market value of this easement because the easement is associated with the redevelopment of the vacant structure located on the Benefitted Property into approximately 62,000 square feet of renovated office space and approximately 13,000 square feet of renovated commercial space, at an estimated total project cost of approximately \$28,031,300, and the

City anticipates that the Project will stimulate economic activity and growth in the Central Business District.

F. Cincinnati City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the conveyance of this easement at its meeting on March 15, 2024.

G. Cincinnati City Council authorized the execution of this easement by No. [____]-2024, passed by Cincinnati City Council on [____], 2024.

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

1. Grant of Easement. The City does hereby grant to Grantee, on the terms and conditions set forth herein, as an appurtenance to and for the benefit of the Benefitted Property, a non-exclusive easement to construct, install, use, maintain, repair, reconstruct, replace, and remove the Encroachment, as more particularly identified on Exhibit B, and described on Exhibit C hereto (the “**Easement**” or the “**Easement Area**,” as applicable). Once installed, Grantee shall only make alterations, additions, enlargements, or modifications to the Encroachment within the Easement Area with the prior written consent of the City. Grantee acknowledges and agrees that it has conducted its own due diligence to familiarize itself with the condition and characteristics of the Easement Area. The City has not made any representations or warranties concerning the title, condition, or characteristics of the Easement Area or the suitability or fitness of the Easement Area for any purpose. Grantee acknowledges and agrees that it is not relying upon any such representations or warranties from the City. The rights granted to Grantee herein shall be subordinate and subject to the City’s rights to manage, operate, and maintain the Main Street public right-of-way in the best interest of the public health, safety, and general welfare, as determined by the City.

2. Utilities. Grantee acknowledges that there may be existing easements, utility lines, and related facilities in the vicinity of the Easement Area (“**Third-Party Utility Lines**”). The rights herein granted to Grantee are subject and subordinate to the rights of public utility providers to enter upon the Property from time to time to construct, install, operate, maintain, repair, reconstruct, reinstall, remove, replace, and abandon utility lines, and related facilities within and around the vicinity of the Easement Area. Grantee shall ensure that such utility lines and facilities are not disturbed and that the utility providers’ access to such facilities is not denied or unreasonably impaired. Grantee shall be responsible for paying all costs related to the repair of any and all damage to Third-Party Utility Lines caused by Grantee, its agents, employees, contractors, subcontractors, licensees, or invitees. Grantee shall be responsible for paying all costs related to relocating such utilities if relocation is required in connection with Grantee’s construction, installation, use, occupancy, operation, or maintenance of the Encroachment.

3. Permitted Use. Grantee shall solely use the Easement Area to construct, install, establish, use, maintain, repair, reconstruct, reinstall, remove, and replace the Encroachment. Grantee shall not use or permit the use of the Easement Area in any manner that is inconsistent with the rights granted herein or in a manner that impairs or unreasonably interferes with the rights of the City or others permitted by the City to the full use and enjoyment of the Property, as determined by the City.

4. Termination. Notwithstanding anything herein to the contrary, the Easement shall automatically terminate (i) upon the complete or respective partial demolition, without rebuilding within one year of such demolition, of the Encroachment within the Easement Area, such that the Easement would be rendered unnecessary; (ii) upon written notice from the City if the City determines that it needs the Easement Area or any portion thereof for a municipal purpose, including, without limitation, to comply with Americans with Disabilities Act (“**ADA**”) regulations or accessibility standards; or (iii) upon written notice from the City if the City determines that the Encroachment is creating a public safety issue, such as noncompliance with ADA accessibility regulations, or contributing to adverse impacts on the usability or accessibility of the Property, if Grantee does not abate or begin to take efforts to mitigate the public safety issue in a timely manner.

5. Maintenance and Repairs. At no cost to the City, Grantee shall construct the Encroachment in accordance with the plans and specifications approved by DOTE and in accordance with applicable code standards. Once installed, Grantee shall maintain the Encroachment in continuous good condition and repair, ordinary wear and tear excepted, at no cost to the City. All activities undertaken by Grantee under this instrument shall be in compliance with all applicable codes, laws, regulations, governmental standards, guidelines, and requirements.

6. Insurance; Indemnification. At all times, and in addition to whatever other insurance and bond requirements the City may from time to time require, Grantee, its successors-in-interest, and assigns shall continuously maintain or cause to be continuously maintained (i) a policy of Commercial General Liability insurance, naming the City as an additional insured, in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, or in such greater amount as the City may from time to time require; or (ii) an umbrella policy, naming the City as an additional insured, in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, or in such greater amount as the City may from time to time require. Such insurance shall be issued by insurance companies reasonably acceptable to the City. Grantee shall furnish to the City a certificate of insurance evidencing such insurance upon the City's request and, in any event, before undertaking any construction activities within the Easement Area. Grantee hereby waives all claims and rights of recovery against the City, and on behalf of Grantee's insurers, rights of subrogation, in connection with any damage to the Encroachment, no matter how caused. Grantee shall defend (with counsel reasonably acceptable to the City), indemnify, and hold the City harmless from and against any and all claims, actions, losses, costs (including, without limitation, reasonable attorneys' fees), liability, and damages suffered or incurred by, or asserted against, the City in connection with the use, construction, maintenance, repair, and all other matters associated with the Encroachment and this grant of easement.

7. Access by City Departments. Grantee shall ensure continuous, unrestricted access to the Easement Area (24 hours/day, 7 days/week, 52 weeks/year) to the City for inspection and any other municipal purpose.

8. No Liens. Grantee shall not permit any mechanics liens to attach to the Easement Area in connection with the construction, installation, use, operation, maintenance, repair, reconstruction, removal, or replacement of the Encroachment.

9. Default. If Grantee, its successors-in-interest, or assigns fail to perform any required work under this instrument and fail to address the same to DOTE's satisfaction within thirty (30) days after receiving written notice thereof from DOTE, the City shall have the right to perform such work, at Grantee's expense, payable within ten (10) days after receiving an invoice from DOTE evidencing the amount due. Grantee, its successors-in-interest, or assigns shall be liable to DOTE for the payment of such work. Any outstanding amount due under this instrument shall create a lien on the Benefitted Property until fully paid. At the City's option, the City may file an affidavit in the Hamilton County, Ohio Recorder's Office to memorialize any outstanding amounts due under this instrument.

10. Covenants Running with the Land. The provisions hereof shall run with the land and shall inure to the benefit of and be binding upon the City, Grantee, and their respective successors-in-interest and assigns.

11. Governing Law; Severability. This instrument shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. If any provisions hereof are determined to be invalid or unenforceable by a court of law, the remainder of this instrument shall not be affected thereby, and all other provisions of this instrument shall be valid and enforceable to the fullest extent permitted by law. All actions concerning or related to this instrument shall be brought in the Hamilton County Court of Common Pleas, and Grantee agrees that venue in such court is proper.

12. Notices. All notices given hereunder shall be in writing and shall be sent by U.S. certified or registered mail, return receipt requested, or delivered by a recognized courier service, or by personal

delivery to the parties at their respective addresses set forth in the introductory paragraph hereof, or such other address as either party may specify from time to time by notice given in the manner prescribed herein. All notices to the City shall be addressed to the Office of the City Manager, and a copy of each such notice shall simultaneously be delivered to: Department of Transportation and Engineering, Attn: Director, Room 450. In the event of an alleged breach by the City of this instrument, a copy of each notice of breach shall simultaneously be delivered to the Office of the City Solicitor, 801 Plum Street, Room 214, Cincinnati, OH 45202.

13. Counterparts and Electronic Signatures. This instrument may be executed and delivered by electronic signature; any original signatures initially delivered electronically shall be physically delivered as soon as reasonably possible. The parties hereto may execute this instrument in two or more counterparts, and each executed counterpart shall be considered an original.

14. Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A – *Legal Description – Benefitted Property*
Exhibit B – *Survey*
Exhibit C – *Legal Description – Easement Area*

Executed by the parties on the respective date of acknowledgement listed below, effective as the later of such dates (the "**Effective Date**").

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024 by _____, the _____ of the **CITY OF CINCINNATI**, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public
My commission expires: _____

Approved as to Form by:

Assistant City Solicitor

[Grantee Signature Page Follows]

ACCEPTED AND AGREED TO BY:

101 WEST FIFTH LLC,
an Ohio limited liability company

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024 by _____, the _____ of **101 WEST FIFTH LLC**, an Ohio limited liability company, on behalf of the company.

Notary Public
My commission expires: _____

This instrument prepared by:
City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, OH 45202

EXHIBIT A
to Grant of Easement

Legal Description – Benefitted Property

Property Address: 101 West 5th Street, Cincinnati, Ohio 45202
Auditor's Parcel No.: 145-0001-B215-00, 145-0001-A215-00, 145-0001-0215-00

Situate, lying and being in Section 18, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being part of In Lots 265, 266, 267, 290, 291 and 292 by Israel Ludlow and Joel Williams as recorded in Deed Book E-2, Pages 66 and 67 Hamilton County, Ohio Recorder's Office, and being more particularly described as follows:

From the intersection of the South line of Fifth Street (now a 76-foot street) and the east line of Elm Street (now a 76-foot street) (as Fifth Street and Elm Street were widened by Ordinance No. 366-1985 of Cincinnati City Council, passed August 7, 1985); thence continuing along the south line of Fifth Street as widened North 81° 14' 40" East for a distance of 192.69 feet to the Place of Beginning; thence continuing along the south line of Fifth Street as widened North 81° 14' 40" East for a distance of 196.00 feet to the intersection of the south line of Fifth Street as widened and the west line of Race Street (now a 68 foot street as widened by the above Ordinance No. 366- 1985); thence along the west line of Race Street as widened South 8° 58' 50" East for a distance of 234.36 feet to a point in a line 154.00 feet north of and parallel with the north line of Fourth Street (a 66 foot street); thence along said line South 81° 11' West for a distance of 196.92 feet to a point in a line perpendicular to the south line of Fifth Street as widened at a point in the south line 196.00 feet West of Race Street as widened; thence along said perpendicular line North 8° 45' 20" West for a distance of 234.57 feet to the Place of Beginning.

Containing an area of 46,063 square feet, more or less.

EXHIBIT B
to Grant of Easement

Survey

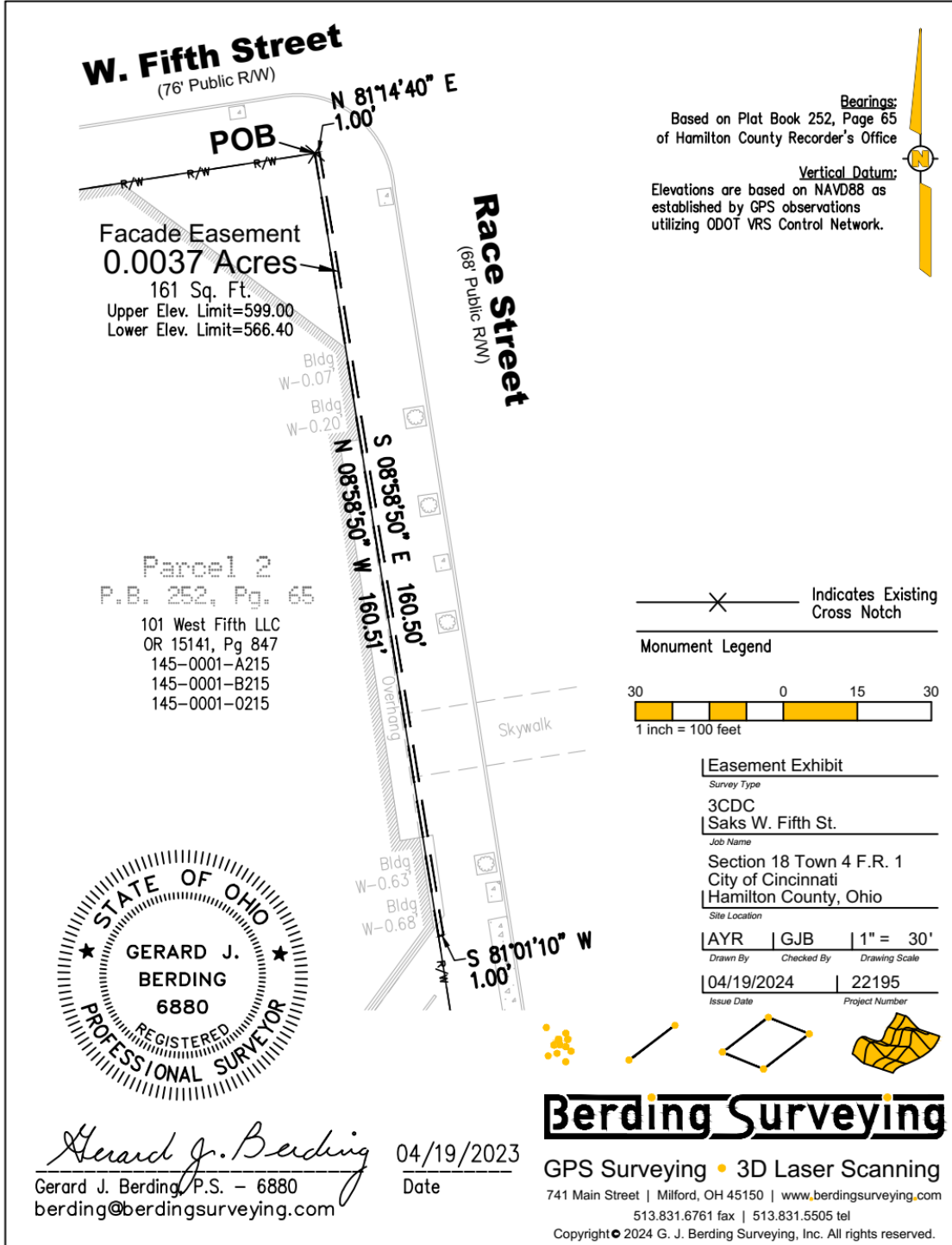
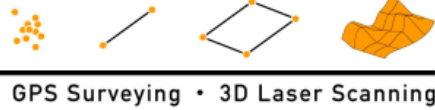


EXHIBIT C
to Grant of Easement

Legal Description – Easement Area

Berding Surveying



Description for: 3CDC – 0.0037 Acre Facade Easement
Location: Race Street, City of Cincinnati

Situated in Section 18, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

BEGINNING at an existing cross notch at the intersection of the south line of W. Fifth Street and the west line of Race Street, said point being the northeast corner of a tract conveyed to City of Cincinnati in Deed Book 4322, Page 1324 of the Hamilton County Recorder's Office;

Thence North 81°14'40" East, 1.00 feet;

Thence South 08°58'50" East, 160.50 feet;

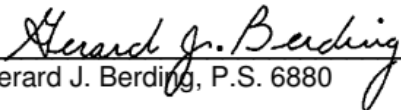
Thence South 81°01'10" West, 1.00 feet to a point in the west line of aforementioned Race Street;

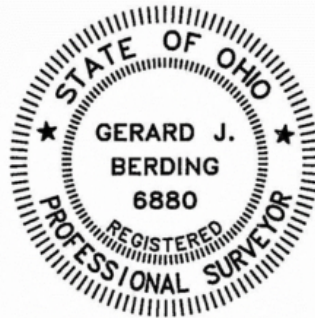
Thence with the west line of said Race Street, North 08°58'50" West, 160.51 feet to the **POINT OF BEGINNING.**

CONTAINING 0.0037 ACRES. Subject to legal highways and easements of record. The described easement lies entirely within the right of way of Race Street. The upper elevation limit of the easement is 566.40 feet and the lower elevation limit of the easement is 599.00 feet.

The bearings shown hereon are based on Plat book 252, Page 65 of the Hamilton County Recorder's Office. The vertical datum is based on NAVD88 as established by GPS observations utilizing ODOT VRS Control Network.

Prepared by G.J. BERDING SURVEYING, INC. on April 19, 2024. Based on Easement Exhibit prepared by G.J. BERDING SURVEYING, INC. on April 19, 2024.


Gerard J. Berding, P.S. 6880



04/19/2024
Date

G.J. Berding Surveying, Inc.

741 Main Street • Milford, OH 45150 • 513 831 5505 tel • 513 831 6761 fax • www.berdingsurveying.com

Exhibit F

to Property Sale Agreement

Additional City Requirements

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

This Exhibit serves two functions:

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

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

(ii) Affirmatively Imposing Contractual Obligations.

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

(A) Construction Workforce.

(i) Applicability.

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

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

(ii) Requirement.

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

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

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering with Trade Unions.

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

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

(ii) Contracts and Subcontracts; Competitive Bidding.

(a) Applicability. This clause (ii) is applicable to “construction contracts” under Cincinnati Municipal Code Chapter 321. Municipal Code Chapter 321 defines “construction” as “any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by 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 15th. Developer or its general contractor shall enter all reports required in this subsection via the City's web page referred to in clause (i) above or any successor site or system the City uses for this purpose. Upon execution of this Agreement, Developer and its general contractor shall contact the Department of Economic Inclusion to obtain instructions, the proper internet link, login information, and password to access the site and set up the necessary reports.

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

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

(G) Equal Employment Opportunity.

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

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

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

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

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

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

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

(M) Wage Enforcement.

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

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

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

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

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

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

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

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

(N) Americans With Disabilities Act; Accessibility.

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

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

(O) Electric Vehicle Charging Stations in Garages.

(i) Applicability. Cincinnati City Council passed Ordinance No. 89-2017 on May 10, 2017. This ordinance requires all agreements in which the City provides any amount of “qualifying incentives” for projects involving the construction of a parking garage to include a provision requiring the inclusion of certain features in the garage relating to electric vehicles. The ordinance defines “qualifying incentives” as the provision of incentives or support for the construction of a parking garage in the form of (a) the provision of any City monies or monies controlled by the City including, without limitation, the provision of funds in the form of loans or grants; (b) the provision of service payments in lieu of taxes in connection with tax increment financing, including rebates of service payments in lieu of taxes; and (c) the provision of the proceeds of bonds issued by the City or with respect to which the City has provided any source of collateral security or repayment, including, but not limited to, the pledge of assessment revenues or service payments in lieu of taxes. For the avoidance of doubt, “qualifying incentives” does not include (1) tax abatements such as Community Reinvestment Area abatements pursuant to Ohio Revised

Code 3735.67, et seq., or Job Creation Tax Credits pursuant to Ohio Revised Code 718.15; (2) the conveyance of City-owned real property for less than fair market value; and (3) any other type of City support in which the City provides non-monetary assistance to a project, regardless of value.

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

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

(Q) Use of Nonfranchised Commercial Waste Haulers Prohibited. The City requires that persons providing commercial waste collection services (as that term is defined under CMC Chapter 730) within the City of Cincinnati obtain a franchise, and the City maintains a list of franchised commercial waste haulers. Developer is prohibited from using or hiring (or causing to be used or hired) a nonfranchised commercial waste hauler to provide commercial waste collection services in connection with the performance of this Agreement, and Developer is responsible for ensuring that any commercial waste collection services provided in connection with the performance of this Agreement are provided by a franchised commercial waste hauler. Questions related to the use of commercial waste franchisees can be directed to, and a list of current franchisees can be obtained from, the City's Office of Environment & Sustainability by calling (513)352-3200.