

EMERGENCY

City of Cincinnati

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An Ordinance No. \_\_\_\_\_

- 2022

**AUTHORIZING** the City Manager to execute a *Property Sale, Funding, and Development Agreement* with Total Property Care, LLC for the sale of City-owned real property located at 3584 Alaska Avenue and adjoining property on Harvey Avenue in the Avondale neighborhood of Cincinnati, in connection with the development of a residential subdivision consisting of 18 buildable lots for the construction of 18 single-family homes and a street that will be dedicated for use by the general public.

WHEREAS, the City owns certain real property located at 3584 Alaska Avenue and adjoining property on Harvey Avenue in the Avondale neighborhood, as more particularly described and depicted in the *Property Sale, Funding, and Development Agreement* (the “Agreement”) attached to this ordinance as Attachment A (the “Property”), which Property is under the management of the City’s Department of Community and Economic Development (“DCED”); and

WHEREAS, Total Property Care, LLC (“Developer”), submitted a development proposal in response to a Request for Proposals issued by the City, which proposal the City Manager, in consultation with DCED, determined to be the most advantageous to the City, and pursuant to which Developer desires to (i) develop the Property into a residential subdivision consisting of 18 buildable lots for the construction of 18 single-family homes at an estimated total hard construction cost of approximately \$5,022,500; and (ii) construct a street that will be open to the general public, connecting Harvey Avenue and Alaska Avenue at an estimated total hard construction cost of approximately \$1,380,000, all as more particularly described in the Agreement (collectively, the “Project”); and

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

WHEREAS, the City’s Real Estate Services Division has determined, by appraisal, that the fair market value of the Property is approximately \$206,000, however, to facilitate the Project, the City desires to sell the Property to Developer for less than fair market value; namely, for \$1.00 because the City anticipates that it will receive economic and non-economic benefits that equal or exceed the fair market value of the Property because the Project will create additional housing units in the Avondale neighborhood and a street to be dedicated for use by the general public; and

WHEREAS, in order to facilitate the redevelopment of the Property to a productive use and the creation of additional housing in the Avondale neighborhood, the City, upon the recommendation of DCED, desires to provide additional support for the Project by providing a

forgivable loan to Developer in an amount not to exceed \$1,000,000, on the terms and conditions set forth in the Agreement; and

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

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

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

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Property at its meeting on January 21, 2022; now, therefore,

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

Section 1. That the City Manager is hereby authorized to execute a *Property Sale, Funding, and Development Agreement* with Total Property Care, LLC ("Developer"), in substantially the form attached to this ordinance as Attachment A, pursuant to which the City will sell to Developer certain real property located at 3584 Alaska Avenue and adjoining property on Harvey Avenue in the Avondale neighborhood of Cincinnati, as more particularly described on Attachment A (the "Property"), for Developer to (a) develop a residential subdivision containing 18 buildable lots for the construction of 18 single-family homes, and (b) construct a street that will be dedicated for use by the general public, connective Harvey Avenue and Alaska Avenue (collectively, the "Project").

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

Section 3. That the City solicited and reviewed development proposals for development of the Property through an open and public process and determined and selected Developer's development proposal as being the most suitable and advantageous to the City.

Section 4. That the fair market value of the Property, as determined by appraisal by the City's Real Estate Services Division, is approximately \$206,000; however, the City is justified in selling the Property to Developer for less than fair market value; namely, for \$1.00, because the City anticipates that it will receive economic and non-economic benefits from the Project that equal or exceed the fair market value of the Property because the Project will create additional housing in the Avondale neighborhood and a street that will be dedicated for use by the general public.

Section 5. That the proceeds from the sale of the Property shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City's Real Estate Services Division in connection with the sale, and that the City's Finance Director is hereby authorized to deposit amounts in excess amount thereof into Miscellaneous Permanent Improvement Fund 757.

Section 6. That the City Manager and other City officials are hereby authorized to take all necessary and proper actions to carry out the provisions of this ordinance and the Agreement, including, without limitation, executing any and all ancillary agreements, deeds, plats, terminations, releases, and other documents.

Section 7. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to expedite the City's sale of the Property to Developer, so that Developer can move forward with the Project without delay, which will result in the stimulation of economic growth and additional

housing units in the Avondale neighborhood, enabling the Property to be put to its highest and best use, for the economic benefit of the City, at the earliest possible time.

Passed: \_\_\_\_\_, 2022

\_\_\_\_\_

Aftab Pureval, Mayor

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

**ATTACHMENT A**

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

**PROPERTY SALE, FUNDING, AND  
DEVELOPMENT AGREEMENT**

*between the*

**CITY OF CINCINNATI**

*and*

**TOTAL PROPERTY CARE, LLC  
d/b/a  
TITAN REAL ESTATE GROUP, LTD**

**Project Name: Alaska Commons**

**(sale of City-owned real property at 3584 Alaska Avenue and adjoining property on Harvey Avenue  
and loan of City capital funds in an amount not to exceed \$1,000,000  
for development of up to 18 single-family homes  
and corresponding public infrastructure in support thereof)**

**Dated: \_\_\_\_\_, 2022**

## PROPERTY SALE, FUNDING, AND DEVELOPMENT AGREEMENT

This Property Sale, Funding, and Development Agreement (this “**Agreement**”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”), and **TOTAL PROPERTY CARE, LLC, d/b/a TITAN REAL ESTATE GROUP, LTD**, a Kentucky limited liability company, the address of which is 10226 Waterford Court, Covington, Kentucky 41015 (“**Developer**”).

### Recitals:

A. The City owns certain real property located at 3584 Alaska Avenue and adjoining property on Harvey Avenue in the Avondale neighborhood of Cincinnati, which property is more particularly described on Exhibit A-1 (Legal Description) hereto and depicted on Exhibit A-2 (Site Plan) hereto (the “**Property**”), and which is under the management and control of the City’s Department of Community and Economic Development (“**DCED**”).

B. Pursuant to a Request for Proposals issued by the City, Developer submitted a development proposal, which was determined to be the most advantageous to the City, and pursuant to which Developer has proposed to (i) purchase and consolidate the Property, and (ii) develop the Property into a residential subdivision containing 18 buildable lots (each, a “**Lot**”) for the construction of 18 single-family homes (each, a “**Home**”), all as more particularly described on Exhibit B (Statement of Work, Budget, and Sources of Funds) hereto (the “**Subdivision**”, and the “**Private Project**”, as applicable), at an estimated total hard construction cost of approximately \$5,022,500. Developer currently anticipates completing the Private Project in two phases:

- i. Developer’s design and construction of 8 Homes on the Property, and more particularly on the Lots identified as 1-5 and 16-18 on Exhibit A-2 (the “**Phase I Private Improvements**” and the “**Phase I Private Property**”, as applicable); and
- ii. Developer’s design and construction of up to 10 Homes on the Property, and more particularly on the Lots identified as 6-15 on Exhibit A-2 (the “**Phase II Private Improvements**” and the “**Phase II Property**”, as applicable).

C. In addition to and in support of the Private Project, Developer intends to construct a street that will be open to the general public, connecting Harvey Avenue and Alaska Avenue, as depicted on Exhibit A-2 (the “**Dedication Property**”, and together with the Phase I Private Property, the “**Phase I Property**”), in accordance with plans and specifications that will be reviewed and approved by the City’s Department of Transportation and Engineering (“**DOT**”), at an estimated total hard construction cost of approximately \$1,380,000 (the public street and associated public sidewalks and/or other public improvements (including, without limitation, any infrastructure in support of the Subdivision required by Greater Cincinnati Water Works (“**GCWW**”), Stormwater Management Utility (“**SMU**”), the Metropolitan Sewer District of Greater Cincinnati (“**MSD**”), or any other public utility) being referred to collectively herein as the “**Public Improvements**,” and together with the Private Project, the “**Project**”), as further described on Exhibit B.

D. Developer has committed to (i) commence on-site construction of (a) the Public Improvements no later than 9 months from the Closing (as defined below), (b) the Phase I Private Improvements no later than 12 months from the Closing (the “**Phase I Commencement Date**”), and (c) the Phase II Private Improvements no later than July 1, 2025 (the “**Phase II Commencement Date**”); and (ii) complete construction of (a) the Public Improvements no later than July 1, 2023, (b) the Phase I Private Improvements no later than June 3, 2025 (the “**Phase I Completion Date**”), and (c) the Phase II Private Improvements no later than 60 months from the actual date Developer commences construction of the Phase II Private Improvements.

E. The City's Real Estate Services Division has determined, by professional appraisal, that the fair market value of the Property is approximately \$206,000; however, to facilitate the Project and in consideration of Developer's construction of the Public Improvements, and upon recommendation of DCED, the City desires to provide support for the Project by (i) selling the Property to Developer for less than fair market value; namely, for \$1.00; and (ii) providing a forgivable loan to Developer in an amount not to exceed \$1,000,000 (the "Loan") on the terms and conditions set forth in this Agreement, for the purpose of facilitating the redevelopment of the Property to a productive use, which will create additional housing in the Avondale neighborhood.

F. 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.

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

H. The City has determined that (i) the Property is not needed for a municipal purpose; (ii) upon the recommendation of DCED, the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents; (iii) the Project is in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements; (iv) the Property poses a financial liability to the City because the City must continue to incur expenses in maintaining it; and (v) it is in the best interest of the City to eliminate competitive bidding in connection with the City's sale of the Property because DCED has identified Developer's development proposal as being the most suitable and advantageous to the City.

I. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's sale of the Property to Developer at its meeting on January 21, 2022.

J. Cincinnati City Council approved the City's sale of the Property to Developer by Ordinance No. [ ]-2022, passed on [ ], 2022.

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

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

2. **Closing and Conditions to Closing.**

(A) **Conditions.** The Closing shall not occur unless and until each of the following conditions including any and all other conditions as may be identified in the City's Coordinated Report No. 12-2021 (collectively, the "Conditions") have been satisfied or waived in writing by the City, at the City's sole and absolute discretion; *provided, however*, that if the City, in its sole and absolute discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, the City



may, if appropriate, include such Conditions in the Deed (as defined below) to Developer or handle such Conditions post-Closing:

- (i) *Title and Survey*: Developer shall have approved the title to the Property and, if obtained by Developer, an ALTA property survey of the Property;
- (ii) *Geotechnical and Environmental Condition*: Developer shall be satisfied that the geotechnical and environmental condition of the Phase I Property is acceptable for development of the Public improvements and the Phase I Private Improvements (collectively, the "**Phase I Project**");
- (iii) *Developer Inspections*: Developer shall have determined from any inspections and investigations made pursuant to this Section 2, including marketing studies, traffic studies, feasibility studies, and any other studies and investigations related to the Property or the Project that Developer may elect to conduct or have conducted, that the Phase I Property and the conditions and circumstances surrounding the Property are suitable for development, construction, and use of the Phase I Project in an economically feasible manner;
- (iv) *Financing*: Developer shall have delivered to the City a satisfactory loan commitment or letter from Developer's lender or other documentation evidencing that Developer has secured or will be able to secure all financing necessary to complete the Phase I Project;
- (v) *Scope and Budget*: Developer shall have provided to the City a detailed and updated scope and budget for the Phase I Project;
- (vi) *Plats and Legal Descriptions*: Developer shall conduct all necessary surveying work and prepare a consolidation plat and legal description for the Property, which shall consolidate all City-owned parcels comprising the Property. Developer shall conduct all necessary surveying work and prepare a cut-up plat and legal description of the 18 buildable lots comprising the Subdivision;
- (vii) *Final Budget and Construction Contract*: Developer shall have obtained and delivered to the City final construction bids and a final budget for construction of the Phase I Project and an executed copy of Developer's construction contract with Developer's general contractor for the Phase I Project;
- (viii) *Zoning Approvals*: Developer shall have secured all zoning approvals necessary to construct the Project;
- (ix) *Construction Schedule*: Developer shall have provided the proposed construction schedule for the Phase I Project;
- (x) *Final Plans*: Developer shall have submitted its final plans for the Phase I Project to DCED;
- (xi) *Project Completion*: Based upon all information then available to the City, the City must be reasonably satisfied that Developer has attained or will attain all approvals and awards necessary to complete the Phase I Project; has made no false or misleading claims to the City regarding the Project; and is otherwise prepared, able, and ready to complete the Phase I Project in accordance with the requirements of this Agreement;
- (xii) *Continued Compliance*: Developer shall be in compliance with all obligations under this Agreement and all representations made by Developer under this Agreement or any

other document executed between Developer and the City related to the Project shall continue to be true and accurate; and

(xiii) *Other Information:* Developer shall have provided such other information and documents pertaining to Developer or the Project as the City may reasonably require.

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

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

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

(D) Right to Terminate. If prior to Closing, either party determines, after exercising reasonable good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period of time, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all of the Conditions have not been satisfied to the satisfaction of both parties or waived in writing and for that reason the Closing has not occurred as of July 1, 2022, the City, in its sole and absolute discretion, may terminate this Agreement and all rights and obligations of the parties hereunder by giving written notice thereof to Developer.

(E) Closing Date. Subject to the terms and conditions of this Agreement, the purchase of the Property by Developer and the sale and conveyance of the Property by the City to Developer (the "**Closing**") shall take place on July 1, 2022, or such earlier or later date upon which the parties mutually agree.

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

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

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

### 3. City Financial Assistance.

(A) Amount of Loan. Subject to the terms and conditions of this Agreement, the City agrees to lend the Loan to Developer, in an amount not to exceed \$1,000,000. The proceeds of the Loan (the "**Funds**") shall be used solely to pay for hard construction costs associated with the Public Improvements itemized on Exhibit B and for no other purpose. Notwithstanding anything herein to the contrary, under no circumstances shall the City be obligated to make disbursements of Funds if any portion of the Public Improvements does not meet the standards and requirements of DOTE. For the avoidance of doubt, Developer shall not use any portion of the Funds to pay for design fees or other soft costs, or for the purchase of inventory, supplies, furniture, trade fixtures, or any other items of personal property, or to establish a working capital fund.

(B) Terms of Loan. The Loan shall be repaid in accordance with the terms and conditions of a promissory note evidencing such Loan in the form attached as Exhibit D (*Form of Promissory Note*) hereto (the "**Note**"). The Note shall be executed by Developer and delivered to the City at Closing. As described in the Note, the Loan may be forgiven in whole or in part upon the satisfaction of certain conditions for forgiveness described therein. If Developer fails to timely complete any obligations with respect to the Project, as and when required under this Agreement or the Note, the City may declare all amounts of the Loan disbursed by the City to be immediately due and payable.

(C) Security. Prior to the disbursement of any Funds for the Public Improvements, Developer shall grant the City a mortgage on the Property substantially in the form of Exhibit E (*Form of Mortgage*) hereto (the "**Mortgage**"), as security for the Loan. Developer shall execute the Mortgage at Closing and record it in the real property records of Hamilton County, Ohio, all at Developer's expense. Following recording, Developer shall deliver the recorded Mortgage to the City. The Mortgage shall be released only after the repayment and/or forgiveness of the Loan in accordance with the Note and upon Developer's written request. Following Developer's completion of construction of a Home, as evidenced by a certificate of occupancy, and provided that Developer is not in default under this Agreement, upon Developer's request, the City will execute a partial release of the Mortgage as it relates to the Lot upon which such Home is built. Developer shall be responsible for recording the release(s) in the Hamilton County Recorder's Office, and all costs and expenses associated with the recording thereof.

(D) Subordination. The City hereby agrees that the Mortgage shall be subordinate to any mortgage lien executed by Developer at the Closing in favor of Developer's senior source of construction financing required for completion of the Project, in an amount not to exceed \$2,525,854.

(E) Disbursement of Funds. The Funds shall be disbursed in accordance with Exhibit F (Disbursement of Funds) hereto.

**4. Commencement and Completion of Project; Re-Conveyance of the Property to City upon Failure to Timely Commence or Complete Construction.**

(A) Commencement and Completion of Construction. Following Closing, Developer shall (i) (a) apply for and receive the required building permits from the City's Department of Buildings and Inspections ("B&I") for construction of the Project, and (b) commence on-site construction of the applicable portion of the Project in accordance with the City-approved plans (collectively, "**Construction Commencement**") no later than the applicable construction Commencement Date, unless such date is extended in writing by the City, such extension to be provided in the City's sole and absolute discretion; and (ii) complete construction of the applicable portion of the Project (as evidenced by a certificate of occupancy for the Project) in accordance with the City-approved plans and specifications and all other City approvals (the "**Construction Completion**") no later than the applicable construction Completion Date, unless such date is extended in writing by the City, such extension to be provided in the City's sole and absolute discretion.

(B) Repurchase Options. As memorialized in the Deed, if (i) Construction Commencement for the Phase I Private Improvements or the Phase II Private Improvements has not occurred by the applicable construction Commencement Dates, (ii) Construction Completion for the Phase I Private Improvements has not occurred on or before the Phase I Completion Date, or (iii) Developer decides not to proceed with the Phase II Private Improvements (each a "**Failure**"), then the City shall have the option, in the City's sole and absolute discretion, to (x) in the case of a Failure to meet the Phase I Commencement Date or the Phase I Completion Date, repurchase the Property for the Purchase Price; or (y) in the case of a Failure to meet the Phase II Commencement Date or a Failure under clause (iii) above, repurchase the Phase II Property (each a "**Repurchase Option**"). In the event the City exercises a Repurchase Option, then Developer shall re-convey the applicable portion of the Property by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing, exercisable by giving written notice thereof to Developer at any time after the occurrence of a Failure, *provided that* in the event of a Failure to Commence Construction by the Phase I or Phase II Commencement Date, as applicable, the City shall send such notice of its intent to repurchase the Property prior to the date of actual Construction Commencement as to the applicable portion of the Project. At such time as the City no longer has the right to exercise a Repurchase Option, and after written request by Developer, the City shall execute and deliver to Developer a recordable release of the applicable Repurchase Option. As it relates to the Repurchase Option for Construction Commencement of the Phase I Private Improvements, following Developer's completion of construction of a Home as part of the Phase I Private Improvements, as evidenced by a certificate of occupancy, and provided that Developer is not in default under this Agreement, upon Developer's request, the City will execute a partial release of that Repurchase Option as it relates to the Lot upon which such Home is built. Developer shall be responsible for recording the release(s) in the Hamilton County Recorder's Office, and all costs and expenses associated with the recording thereof.

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

(D) Plans and Specifications. Developer shall submit its final plans and specifications for the Project to DCED and DOTE and receive approval of the same from the City. Following the City's approval, Developer shall design and construct the Project in accordance with those City-approved plans and specifications that are consistent with Exhibit B, including, without limitation, Developer's proposed site plan for driveway locations, parking, and other ancillary improvements. Once the City has approved Developer's plans and specifications, Developer shall not make any material changes thereto without the City's prior written consent.

(E) Surety Bond. Prior to commencing construction of the Public Improvements, Developer shall provide the City with payment and performance bonds from its general contractor and/or prime subcontractors in the aggregate amount required to be paid under the construction contract(s) for the construction of the Public Improvements. The form of the surety bonds shall in all respects be satisfactory to the City and shall entitle Developer and the City to enforce the surety bonds directly against the issuers thereof in the event the work covered by the bonds is not satisfactorily completed in a timely manner as required under this Agreement.

(F) Dedication and Acceptance of Public Improvements. The parties acknowledge that Developer intends to dedicate the Public Improvements for public use, and intends for the City to accept the Public Improvements (subject to all approvals as required by DOTE and City Planning Commission, and subject to the passage by City Council of an ordinance to accept the dedication). Developer shall prepare all survey plats, legal descriptions, and other documents as may be required by the City and the Hamilton County Auditor and Recorder in connection with such dedication and acceptance, all at no cost to the City.

(G) Contractors and Subcontractors. In performing work on the Project, Developer shall not solicit bids from any contractors or subcontractors who are identified as being debarred by the federal or state government or who are identified as being debarred on the City's Vendor's Performance list.

(H) Applicable Laws. Developer shall obtain, pay for, and maintain all necessary building permits and other permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances, judicial orders, and other governmental requirements applicable to the Project, including, without limitation, those set forth on Exhibit G (Additional Requirements) hereto. The City makes no representations or other assurances to Developer that Developer will be able to obtain whatever variances, permits, or other approvals from B&I, DOTE, other City departments, City Planning Commission, or City Council that may be required in connection with the Project.

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

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

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

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

## **5. Insurance; Indemnity.**

(A) Insurance. Throughout construction, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$1,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of 100% of the value of the improvements to be constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Developer's construction lenders, and (v) such other insurance as may be reasonably required by the City's Division of Risk Management. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least 30 days' prior written notice to the City. Within 10 days following execution of this Agreement, Developer shall send proof of all such insurance to DCED 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.

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

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

**6. Casualty; Eminent Domain**. If the Project or the Property is damaged or destroyed by fire or other casualty during construction, or if any portion of the Property is taken by exercise of eminent domain (federal, state, or local), Developer shall repair and restore the Property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which the Property was in immediately prior to such occurrence. To the extent the City's participation is required, the City and Developer shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the proceeds are insufficient to fully repair and restore the Property, the City shall not be required to make up the deficiency. Developer shall handle all construction

in accordance with the applicable requirements set forth herein, including, without limitation, obtaining the City's approval of the plans and specifications for the improvements if they deviate from the original City-approved plans. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the Project or the Property is being repaired or restored.

**7. Default; Remedies.**

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

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

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

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

(B) Remedies. Upon the occurrence of an event of default under this Agreement that is not cured or corrected within the Cure Period, the City shall be entitled to: (i) if the default occurs prior to Closing, terminate this Agreement by giving Developer written notice thereof, (ii) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such event of default, all at the expense of Developer, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including, without limitation, pursuing an action for specific performance. Developer shall be liable for all costs and damages, including, without limitation, attorneys' fees, suffered or incurred by the City as a result of a default of Developer under this Agreement or the City's enforcement or termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

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

To the City:

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

To Developer:

Total Property Care, LLC  
10226 Waterford Court  
Covington, Kentucky 41015

Cincinnati, Ohio 45202

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

**9. 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 Kentucky limited liability company, duly organized and validly existing under the laws of the State of Kentucky, is authorized to transact business in the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws relevant to the transactions contemplated by this Agreement.

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

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

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

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

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

(vii) With reference to Section 301-20 of the Cincinnati Municipal Code, neither Developer nor any of its affiliates are currently delinquent in paying any fines, penalties, judgments, water, or other utility charges, or any other amounts owed by them to the City.

**10. 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 for a period of 3 years after the completion of the Project.

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

## **11. General Provisions.**

(A) Assignment. Developer shall not assign its rights or obligations under this Agreement without the prior written consent of the City, such consent not to be unreasonably withheld; and *provided*, that the City may require the execution of an amendment hereto or other clerical documentation to effect such assignment or substitution of parties. Any attempt by Developer to assign its rights or obligations under this Agreement without the City's consent shall, at the City's option, render this Agreement null and void.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**12. Coordinated Report Conditions**. Developer shall abide by the additional conditions identified in the City's Coordinated Report No. 12-2021, including, without limitation, the following:

(A) Department of Public Services: Developer shall address the issues regarding the large, landscaped island in the proposed site plan with the City's Department of Public Services.

(B) MSD:

(i) A 30' wide minimum permanent sewer easement will be necessary for existing 12", 15", and portion of the 18" combined/sanitary sewers. The final width may need to be adjusted pending submission of the MSD Request for Availability for Sewer Services ("RASS") and preliminary design for the Project. The permanent sewer easements will be necessary for access, operations, and maintenance to the existing combined/sanitary sewers and manholes. Note, an additional, 3' on either side of the permanent easement will be required, along with other MSD easement restrictions, as outlined per MSD Rules and Regulations Section 207. No structure can interfere with the access to the public sewer or can exert loading upon a public sewer per MSD Rules and Regulations Section 206. A change in existing topography or proposed site plan submittal may necessitate a revision to the minimum width requirement.

(ii) A permanent sewer easement exists for the remaining sections of the existing 18" combined sewer that were recently replaced. The existing permanent easement width does not need to be revised with the information provided in the Coordinated Report, but may need to be adjusted pending the submission of the RASS and the preliminary design for the project; the addition of the MSD easement restrictions stated in (i) will need to be incorporated.

(iii) As noted, with CPRE210016, a RASS will be required for the Project, which will determine the availability of a sewer and outline any additional MSD Project requirements that could impact a construction schedule if not considered early in project conceptual planning. Such considerations may include the need to obtain any MSD tap permits, easements mentioned above, Ohio EPA Permit to Install, utilization of licensed and bonded sewer tappers with MSD, sewer inspection scheduling, project on-site separation of flow requirements, MSD Excavations/Fill permitting and bonding

need for a grease interception system, and/or a reminder for the Project to coordinate with SMU for their specific additional detailed storm water, storm water detention, erosion and sediment control, and flood plain requirements. At minimum the current storm water volume provided with the existing on-site storm water basin will need to be available and most likely relocated based on the current concept plans provided in this Coordinated Report.

(iv) The RASS may require an Excavation/Fill permit and bond which will be necessary for any predesign, construction, construction traffic, earthwork, or any other construction activity over existing sewers, including site preparation activities such as demolition of buildings in which existing sewers are located. Additional requirements will be established by MSD Excavation/Fill permit depending on the final project plan. No additional loading may be exerted on the MSD sewers as the result of proposed structures and geotechnical/structural design calculations will be required for MSD review.

(v) Developer shall address the issues regarding the large, landscaped island in the proposed site plan with MSD, as MSD access may be restricted by the island and any trees planted within it.

(C) SMU: Developer shall address the proposed storm sewer design with SMU, which may require a trunk line with spurs, not inlets in series, to be designed for the Project.

(D) GCWW:

(i) Developer shall submit a GCWW Preliminary Application and a concept plan for the extension of the public water main in the proposed street. Developer's engineer shall prepare a survey of existing conditions, indicating all existing water mains and related appurtenances in the Property, and prepare engineering drawings for GCWW's review and approval. GCWW plan review fees will be charged.

(ii) There are three active water service branches for the Property. GCWW records indicate that the branch material within the Property is lead. In accordance with Cincinnati Municipal Code Chapter 401 Division M, the lead service lines must be replaced with copper service lines.

(iii) Developer's contractor must perform all necessary water main abandonment and water main replacement work. Developer's contractor must submit a letter of intent and contractor's bond for the work to be performed, and a GCWW inspector must be present during all phases of water main abandonment work and water main installation. GCWW inspections fees will be charged.

(iv) Developer's contractor shall contact GCWW at least 2 full business days prior to the start of any work in the Property so the location of public water mains and related appurtenances can be marked in the field. Any damage done to any public water main or related appurtenance shall be repaired entirely at Developer's expense.

(E) Cincinnati Bell: The existing underground telephone facilities must remain in place, in service, and able to be accessed. Any damage done to the facilities, or any work done to relocate the facilities as a result of this condition, will be handled entirely at Developer's expense.

(F) B&I:

(i) A Major Subdivision and Subdivision Improvement Plan must be approved by the City Planning Commission.

(ii) Developer shall obtain all required zoning variances and Hillside Regulation approvals necessary for the Project to occur.

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

- Exhibit A-1 – *Legal Description*
- Exhibit A-2 – *Site Plan*
- Exhibit B – *Statement of Work and Budget*
- Exhibit C – *Form of Quitclaim Deed*
- Exhibit D – *Form of Promissory Note*
- Exhibit E – *Form of Mortgage*
- Exhibit F – *Disbursement of Funds*
- Exhibit G – *Additional Requirements*

*[SIGNATURES ON FOLLOWING PAGE]*

This Agreement is executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

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

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

Date: \_\_\_\_\_, 2022

**TOTAL PROPERTY CARE, LLC,**  
a Kentucky limited liability company

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

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

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

Date: \_\_\_\_\_, 2022

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

Approved as to Form:

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

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

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

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

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

Exhibit A-1  
to Property Sale, Funding, and Development Agreement

*Legal Description*

**PARCEL 1:**

**Auditor's Parcel No.:** 113-0002-0016-00

Situated in Section 9, Town 3, F.R. 2, Miami Purchase, City Of Cincinnati, County Of Hamilton, State of Ohio, being Lots 22, 23, 24 and part of lots 25 and 26 of A.E. Burkhardt's Subdivision, a plat of which is found in Plat Book 12, Page 15, of the Hamilton County Records and also part of Lot 1 of the lands of John Mears, a plat of which is found in Plat Book 1, Page 291 of the Hamilton County Records and being more particularly described as follows:

Beginning at an iron pin in the Easterly line of Alaska Avenue, a 50 foot street (said iron pin being the Northwest corner of Lot 22 of A.E. Burkhardt's Subdivision);

Thence, leaving said Easterly line of Alaska Avenue, South 86 deg. 06' East, 192.61 feet to a point;

Thence North 4 deg. 57' East, 75.06 feet to an iron pin;

Thence South 88 deg. 18' East, 116.77 feet to an iron pin;

Thence South 5 deg. 24' East, 65.95 feet to an iron pin;

Thence South 20 deg. 48' East, 105.30 feet to an iron pin;

Thence South 49 deg. 03' East, 85.00 feet to an iron pin;

Thence South 74 deg. 18' East, 43.00 feet to an iron pin;

Thence South 64 deg. 33' East, 56.00 feet to an old iron pin;

Thence South 46 deg. 18' East, 12.63 feet to an old iron pin in the Westerly line of Harvey Avenue (a 60 foot street), South 38 deg. 25' 20" West, 63.20 feet to an iron pin;

Thence, leaving said Westerly line of Harvey Avenue, North 87 deg. 12' 20" West, 313.01 feet to a point;

Thence South 4 deg. 57' West, 80.58 feet to an iron pin;

Thence South 3 deg. 59' East, 103.56 feet to a point;

Thence North 86 deg. 05' West, 66.44 feet to a point;

Thence North 2 deg. 34' East, 40.25 feet to an iron pin;

Thence South 86 deg. 05' East, 4.00 feet to an iron pin;

Thence North 2 deg. 34' East, 61.95 feet to a point;

Thence North 86 deg. 05' West, 129.00 feet to an iron pin in the Easterly line of Alaska Avenue;

Thence, with said Easterly line of Alaska Avenue, North 2 deg. 34' East, 309.05 feet to an iron pin and the place of beginning for this description.

Containing 2.892 acres, more or less.

**PARCEL 2:**

**Auditor's Parcel No.:** 113-0002-0083-00

Situate in Section 9, Township 3, Fractional Range 2, Miami Purchase, and more particularly described as follows:

Beginning at a point in the East line of Lot 25 of A.E. Burkhardt's subdivision recorded in Plat Book 12, Page 15, Hamilton County, Ohio Records, 8.63 feet Southwardly from the Northeast corner of said lot, said beginning point being the Southwest corner of a tract of land conveyed by Charles E. Hofer to Elizabeth Rodgers by deed recorded in Deed Book 887, Page 561, Hamilton County, Ohio Records;

Thence North 3 deg. 43' East, along the East line of Lots 25 and 24 of said Burkhardt's Subdivision, 80.58 feet;

Thence South 88 deg. 3' East, 309.92 feet;

Thence Southwardly along a curve deflecting to the left with a radius of 430 feet, a distance of 118.25 feet and being the Westerly line of the tract conveyed by Jerome Apseloff to the City of Cincinnati for street purposes as recorded in Deed Book 1870, Page 246, of the Hamilton County, Ohio Records;

Thence North 82 deg. 28' West, 258.09 feet, more or less, to the point of beginning.

**PARCEL 3:**

**Auditor's Parcel Nos.:** 113-0002-0049-00 and 113-0002-0050-00

All that lot of land in the City of Cincinnati, Hamilton County, Ohio, situated in Section 9, Town 3, Fractional Range 2, Miami Purchase, described as follows:

Beginning at a point in the East line of Lot 25 of A.E. Burkhardt's Subdivision as recorded in Plat Book 12, Page 15, Hamilton County, Ohio Records, 8.63 feet Southwardly from the Northeast corner of said lot;

Thence Southwardly along the East line of lots 25 and 26 of said Burkhardt's Subdivision, 102.60 feet;

Thence Eastwardly on a line at right angles to Rosedale Place, 92.20 feet to a point, 143 feet West of the West line of Rosedale Place;

Thence Northeastwardly 53.14 feet to a point 125 feet West, measured at right angles to the West line of Rosedale Place;

Thence Northeastwardly 55.90 feet to a point 100 feet West, measure at right angles to the West line of Rosedale Place;

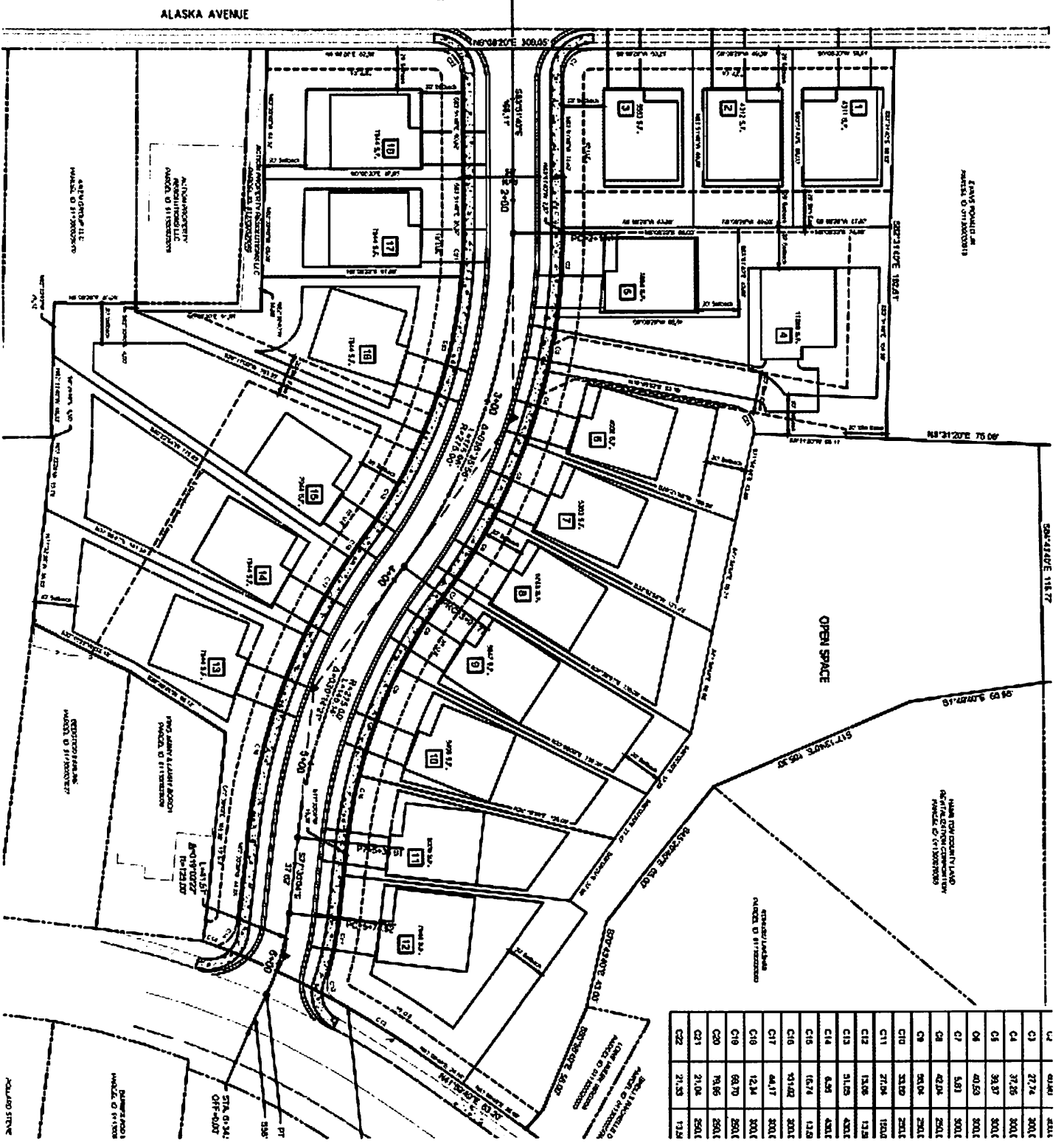
Thence Westwardly along a line at right angles to Rosedale Place, 158 feet to the place beginning.

Exhibit A-2  
to Property Sale, Funding, and Development Agreement

*Site Plan*

SEE ATTACHED





LOT	AREA	AREA
C3	2774	3001
C4	3728	3001
C5	3837	3001
C6	4059	3001
C7	5831	3001
C8	4204	2901
C9	3804	2901
C10	3329	2901
C11	2784	1900
C12	1308	125
C13	1129	4301
C14	826	4301
C16	1674	120
C16	9142	3001
C17	4417	3001
C18	1234	3001
C19	6970	2901
C20	1906	2901
C21	2104	2901
C22	2133	132

Exhibit B  
to Property Sale, Funding, and Development Agreement

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

**I. Statement of Work:**

Developer plans to undertake the Project to deliver new housing options in the Avondale neighborhood. At completion, the Project will create up to 18 newly-constructed detached single-family Homes along a newly constructed public road dedicated for use by the general public.

A. Description of Private Project. The Private Project will be split into two phases due to the soil conditions found at the Property after performing soil boring tests. The Phase I Private Improvements will consist of the development of up to 8 newly-constructed single-family Homes. Once the first 8 Homes are complete as part of the first phase, Developer and the City will together determine the total amount of Homes that can be built in the second phase. The sale of the Homes built as part of the Phase I Private Improvements will determine how much the market can absorb to cover the additional development costs for the construction of the Homes in the Phase II Private Improvements. If the market cannot bear the additional development costs, then the City shall have the ability to exercise its Repurchase Option or allow Developer to market the remainder of the Property for sale to another builder, as approved by the City, in the City's sole and absolute discretion, to complete the Phase II Private Improvements. However, if the market can bear the additional costs, Developer plans to commence the Phase II Private Improvements and build up to 10 additional Homes.

B. Description of Public Improvements. Developer will construct a new public roadway between Alaska Avenue and Harvey Avenue and all associated public utilities and sidewalks. Developer will be required to:

1. Provide permits and performance bond for the cost of the work and excavation and site work including roadway grading.
2. Demolish/remove existing water services on Alaska Avenue, storm sewers in the right-of-way Harvey Avenue, and 12" storm sewers within the Property.
3. Provide sedimentation controls onsite including a silt fence, inlet filters, and a construction entrance.
4. Pave and install curbs and gutters for the new street include a 3-ply paving specification with layers of 5" and 3" with a 2" wear course of asphaltic concrete to City standards. Concrete curbs are Type P-4. Crosswalk lines, centerline striping, stop signs, and stop bars are also included.
5. Install a public sanitary sewer including a 12" main line running from Harvey Avenue to Alaska Avenue. 4 manholes will be constructed with the new sanitary sewer along with wyes and 6" laterals for the 18 residential lots.
6. Install approximately 560 L.F. of 8" water main per GCWW standards, a fire hydrant assembly, mainline valves, connecting to existing, and the tap-in and inspection fees. Developer shall provide 3/4" water services for all 18 Lots ending at a meter located at the right-of-way line.
7. Install electric and lighting for electric service and streetlights. Developer will establish an agreement with Duke Energy to install streetlights in the public right-of-way. The final agreement is subject to establishing the final layout of the lighting.

Any changes to the plans and specifications of the Public Improvements provided and approved by the City shall, upon the City's approval, be reflected in a final plan set, which will be kept on file in the offices of DOTE.

II. **Budget:**

	<b>City Funds</b>	<b>Non-City Funds</b>	<b>Total</b>
Public Improvements	\$1,000,000	\$380,000	\$1,380,000
Hard Construction Costs (for the Homes)	-	\$5,022,500	\$5,022,500
Soft Costs	-	\$513,820	\$513,820
Acquisition Costs	-	\$1	\$1
Developer Fee	-	-	-
		<b>TOTAL</b>	<b>\$6,916,321</b>

III. **Sources of Funds:**

<b>Sources</b>	
Spring Valley Bank	\$2,500,000
Developer Equity	\$2,984,321
Cincinnati Children's	\$432,000
City of Cincinnati Capital Loan	\$1,000,000
<b>TOTAL</b>	<b>\$6,916,321</b>

Exhibit C  
to Property Sale, Funding, and Development Agreement

*Form of Quitclaim Deed*

SEE ATTACHED

---

[SPACE ABOVE FOR RECORDER'S USE ONLY]

Property: 3584 Alaska Ave and adjoining property on Harvey Avenue

### QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), for valuable consideration, hereby grants and conveys to **TOTAL PROPERTY CARE, LLC**, a Kentucky limited liability company, the tax-mailing address of which is \_\_\_\_\_ ("**Grantee**"), all of the City's right, title, and interest in and to the real property described on Exhibit A (*Legal Description of Property*) hereto (the "**Property**").

Property Address: 3584 Alaska Avenue and adjoining property on Harvey Avenue  
Cincinnati, Ohio 45229

Auditor's Parcel Nos: 113-0002-0016-00; 113-0002-0083-00; 113-0002-0050-00; 113-0002-0049-00

THIS TRANSFER IS SUBJECT TO, AND THE CITY HEREBY RESERVES, THE FOLLOWING EASEMENTS, COVENANTS, AND RESTRICTIONS.

(A) Permanent Sewer Easement in Favor of the City of Cincinnati. The City hereby reserves and creates a permanent utility easement over a 30-foot wide area of the Property as more particularly described on Exhibit B (*Legal Description – Easement Area*) hereto, and more particularly depicted on Exhibit C (*Plat – Easement Area*) hereto (the "**Sewer Easement Area**"), for the operation, maintenance, repair, reconstruction, removal, or replacement of existing sanitary sewer lines, facilities, equipment, and all appurtenances located within the Sewer Easement Area, including the right to enter upon and reenter upon the Property to access the Sewer Easement Area.

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

If the City determines that improvements placed within the Sewer Easement Area interfere with the City's easement rights, the City may remove such improvements at the property owner's expense.

Under no circumstances shall the City or its contractors be liable for any damage to improvements placed within the Sewer Easement Area.

Any structure constructed on the Property after the date of acknowledgment herein shall be kept not less than 3 feet outside the Sewer Easement line nearest the site of the proposed structure.

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

**[ subject to possible creation of utility easements in favor of Cincinnati for its existing facilities if no existing easements are in place ]**

(B) Re-conveyance to City upon Failure to Timely Commence or Complete Construction. The City and Grantee are parties to a *Property Sale, Funding, and Development Agreement* dated \_\_\_\_\_, 20\_\_ (the "**Agreement**"), pursuant to which Grantee is required to redevelop the Property. If (i) Grantee fails to commence construction of the Phase I Private Improvements on or before the Phase I Commencement Date (as defined in the Agreement) in accordance with the Agreement, (ii) Grantee fails to complete construction of the Phase I Private Improvements on or before the Phase I Completion Date (as defined in the Agreement) in accordance with the Agreement, (iii) fails to commence construction of the Phase II Private Improvements on or before the Phase II Commencement Date (as defined in the Agreement) in accordance with the Agreement, or (iv) Grantee decides not to proceed with the Phase II Private Improvements, Grantee shall re-convey the Property, or the applicable portion thereof, to the City as described in the Agreement. At such time as the City no longer has the right to reacquire the Property under the Agreement, the City, at Grantee's request, shall execute and deliver to Grantee a release of such rights for recording in the Hamilton County, Ohio Recorder's Office. Until such time as the Property has been reconveyed to the City or the City has released or waived its rights to reacquire the Property thereunder, Grantee shall not sell or otherwise transfer title to the Property or any portion thereof without the prior written consent of the City.

All of the easements, covenants, and restrictions above shall "run with the land" and be binding upon Grantee and its successors-in-interest with respect to the Property.

This conveyance was authorized by Ordinance No. \_\_\_\_-2022, passed by Cincinnati City Council on \_\_\_\_\_, 2022.

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

[Signature Page Follows]

Executed on \_\_\_\_\_, 2022.

**CITY OF CINCINNATI**

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

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

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

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF HAMILTON         )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_ the \_\_\_\_\_ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

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

Approved as to Form:

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

This instrument prepared by:

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

Accepted and Agreed to by:  
**Total Property Care LLC**

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

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

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

Date: \_\_\_\_\_, 2022

- Exhibits:  
Exhibit A – Legal Description of Property  
Exhibit B – Legal Description – Sewer Easement  
Exhibit C – Easement Plat

Exhibit A  
to Quitclaim Deed

*Legal Description of Property*

[to be attached to execution version]



Exhibit B  
to Quitclaim Deed

*Legal Description – Sewer Easement*

[to be attached to execution version]

Exhibit C  
to Quitclaim Deed

*Easement Plat*

[to be attached to execution version]

Exhibit D  
to Property Sale, Funding, and Development Agreement

*Form of Promissory Note*

SEE ATTACHED

**PROMISSORY NOTE**  
(secured by mortgage on real estate)

**\$1,000,000.00**

Cincinnati, Ohio  
\_\_\_\_\_, 2022

**FOR VALUE RECEIVED**, the undersigned, **TOTAL PROPERTY CARE LLC d/b/a TITAN REAL ESTATE GROUP, LTD**, a Kentucky limited liability company, the address of which is \_\_\_\_\_ ("**Borrower**"), hereby promises to pay to the order of the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which for purposes of this Promissory Note (this "**Note**") is 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202; Attention: Director, Department of Community and Economic Development (the "**City**"), the principal sum of One Million Dollars (\$1,000,000.00), or so much thereof as is disbursed by the City to Borrower under that certain *Property Sale, Funding, and Development Agreement* by and between Borrower and the City, dated \_\_\_\_\_, 2022 (the "**Agreement**"), together with interest thereon and upon the following terms and conditions (the "**Loan**"). The date on which the City disburses the Loan proceeds or any portion thereof to Borrower pursuant to the terms of the Agreement is referred to herein as the "**Loan Disbursement Date**." Capitalized terms used herein but not defined herein, if any, shall have the meanings ascribed to them in the Agreement.

This Note is secured by a mortgage on the property located at 3584 Alaska Avenue and adjoining property along Harvey Avenue, Cincinnati, Ohio 45229, as further described in the Agreement (the "**Property**" and the "**Mortgage**", as applicable). Pursuant to the terms of the Agreement, Borrower is required to (i) construct and dedicate to public use certain Public Improvements under the supervision of the City's Department of Transportation and Engineering; and (ii) develop the Property into 18 buildable lots (each, a "**Lot**") for the construction of 18 single-family homes (each, a "**Home**") as part of the Private Project, all as more particularly described in the Agreement. Developer anticipates completing the Private Project over two phases, with the Phase I Private Improvements consisting of the first 8 Homes, and the Phase II Private Improvements consisting of up to 10 additional Homes.

**1. Terms.** The terms of the Loan are as follows:

- (a) Amount: The principal and amount of the Loan evidenced by this Note is One Million Dollars (\$1,000,000.00).
- (b) Term: The term of the Loan (the "**Term**") shall be 5 years, beginning on the Loan Disbursement Date, and ending on the 5-year anniversary thereof (the "**Maturity Date**").
- (c) Interest Rate: 0.00% per annum.
- (d) Payments:
  - (i) Deferment. Borrower shall not be required to make payments under this Note during the period between the Loan Disbursement Date and the 60-month anniversary thereof (the "**Deferment Period**").
  - (ii) Forgiveness. The Loan shall be forgiven in the following manner:
    - (A) If and when Borrower completes the Public Improvements within the Deferment Period and in accordance with the terms of the Agreement, and provided that Borrower is not in default of its obligations under this Note or the Agreement, the City shall forgive 50% of the outstanding principal amount of the Loan.
    - (B) Provided that Borrower is not in default of its obligations under this Note or the Agreement, the City shall forgive 1/8<sup>th</sup> of the remaining outstanding

principal amount of the Loan upon the completion of each Home constructed on the Property as part of the Phase I Private Improvements, and as evidenced by the issuance of a certificate of occupancy within the Deferment Period. At Developer's request, the City shall execute a partial release from the Mortgage for each of the first 7 Lots as the respective Homes on such Lots are completed, and upon completion of the 8th Home, and at Developer's request, the City shall release the remaining Property from the Mortgage.

(iii) Balloon Payment. If the Loan is not fully forgiven as described in paragraph (ii) above prior to the end of the Deferment Period, then on the Maturity Date, Borrower shall pay a balloon payment equal to all unpaid and unforgiven principal and other charges outstanding on the Loan.

(e) Prepayment: Borrower may prepay the Loan and accrued interest at any time, without penalty.

(f) Default Rate of Interest; Late Charges: If any payment due hereunder is not received by the City when due, a late charge equal to five percent (5%) of the past due amount shall automatically become due, and interest on the past due amount shall accrue from the due date at the rate of twelve percent (12%) per annum until the entire past due amount has been paid. The foregoing is in addition to the City's other rights and remedies hereunder and under the Funding Agreement in the event of a default.

(g) Due on Sale: Notwithstanding the Maturity Date specified herein, the entire outstanding principal balance and all accrued interest shall automatically become due and payable in full upon the sale of all or any portion of the Property other than as authorized under the terms of the Agreement.

2. Authority. The officer or representative of Borrower subscribing below represents that s/he has full power, authority, and legal right to execute and deliver this Note and that the debt hereunder constitutes a valid and binding obligation of Borrower.

3. Place of Payment. Payments due under this Note shall be made by check payable to the "City of Cincinnati-Treasurer" and mailed to the City at the address set forth in the introductory paragraph of this Note or such other place as the Note holder may designate in writing from time to time.

4. Default. Upon any default under the Agreement or default in the payment of interest, principal or any other sum when due under this Note that is not cured within five (5) days after Borrower is given written notice thereof, the entire principal sum hereof and accrued and unpaid interest hereon may, at the option of the Note holder, be declared to be immediately due and payable, time being of the essence, and the Note holder may proceed to enforce the collection thereof by suit at law or in equity or proceedings pursuant to the Mortgage to foreclose on the Property. If suit is brought to collect this Note, the Note holder shall be entitled to collect, and Borrower shall indemnify the Note holder against, all expenses of suit, including, without limitation, attorneys' fees. Failure of the Note holder to exercise its rights under this Note in the event of default shall not constitute a waiver of the right of the holder to exercise the same or to exercise such rights in the event of a subsequent default.

5. General Provisions. This Note and any and all ancillary documents executed by Borrower in connection with the Loan constitute the entire agreement of the parties with respect to the matters described herein and supersede any and all prior communications and agreements between the parties. This Note may be amended only by a written amendment signed by Borrower and the Note holder. This Note shall be governed by the laws of the City of Cincinnati and the State of Ohio. This Note shall be binding upon Borrower and its successors and assigns. If any provision

of this Note is determined to be in violation of any applicable local, state, or federal law, such provision shall be severed from this Note and the remainder of this Note shall remain in full force and effect. All notices given under this Note shall be sent by regular or certified U.S. mail to Borrower at its address set forth above, and to the Note holder at the address where loan payments are made. Any action or proceeding arising under this Note shall be brought only in the Hamilton County Court of Common Pleas. Presentment, notice of dishonor, protest, and notice of protest are hereby waived.

Executed by Borrower on the date first above written.

**BORROWER:**

**TOTAL PROPERTY CARE LLC**

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

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

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

Approved as to Form:

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

cc: Karen L. Alder, City Finance Director

Exhibit E  
to Property Sale, Funding, and Development Agreement

*Form of Mortgage*

SEE ATTACHED

[SPACE ABOVE FOR RECORDER'S OFFICE]

### MORTGAGE

THIS MORTGAGE ("**Mortgage**") is given on \_\_\_\_\_, 2022, by **TOTAL PROPERTY CARE LLC d/b/a TITAN REAL ESTATE GROUP, LTD**, a Kentucky limited liability company, with offices at \_\_\_\_\_ ("**Borrower**"). This Mortgage is given to the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Room 214, Cincinnati, Ohio 45202 (the "**City**"). Borrower owes the City the principal sum of \$1,000,000.00, or so much thereof as is disbursed by the City to Borrower pursuant to that certain *Property Sale, Funding, and Development Agreement* dated \_\_\_\_\_, 2022, between the parties (as the same may hereafter be amended, restated, or replaced from time to time, the "**Agreement**") and by Borrower's promissory note in said amount in favor of the City and executed in relation to the Agreement (as the same may hereafter be amended, restated, or replaced from time to time, the "**Note**"). This Mortgage secures to the City the repayment of the debt evidenced by the Note, the performance by Borrower of all of Borrower's other obligations under the Agreement, and the payment of all other sums, with interest, advanced by the City under this Mortgage. Capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Agreement.

For this purpose, Borrower does hereby grant with mortgage covenants to the City certain real property, consisting of the property described on Exhibit A (Legal Description) hereto, together with all improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property (the "**Property**"). Pursuant to the Agreement, the City intends to disburse up to \$1,000,000.00 for use by Borrower in paying construction-related costs and other eligible costs under the Agreement associated with the Public Improvements.

Borrower covenants that Borrower is lawfully seized of the Property hereby conveyed and has the right to mortgage, grant, and convey the Property, and that the Property is unencumbered, except for easements and restrictions of record.

Property Address: 3584 Alaska Avenue, Cincinnati, Ohio 45229 and other vacant property on Alaska and Harvey Avenue

Auditor's parcels: 113-0002-0016-00; 113-0002-0049-00; 113-0002-0050-00; 113-0002-0083-00

Prior Instruments: OR 13448, Page 02958, Hamilton County, Ohio Records.



Borrower and the City covenant and agree as follows:

**1. Payments.** Borrower shall promptly pay when due any and all amounts that may become due and payable under the Agreement and the Note, all in accordance with the terms thereof.

**2. Charges; Liens.** Borrower shall pay all real property taxes, assessments, charges, fines, and impositions attributable to the Property which may attain priority over this Mortgage. If Borrower fails to do so in a timely fashion, the City may, at its option, pay such amounts pursuant to paragraph 5 hereof. Borrower shall promptly discharge any lien that has priority over this Mortgage unless the City has consented in writing to the superiority of such lien.

**3. Property Insurance.** Borrower shall maintain adequate property insurance on any and all improvements now existing or hereafter erected on the Property. All insurance policies and renewals shall include a standard mortgagee clause in favor of the City. If Borrower fails to maintain insurance as required hereunder, the City may, at its option, obtain such insurance pursuant to paragraph 5 hereof. Unless the City and Borrower otherwise agree in writing or unless otherwise provided in the Agreement, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible. If the restoration or repair is not economically feasible, the insurance proceeds shall be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to Borrower.

**4. Maintenance of the Property.** Borrower shall maintain the Property in good condition and repair and otherwise in accordance with the terms of the Agreement.

**5. Protection of the City's Rights to the Property.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or there is a legal proceeding that may significantly affect the City's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), the City may do and pay for whatever is necessary to protect the value of the Property and the City's rights in the Property. The City's actions may include paying any sums secured by a lien which has priority over this Mortgage, appearing in court, paying reasonable attorneys' fees and entering onto the Property to make repairs. Any amounts disbursed by the City under this paragraph shall become additional debt of Borrower secured by this Mortgage. These amounts shall bear interest, at the rate of ten percent per annum, from the date of disbursement and shall be payable, with interest, upon notice from the City to Borrower requesting payment.

**6. Successors and Assigns Bound; Governing Law.** The covenants and agreements of this Mortgage shall bind and benefit the successors and assigns of the City and Borrower, subject to the provisions of paragraph 8 hereof. This Mortgage shall be governed by the laws of the City of Cincinnati and State of Ohio.

**7. Notices.** Any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to Borrower's address stated herein or any other address Borrower designates by notice to the City. Any notice to the City shall be given by first class mail to the City's address stated herein or any other address the City designates by notice to Borrower.

**8. Transfer of the Property.** If Borrower sells or transfers the Property to anyone without the City's prior written consent, the City may, at its option, require immediate payment in full of all sums secured by this Mortgage.

**9. Acceleration; Remedies.** If Borrower fails to complete its construction obligations or any other obligations with respect to the Property as and when required under the Agreement, the Note, or this Mortgage, the City may declare all amounts disbursed by the City with respect to the Property to be immediately due and payable and may foreclose this Mortgage. Unless prohibited by law, Borrower

shall pay to the City any and all sums, including expenses and reasonable attorneys' fees, that the City may incur or expend (a) in any proceeding to sustain the lien of this Mortgage or its priority or to defend against the liens or claims of any person asserting priority over this Mortgage, or (b) in connection with any suit at law or in equity to enforce the Note, the Agreement, or this Mortgage; to foreclose this Mortgage; or to prove the amount of or to recover any indebtedness hereby secured. All rights and remedies of the City are cumulative, and the City shall be entitled to all other rights and remedies hereunder, under the Note or Agreement, or available at law or in equity.

**10. Advances to Protect Security.** This Mortgage shall secure the unpaid balance of any advances made by the City with respect to the Property for the payment of taxes, assessments, insurance premiums, costs incurred for the protection of the Property, and other costs that the City is authorized by this Mortgage to pay on Borrower's behalf.

**11. Maximum Principal Amount.** This Mortgage shall secure the payment of any and all amounts advanced from time to time by the City to Borrower under the Note, the Agreement, or this Mortgage, and under any other promissory notes or other documents signed by Borrower and stating that such advances are secured hereby. The City shall not be obligated to make any additional advances unless the City has agreed to do so in writing. The maximum amount of unpaid loan indebtedness which may be outstanding at any time and secured hereby shall be \$1,000,000.00, exclusive of interest thereon and unpaid balances of advances made by the City under this Mortgage.

*[Signature page follows]*

This Mortgage is executed by Borrower on the date first set above.

**TOTAL PROPERTY CARE LLC**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF HAMILTON        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_ of Total Property Care LLC, d/b/a Titan Real Estate Group, Ltd., a Kentucky limited liability company, on behalf of the company. 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:  
Samantha Brandenburg, Esq.  
City of Cincinnati Law Department  
801 Plum Street, Suite 214  
Cincinnati, Ohio 45202

Exhibits:  
Exhibit A – *Legal Description*

Exhibit A  
to Mortgage

*Legal Description*

[to be attached to execution version]

Exhibit F  
to Property Sale, Funding, and Development Agreement

*Disbursement of Funds*

(A) Conditions to be Satisfied Prior to Disbursement of Funds. The City shall be under no obligation to disburse the Funds unless and until the following conditions are satisfied and continue to be satisfied:

(i) Developer shall have delivered to the City the Mortgage and the Note;

(ii) Developer has provided the City with evidence of insurance required under this Agreement;

(iii) Developer has provided the City with evidence that it has obtained all licenses, permits, governmental approvals, and the like necessary for the construction work;

(iv) Developer has provided the City with evidence that it has secured all other funds necessary to complete the Phase I Project;

(v) Construction has commenced and is proceeding in accordance with the City-approved plans and specifications, budget, and construction schedule;

(vi) Developer has provided the City with such other documents, reports, and information relating to the Project as the City has reasonably requested, including, without limitation, the due diligence materials; and

(vii) Developer is not in default under this Agreement.

(B) Disbursement of Funds. Provided all of the requirements for disbursement of the Funds shall have been satisfied, the City shall disburse the Funds to Developer. The City shall disburse the Funds on a reimbursement basis and pro-rata with all other construction loan funds being utilized by Developer for the Public Improvements (i.e., the Funds shall not be first in). Developer shall not be entitled to a disbursement of Funds to pay for costs incurred prior to the Effective Date. Developer shall request the Funds and shall use the Funds solely for the purposes permitted under the Agreement. Nothing in this Agreement shall permit, or shall be construed to permit, the expenditure of Funds for the acquisition of supplies or inventory, or for the purpose of purchasing materials not used in the construction, or for establishing a working capital fund, or for any other purpose expressly disapproved in writing by the City. Developer shall not request a disbursement of Funds for any expenditure that is not itemized on or contemplated by the approved budget or if the costs for which the disbursement is being requested exceeds the applicable line item in the budget; however, Developer may request, in writing, that funds be transferred between line items, with the City's approval thereof not to be unreasonably withheld. Disbursements from the project account shall be limited to an amount equal to the actual cost of the work, materials, and labor incorporated in the work up to the amount of such items as set forth in Developer's request for payment. Anything contained in this Agreement to the contrary notwithstanding, the City shall not be obligated to make or authorize any disbursements from the project account if the City determines, in its reasonable discretion, that the amounts remaining from all funding sources with respect to the Project are not sufficient to pay for all the costs to complete construction. Developer acknowledges that the obligation of the City to disburse the Funds to Developer for construction shall be limited to the Funds to be made available by the City under this Agreement. Developer shall provide all additional funds from other resources to complete the Project, including the Public Improvements. Notwithstanding anything in this Agreement to the contrary, the City's obligation to make the Funds available to Developer, to the extent such Funds have not been disbursed, shall terminate 30 days following completion of construction of the Public Improvements to the satisfaction of DOTE.

(C) Draw Procedure

(i) Frequency. Developer may make disbursement requests no more frequently than once in any 30 day period.

(ii) Documentation. Each disbursement request shall include the following: For construction costs shown on the approved budget, Developer shall submit a draw request form provided by the City, with the following attachments: (i) an AIA G-702-703 Form (AIA) or such other similar form acceptable to the City; (ii) sworn affidavits and/or unconditional lien waivers (together with invoices, contracts, or other supporting data) from all contractors, subcontractors, and materialmen covering all work, labor, and materials for the work through the date of the disbursement and establishing that all such work, labor, and materials have been paid for in full; (iii) waivers or disclaimers from suppliers of fixtures or equipment who may claim a security interest therein; and (iv) such other documentation or information requested by the City that a prudent construction lender might request. All affidavits and lien waivers shall be signed, fully-executed originals.

(D) Retainage. After review and approval of a disbursement request, the City shall disburse 90% of the amount requested (with retainage of 10%). The retained amount shall be disbursed when (i) construction of the Public Improvements has been completed and evidence thereof, in form satisfactory to the City, has been delivered to the City; (ii) the City has obtained final lien waivers and all other conditions to payment set forth in this Agreement have been satisfied with respect to such payment; and (iii) Developer has complied with all of its other obligations, as it relates to the Public Improvements, under this Agreement as determined by the City in its sole discretion. For the avoidance of doubt, Developer may, following the completion of the Public Improvements, and upon the provision of the required documentation and the satisfaction of the other disbursement conditions in this Exhibit, request disbursement of the entire amount of Funds in one lump sum, in which case such amount would not be subject to retainage.

(E) Estoppel Certification. A request for the disbursement of Funds shall, unless otherwise indicated in writing at the time Developer makes such request, be deemed as a representation and certification by Developer that (i) all work done and materials supplied to date are in accordance with the approved plans and specifications and in strict compliance with all legal requirements as of the date of the request, (ii) the construction is being completed in accordance with the approved budget and construction schedule, and (iii) Developer and the City have complied with all of their respective obligations under this Agreement. If Developer alleges that the City has been or is then in default under this Agreement at the time Developer makes such request, and if the City disputes such allegation, the City shall not be obligated to make or authorize such disbursement until the alleged default has been resolved.

End of Exhibit

Exhibit G  
to Property Sale, Funding, and Development Agreement

*Additional Requirements*

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

This Exhibit serves two functions:

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

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

(A) Construction Workforce.

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

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

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

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

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Conferring with Trade Unions.

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

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

(ii) Contracts and Subcontracts; Competitive Bidding.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Including qualified SBEs on solicitation lists.

(2) Assuring that SBEs are solicited whenever they are potential sources. Contractor must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials or to bid on construction contracts for the Project. Contractor is encouraged to use the internet and similar types of advertising to reach a broader audience, but these additional types of advertising cannot be used as substitutes for the above.

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<sup>1</sup> Note: DCED is currently evaluating revisions to this SBE section due to recent legislative changes adopted by Council. If DCED implements these policy changes prior to the execution of this Agreement, this section will be revised.

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

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

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

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

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

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

(G) Equal Employment Opportunity.

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

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

(H) Prevailing Wage. Developer shall comply, and shall cause all contractors working on the Project to comply, with all any prevailing wage requirements that may be applicable to the Project. In the event that the City is directed by the State of Ohio to make payments to construction workers based on violations of such requirements, Developer shall make such payments or reimburse the City for such payments within twenty (20) days of demand therefor. A copy of the City's prevailing wage determination may be attached to this Exhibit as Addendum I to Additional Requirements Exhibit (City's Prevailing Wage Determination) hereto.

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

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

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

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

(M) Wage Enforcement.

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

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

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

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

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

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

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

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

(N) Americans With Disabilities Act: Accessibility.

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

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

(O) Electric Vehicle Charging Stations in Garages.



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

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

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

*ADDENDUM I*  
*to*  
*Additional Requirements Exhibit*  
City's Prevailing Wage Determination

TO BE ATTACHED