

FUNDING AND DEVELOPMENT AGREEMENT

among

CITY OF CINCINNATI

and

CINCINNATI CENTER CITY DEVELOPMENT CORPORATION

and

OTR HOLDINGS, INC.

and

FINDLAY COMMUNITY CENTER LLC

Project: Findlay Community Center

Dated: _____, 2025

FUNDING AND DEVELOPMENT AGREEMENT

(Findlay Community Center)

THIS FUNDING AND DEVELOPMENT AGREEMENT (this “**Agreement**”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and among the **CITY OF CINCINNATI**, an Ohio municipal corporation, having an address of 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”); **CINCINNATI CENTER CITY DEVELOPMENT CORPORATION**, an Ohio nonprofit corporation, having an address of 1203 Walnut Street, 4th Floor, Cincinnati, Ohio 45202 (“**3CDC**”); **OTR HOLDINGS, INC.**, an Ohio corporation, having an address of 1203 Walnut Street, 4th Floor, Cincinnati, Ohio 45202 (“**OTR Holdings**”), an affiliate of 3CDC; and **FINDLAY COMMUNITY CENTER LLC**, an Ohio limited liability company, having an address of 1203 Walnut Street, 4th Floor, Cincinnati, Ohio 45202 (“**Project Owner**” and collectively with 3CDC, and OTR Holdings, sometimes referred to herein as the “**Developer Parties**”), an affiliate of 3CDC.

Recitals:

A. The City owns fee simple interest in certain real property generally bounded by Goose Alley, Findlay Street, Vine Street, and Bardes Alley, Cincinnati, Ohio 45202, all in the Over-the-Rhine neighborhood of Cincinnati, as depicted on Exhibit A (Site Map) hereto (less a portion of the property along existing Bardes Alley that the City intends to dedicate and accept as part of the Bardes Alley public right-of-way, the “**City Parcels**”).

B. OTR Holdings owns fee simple interest in certain real property located at 1829 Vine Street in the Over-the-Rhine neighborhood of Cincinnati, as depicted on Exhibit A and more particularly described on Exhibit B (Legal Description – 1829 Vine) hereto (the “**Developer Parcel**”).

C. The City intends to vacate that portion of Republic Street between 1826 Republic Street and Bardes Alley, as depicted on Exhibit C (Vacation Plat – Republic Street) and more particularly described on Exhibit D (Legal Description – Republic Street) hereto (the “**Former City ROW**”; and, together with the City Parcels and the Developer Parcel, the “**Project Site**”). For the avoidance of doubt, that portion of Republic Street between Findlay Street and 1826 Republic Street (the “**Republic ROW**”) is to remain public right-of-way.

D. The City desires to purchase the Developer Parcel from OTR Holdings and OTR Holdings desires to convey the Developer Parcel to the City prior to the Closing Date (as defined below), for the purchase price of \$286,000 (the “**Purchase Price**”), on the terms and conditions described herein.

E. Upon the City’s acquisition of the Developer Parcel and vacation of the Former City ROW, the City intends to consolidate all parcels comprising the Project Site.

F. The City desires to lease the Project Site to Project Owner pursuant to the Findlay Community Center Ground Lease (as defined below), pursuant to which Project Owner will cause the rehabilitation, renovation, improvement, and development of the Project Site into an approximately [59,700] square foot community center and approximately [7,900] square foot public outdoor play area, as depicted on Exhibit E (Project Site Plan) hereto, and designated as “Findlay Community Center” therein (collectively, the “**Findlay Community Center**”); and an approximately [8,400] square foot early learning childcare center and approximately [4,900] square foot childcare center playground, as depicted on Exhibit E hereto, and designated as “Early Learning Childcare Center” therein (collectively, the “**Early Learning Childcare Center**”).

G. Simultaneously, the City desires to engage Project Owner to cause the rehabilitation and improvement of the Republic ROW (the “**Republic ROW Project**”; and, together with the Early Learning Childcare Center and the Findlay Community Center, the “**Project**”).

H. The City desires to sublease the Findlay Community Center from Project Owner pursuant to the Findlay Community Center Sublease (as defined below), whereby the City will lease back the Findlay Community Center as improved by the Project.

I. The City desires to engage [Findlay Community Center Manager, LLC] (“**Findlay Operator**”), an affiliate of 3CDC, to (i) operate the Findlay Community Center on the terms and conditions contained in the Findlay Community Center Management Agreement (as defined below) and (ii) manage the Republic ROW on the terms and conditions contained in the Republic ROW Management Agreement (as defined below).

J. The total estimated cost (including hard construction costs, soft costs, and acquisition costs) of the Project is projected to be approximately \$[46,100,631], as more particularly described on Exhibit F (Preliminary Budget) hereto.

K. The City, upon the recommendation of the City’s Department of Community and Economic Development (“**DCED**”), desires to provide additional support to the Project in the form of a grant to 3CDC in an amount not to exceed \$[24,117,780], on the terms and conditions set forth herein (the “**Grant**”), which the parties currently anticipate will be used by 3CDC to (i) make an equity investment to Findlay Community Center Leverage Lender, LLC, an Ohio limited liability company (“**Leverage Lender**”), to facilitate the making of a leverage loan by Leverage Lender to a new markets tax credit financing structure, and (ii) to make equity investments into other 3CDC subsidiaries associated with the new markets tax credit financing structure, all to finance, indirectly, a portion of the construction of the Project.

L. The City, upon the recommendation of DCED, is committed to providing additional future assistance for the operation of the Findlay Community Center, which commitment is more particularly outlined in the Findlay Community Center Management Agreement.

M. The City, 3CDC, OTR Holdings, and Project Owner propose to redevelop the Project Site and the Republic ROW, generally speaking, as follows:

- (i) The City will ground lease the Project Site to Project Owner for \$1.00/year for a term of 75 years on substantially the same terms set forth in the *Ground Lease* attached hereto as Exhibit G (Form of Ground Lease) (the “**Findlay Community Center Ground Lease**”);
- (ii) The City will provide the Grant to 3CDC for the purpose of financing a portion of the costs of the Project on substantially the same terms set forth herein;
- (iii) Project Owner, in conjunction with OTR Holdings, will complete the construction, improvement, and development of the Project on the Project Site and the Republic ROW;
- (iv) Project Owner will sublease the Early Learning Childcare Center to a third party to manage and operate;
- (v) The City will sublease the Findlay Community Center from Project Owner for a term of [30] years for \$_____/year after the Closing Date, on substantially the same terms set forth in the *Findlay Community Center Sublease* attached hereto as Exhibit H (Form of Community Center Sublease) (the “**Findlay Community Center Sublease**”);
- (vi) The City will engage Findlay Operator to operate and manage the Findlay Community Center on behalf of the City, on substantially the same terms set forth in the *Professional Services Management Agreement* attached hereto as Exhibit I (Form of Professional Services Management Agreement – Findlay Community Center) (the “**Findlay Community Center Management Agreement**”); and
- (vii) The City will engage [Findlay Operator] to operate and manage the Republic ROW on behalf of the City, on substantially the same terms set forth in the [*Professional Services Management Agreement*] attached hereto as Exhibit J (Form of Professional Services Management Agreement – Republic ROW) (the “**Republic ROW Management Agreement**”).

N. 3CDC, OTR Holdings, and Project Owner have represented to the City that they intend to use various sources of funds to finance the costs associated with the Project, as set forth in Exhibit K (Sources of Project Funds) hereto. The actual costs incurred by the Developer Parties in designing and constructing the Project are referred to herein collectively as the “**Project Costs**”.

O. 3CDC, OTR Holdings, and Project Owner have represented to City that the design and construction of the Project will create approximately [263] temporary construction jobs, and that the operation of the Project will create approximately [58] permanent jobs.

P. The Developer Parties presently anticipate that they will substantially complete construction of the Project on or about [July 1, 2026].

Q. 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.

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

S. The City and the Developer Parties have determined to enter into this Agreement in part to finance the Project through the utilization of the federal new markets tax credit program.

T. Execution of this Agreement, the *Findlay Community Center Ground Lease*, the *Findlay Community Center Sublease*, the *Findlay Community Center Management Agreement*, and the *Republic ROW Management Agreement* was authorized by (i) Ordinance No. ____-2025, passed by Council on ____, 2025; and (ii) Ordinance No. ____-2025, passed by Council on ____, 2025.

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

1. DUE DILIGENCE MATERIALS.

(A) Delivery of Project Due Diligence Materials to the City. Following the parties’ execution of this Agreement, and prior to commencement of construction of the Project, 3CDC, OTR Holdings, or Project Owner, as applicable, at its sole expense, shall obtain and deliver to the City the following items (collectively, the “**Project Due Diligence Materials**”):

- (i) *Title:* A recent title report or, if available, an Owner’s Policy of Title Insurance, showing that 3CDC owns fee simple title to the Developer Parcel free from liens or any other encumbrances;
- (ii) *Legal Description(s) and Survey:* Legal description of the Project Site and recent property survey of the Project Site showing all easements and other matters of record that can be shown on a survey;
- (iii) *Site Plan:* Detailed site plan showing the Project Site and the Republic ROW, and the proposed location of the Project;
- (iv) *Environmental:* Phase I (and if warranted, Phase II) environmental assessments for the Project Site (including the Developer Parcel) and the Republic ROW (if applicable);
- (v) *Engineering Studies:* Geotechnical and other engineering studies for the Project Site (including the Developer Parcel) and the Republic ROW (if applicable);
- (vi) *Construction Schedules:* Detailed timelines showing anticipated commencement and completion dates for the Project, including significant milestones (the “**Construction Schedule**”);

- (vii) *Financing*: Evidence satisfactory to the City that the Developer Parties have obtained all financing necessary for construction of the Project in excess of the City Grant Funds (as defined below);
- (viii) *Insurance*: Evidence satisfactory to the City that the Developer Parties have obtained proof of insurance for all insurance policies required by this Agreement, naming the City as an additional insured; and
- (ix) *Other Information*: Such other information and documentation pertaining to 3CDC, OTR Holdings, Project Owner, or the Project as the City may reasonably request.

(B) Contingency for City's Satisfaction with Due Diligence Materials. 3CDC, OTR Holdings, and/or Project Owner shall deliver all Due Diligence Materials to be provided by 3CDC, OTR Holdings, or Project Owner to the City and fully cooperate with the City in any other investigations the City may conduct concerning the Project as the City deems reasonably necessary. All reports and the like obtained by 3CDC, OTR Holdings, or Project Owner from third parties and delivered to the City shall be recent (*i.e.*, prepared or updated, as the case may be, within 3 months from the date that the item is delivered to the City or within such shorter time period as the City deems necessary to reasonably rely on the accuracy of such item) and shall be prepared by properly licensed and qualified companies or individuals reasonably acceptable to the City. The City shall use reasonable efforts to notify 3CDC, OTR Holdings, and/or Project Owner of its acceptance or objections to the Due Diligence Materials within 10 business days after receipt of such materials by the City.

(C) Developer Parties' Due Diligence. The Developer Parties shall have the right to conduct whatever investigations concerning the Project as such parties deem necessary, including, without limitation, investigations into the feasibility and likelihood of 3CDC, OTR Holdings, and/or Project Owner obtaining all building, zoning, and other approvals from the City's Department of Transportation and Engineering ("**DOT**"), the City's Department of Buildings and Inspections ("**B&I**"), and the City Planning Commission.

(D) Right to Terminate. If during the due diligence investigations, either 3CDC or the City determines that the Project is not feasible or desirable for any reason, then, notwithstanding anything in this Agreement to the contrary, such party may terminate this Agreement by giving the other parties written notice thereof, whereupon this Agreement shall terminate and no party shall thereafter have any rights or obligations hereunder. All rights of the parties under this Section 1(D) shall expire as of the Closing Date after all of the following documents have been fully executed: the *Developer Parcel Deed* (as defined below), the *Findlay Community Center Ground Lease*, the *Findlay Community Center Sublease*, the *Findlay Community Center Management Agreement*, and the *Republic ROW Management Agreement*.

2. PREPARATION OF PLANS AND SPECIFICATIONS.

(A) Final Plan Preparations. 3CDC, OTR Holdings, and/or Project Owner shall cause the plans and specifications for the Project to be prepared by an experienced architectural or engineering firm that is acceptable to the City. 3CDC, OTR Holdings, and/or Project Owner shall provide preliminary plans and specifications for the Project to the City's DCED Director for review and comment. The Developer Parties acknowledge that the location, configuration, design, and all other aspects of the Project are of utmost importance to the City and, in that spirit, 3CDC, OTR Holdings, and/or Project Owner shall make any and all changes to the preliminary plans and specifications for the Project submitted by the Developer Parties as may be required by the City. The parties agree to work diligently and cooperatively with each other in order that the plans and specifications for the Project can be finalized as expeditiously as possible. Once the City and all governmental departments and entities with jurisdiction, including, without limitation, B&I and DOT, have approved the plans and specifications for the Project, the Developer Parties shall not make any Material Changes thereto without the City's prior written consent. For purposes of this Section 2(A), a "**Material Change**" shall mean any change in excess of \$100,000. The Developer Parties' final plans and specifications for the Project, as approved by the City and the applicable entities (including any and all changes thereto reflected on properly-executed change orders approved by the City) are referred to herein as the "**Final Plans**".

(B) Termination for Disagreement. If for any reason the Developer Parties and the City, after exercising good faith efforts, are unable to agree upon the Final Plans and are unwilling in each such party's sole discretion to waive this condition, their sole remedy shall be to terminate this Agreement by giving written notice thereof to the other parties (a "**Final Plans Termination Notice**") on or before the Closing Date (the "**Final Plans Termination Date**"), whereupon this Agreement shall terminate and none of the parties shall thereafter have any rights or obligations under this Agreement. If, on the other hand, the City approves the Final Plans by the Final Plans Termination Date (or if there then remain unresolved issues with respect to approval of the Final Plans but the City nevertheless agree to waive this condition), then, on or before such date, the City shall provide the Developer Parties with written notice that the City is waiving its right to terminate this Agreement under this Section 2(B) (a "**Final Plans Acceptance Notice**").

3. OBTAINING AND APPROVING CONSTRUCTION BIDS. Following completion of the Final Plans under Section 2 above, the Developer Parties shall engage in a public competitive bidding process for the selection of subcontractors for the construction of the Project. The Developer Parties shall not solicit bids from any contractors or subcontractors who are listed on the Federal Debarred List or the State Debarred List or who are identified as being debarred on the City's Vendor's Performance list. Promptly after the parties have approved the Final Plans and the bids (as may be approved by the City, if applicable (the "**Final Bids**"), the Developer Parties shall submit to the City the final construction budget for the Project (the "**Final Budget**") and, if necessary, an updated Construction Schedule.

4. DEVELOPER PARCEL CONVEYANCE.

(A) Agreement to Sell Developer Parcel. In consideration of the Purchase Price and the covenants contained herein, OTR Holdings hereby agrees to sell to the City, and the City agrees to purchase from OTR Holdings, all of OTR Holdings's right, title, and interest in and to the Developer Parcel. Between the Effective Date and the closing on the Developer Parcel Conveyance (the "**Developer Parcel Closing**"), OTR Holdings shall not make or permit any physical changes to the Developer Parcel without the City's prior written consent. OTR Holdings shall deliver exclusive possession of the Developer Parcel to the City at the Developer Parcel Closing.

(B) City's Right to Enter. Between the Effective Date hereof and Developer Parcel Closing, OTR Holdings shall ensure that the City's agents, employees, and contractors shall have the right to enter upon the Developer Parcel for purposes of inspection and any and all other reasonable purposes.

(C) Title. Except as may be expressly provided herein, OTR Holdings shall not take or permit any action without the City prior's written consent between the Effective Date hereof and the Developer Parcel Closing that affects the title to the Developer Parcel, including, without limitation, conveying any interest (or permitting such conveyance) in the Developer Parcel to any third party, granting any easements, or otherwise voluntarily or consensually performing any act that results in any additional exceptions to title that would survive such closing.

(D) Developer Parcel Closing. No later than [April __, 2025], OTR Holdings shall transfer title of the Developer Parcel (the "**Developer Parcel Conveyance**") to the City by warranty deed in substantially the form of Exhibit L (*Form of Developer Parcel Deed*) hereto (the "**Developer Parcel Deed**"). OTR Holdings's title shall be free, clear, and unencumbered, subject only to such matters of record as are acceptable to the City. At the Developer Parcel Closing, OTR Holdings shall execute a customary seller's title affidavit in a form, and the parties shall execute a settlement statement and any and all other customary closing documents, all in form and substance reasonably agreed to by OTR Holdings.

(E) Closing Costs. At the Developer Parcel Closing, OTR Holdings shall pay all customary closing costs (e.g., County transfer tax and County recording fees). OTR Holdings shall be exclusively responsible for all delinquent taxes and assessments, including penalties and interest, and for all other real estate taxes and assessments that are a lien at the time of the Developer Parcel Closing. Real estate taxes and assessments shall be prorated as of the date of the Developer Parcel Closing.

(F) Environmental Representations. The City's obligation to close on the acquisition of the Developer Parcel is conditioned upon the City's satisfaction with the environmental condition of the Developer Parcel. To the best of OTR Holdings's actual knowledge, except to the extent disclosed in any

environmental report, study, test, or analysis provided to the City by OTR Holdings, no Hazardous Substance (as defined below) has been generated, stored, released, discharged or disposed of, from or on the Developer Parcel in violation of any Environmental Statute (as defined below). “**Hazardous Substances**” shall mean any and all pollutants, contaminants, toxic or hazardous wastes or any other substances that might pose a hazard to health or safety, the removal of which may be required or the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage, or filtration of which is or shall be restricted, prohibited, or penalized under any Environmental Statute. “**Environmental Statutes**” shall include the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, and the Toxic Substance Control Act, all as amended, or any other state, local, or federal environmental law, rule, or regulation applicable to the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage or filtration of any and all pollutants, contaminants, toxic, or hazardous wastes or any other substances that might pose a hazard to health or safety.

5. REPUBLIC STREET VACATION; PROJECT SITE CONSOLIDATION.

(A) Republic Street Vacation. Subject to confirmation by the City of satisfaction of the contingencies described in Sections 1(A) and 1(B) herein, the City shall take any actions necessary to vacate the Former City ROW as public right-of-way.

(B) Project Site Consolidation. Upon the conveyance to the City of the Developer Parcel and the City’s vacation of the Former City ROW, the City, with the support of the Developer Parties, shall take all actions necessary to consolidate the real property constituting the Project Site into a single parcel.

6. FINDLAY COMMUNITY CENTER GROUND LEASE. Subject to confirmation by the City of satisfaction of the contingencies described in Sections 1(A) and 1(B) herein and all conditions set forth in the Coordinated Report 27-2024, the City shall convey a leasehold interest in the Project Site to Project Owner on the Closing Date in accordance with the terms of the Findlay Community Center Ground Lease. The term of the Findlay Community Center Ground Lease shall be 75 years and annual lease payments payable by Project Owner thereunder shall be equal to \$1.00, payable in installments due on the first day of each calendar year throughout such term. Pursuant to the Findlay Community Center Ground Lease, the City shall permit Project Owner to grant a leasehold mortgage interest, strictly limited to the interests of Project Owner pursuant to the Findlay Community Center Ground Lease, with respect to the Project as security under a loan agreement entered into for the purpose of financing the Project.

7. FINDLAY COMMUNITY CENTER PROJECT GRANT.

(A) City Grant. Subject to the terms and conditions set forth in this Section 7, the City agrees to provide the Grant to 3CDC in an amount not to exceed [\$24,117,780] (the “**City Grant Funds**”). 3CDC shall cause the Developer Parties to use the City Grant Funds solely to pay costs of the Project, as itemized on Exhibit E, and for no other purpose. For the avoidance of doubt, the Developer Parties shall not use any portion of the City Grant Funds to pay for design fees, 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) Disbursement Conditions of City Grant Funds. The obligation of the City to disburse any portion of the City Grant Funds is subject to satisfaction or waiver, in the City’s sole and absolute discretion, of each of the following conditions (collectively, the “**Disbursement Conditions**”); *provided, however*, that if the City, in its sole and absolute discretion, determines that one or more of the Disbursement Conditions would be more appropriately handled at Closing (as defined below) or post-Closing, the City may accept such Disbursement Condition(s) at Closing or post-Closing:

- (i) *Due Diligence Materials; NMTC Financing.* Satisfaction of the contingencies described in Sections 1(A) and 2(A) herein, including, without limitation, evidence satisfactory to the City that Project Owner will execute a loan agreement with a qualified community development entity in connection with a new markets tax credit transaction to provide financing for the Project;

- (ii) *Final Plan & Budget.* Approval by the City of the Final Plans in accordance with Section 2(A) herein and the Final Budget in accordance with Section 3 herein;
- (iii) *Insurance Certificate.* Presentation by the Developer Parties to the City of proof of insurance as required by this Agreement, naming the City as an additional insured;
- (iv) *Permitting.* Presentation by the Developer Parties to the City of evidence that the Developer Parties have obtained all licenses, permits, governmental approvals, and all other applicable and necessary approvals necessary to construct the Project;
- (v) *No Default.* The Developer Parties shall be in full compliance with all requirements under this Agreement and shall not be in default under this Agreement or any other ancillary agreements with the City pertaining to the Project; and
- (vi) *Any Other Information.* Presentation by the Developer Parties to the City of such other information and documents pertaining to 3CDC, OTR Holdings, Project Owner, the Project Site, or the Project as the City may reasonably require.

All of the Disbursement Conditions, materials, investigations, and documents referred to in this paragraph shall be performed and obtained, as the case may be, at no cost to the City.

(C) Copies of Due Diligence Materials to Be Provided to City. Once the aforementioned materials in this Section 7 have been provided by the Developer Parties as a Disbursement Condition and have been approved by the City (the “**Project Materials**”), the Developer Parties shall not make or permit any changes thereto without the prior written consent of the Director of DCED. Without limitation of the Developer Parties’ other obligations, prior to the City’s disbursement of the City Grant Funds, as such due diligence materials are obtained by the Developer Parties, the Developer Parties, 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 any of the Developer Parties that pertain to the Project or the Project Site, or are otherwise related to anything authorized pursuant to the terms and conditions of this Agreement.

(D) Closing; Disbursement. Subject to satisfaction of the Disbursement Conditions, the disbursement of the City Grant Funds to 3CDC shall take place on [_____], or such other date as the parties may agree upon so as to enable the Developer Parties to close on the new markets tax credit transaction and all other transactions necessary to finance construction of the Project (the “**Closing Date**”, and the “**Closing**”, respectively). The disbursement of the City Grant Funds shall be made in accordance with, and subject to the conditions of, this Agreement, including the requirement [that 3CDC use the City Grant Funds on the Closing Date solely to fund an equity investment into the Leverage Lender to facilitate the financing of the Project.

(E) No Other City Assistance. Except for the Grant and such other funds provided in accordance with this Agreement, the Developer Parties acknowledge and agree that no additional funds will be requested from the City in connection with the Project. Except for the City’s agreement to provide the City Grant Funds as described in this Agreement, the City shall not be responsible for any costs associated with the Project.

8. FINDLAY COMMUNITY CENTER CONSTRUCTION.

(A) Commencement of Construction. Pursuant to the Findlay Community Center Ground Lease, Project Owner, in conjunction with OTR Holdings, shall proceed with the construction of the Project in accordance with the Final Plans. In the event of construction delays, Project Owner or OTR Holdings shall deliver to the City, for the City’s approval, a revised Construction Schedule. Project Owner, in conjunction with OTR Holdings, shall complete the construction in a timely fashion. Project Owner and OTR Holdings shall comply with and shall cause all contractors and subcontractors working on the Project to comply with all requirements set forth herein, including as included in and referenced in Section 8(C) below.

(B) General Contractor Guaranty. Prior to assumption by OTR Holdings and Project Owner of the obligation hereunder to construct the Project, and to the extent not heretofore in effect as required herein,

Project Owner shall provide City with a guaranty from the general contractor and/or prime subcontractors evidencing its financial capacity to pay for the costs of constructing the Project. The form of such guaranty shall in all respects be satisfactory to the City and shall entitle Project Owner to enforce the guaranty directly against the issuers thereof in the event the work covered by the guaranty is not satisfactorily completed in a timely manner as required under this Agreement.

(C) Applicable Laws. The Developer Parties shall obtain, to the extent not already obtained by the City, and maintain all necessary City and other governmental permits, licenses and other approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements, including, without limitation, those set forth in Exhibit M (Additional Requirements) hereto. By executing this Agreement, the City makes no representations or other assurances to the Developer Parties that they will be able to obtain whatever variances, permits other approvals from B&I, DOTE, other City departments, City Planning Commission, or City Council that may be required in connection with the Project. As provided in Exhibit M hereto, the Developer Parties shall cause laborers and mechanics performing work in connection with the Project to be paid wages in accordance with Ohio prevailing wage requirements. In the event of violations, or allegations of potential violations, of Ohio's prevailing wage laws, the Developer Parties shall protect, defend, indemnify, and hold the City harmless from and against any and all liabilities, claims, costs and expenses arising therefrom.

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

(E) Mechanics' Liens. The Developer Parties shall not permit any mechanics' or other liens to be filed against the Project Site or the Republic ROW during construction. If a mechanics' lien shall at any time be filed, the Developer Parties shall cause such lien to be discharged of record within 30 days' notice of the filing thereof.

(F) Project Information. Upon completion of the Project, the Developer Parties shall provide the City with: (i) a complete set of the Final Plans for the Project and copies of any and all change orders, and such other pertinent documents or reports previously obtained by Project Owner or OTR Holdings relating to the Project, and (ii) verification of actual construction costs for the Project.

9. FINDLAY COMMUNITY CENTER SUBLEASE. [On the Closing Date] and subject to confirmation by the City of satisfaction of the contingencies described in Sections 1(A) and 2(A) herein, Project Owner shall sublease the Findlay Community Center to the City in accordance with the terms of the Findlay Community Center Sublease, pursuant to the terms of which the City will operate the Findlay Community Center. During the term of such sublease, the City shall be solely responsible for the costs associated the operation, management, and maintenance of the Findlay Community Center. Notwithstanding the foregoing, nothing herein shall modify or supersede any of the provisions (if any) set forth in the Findlay Community Center Management Agreement concerning the parties' obligations in regard to paying such costs under that agreement. The term of the Findlay Community Center Sublease shall be [30] years for \$[_____/year] through the term of the Findlay Community Center Sublease, payable in installments due on the [first] day of each calendar quarter.

10. FINDLAY COMMUNITY CENTER MANAGEMENT AGREEMENT; FINDLAY COMMUNITY CENTER SUBMANAGEMENT AGREEMENT; REPUBLIC ROW MANAGEMENT AGREEMENT.

(A) Findlay Community Center Management Agreement. Concurrently with the execution of the Findlay Community Center Sublease, the City will engage Findlay Operator to manage and operate the Findlay Community Center in accordance with the terms of the Findlay Community Center Management Agreement. Upon the start of operation of the Findlay Community Center by Findlay Operator in accordance with the terms of the Findlay Community Center Management Agreement, the City will provide funds to Findlay Operator in the amount of \$400,000 annually, subject to annual appropriation.

(B) Findlay Community Center Submanagement Agreement. Findlay Operator shall enter into a submanagement agreement (the "**Findlay Community Center Submanagement Agreement**") with a third

party (the “**Findlay Daily Operator**”) to manage the daily operations of the Findlay Community Center for Findlay Operator, Findlay Operator, 3CDC, and the City, in coordination with the Cincinnati Recreation Commission (the “**CRC**”), will release a request for proposal to identify the Findlay Daily Operator who will enter into the Findlay Community Center Submanagement Agreement, in a form and substance acceptable to the City, to manage the daily operations of the Findlay Community Center for Findlay Operator. Findlay Operator must obtain written approval from the City prior to the execution of the Findlay Community Center Submanagement Agreement. Throughout the term of the Findlay Community Center Ground Lease, Findlay Operator must (i) obtain written approval from the City for any change in the Findlay Daily Operator (a “**New Findlay Daily Operator**”), (ii) written approval of any Findlay Community Center Submanagement Agreement to be entered into between Findlay Operator and any such New Findlay Daily Operator (a “**New Findlay Community Center Submanagement Agreement**”), and (iii) submit any such proposed New Findlay Daily Operator and/or New Findlay Community Center Submanagement Agreement to the City Manager no sooner than 60 days prior to the expiration or termination of the then existing agreement for the daily operation of the Findlay Community Center.

(C) Republic ROW Management Agreement. Concurrently with the execution of the Findlay Community Center Management Agreement, the City will engage [Findlay Operator] to manage the Republic ROW in accordance with the terms of the Republic ROW Management Agreement.

11. EARLY LEARNING CENTER SUBLEASE AND MANAGEMENT AGREEMENT. Project Owner shall enter into a sublease and management agreement (the “**Daycare Sublease and Management Agreement**”) with a third party (the “**Daycare Operator**”) to manage and operate the Early Learning Childcare Center at the Project Site. Project Owner, 3CDC, and the City will release a request for proposal to identify the Daycare Operator who will enter into the Daycare Sublease and Management Agreement, in a form and substance acceptable to the City, to operate the Early Learning Childcare Center at the Project Site. Project Owner must obtain written approval from the City prior to the execution of the Daycare Sublease and Management Agreement. Throughout the term of the Findlay Community Center Ground Lease, Project Owner must (i) obtain written approval from the City for any change in the Daycare Operator (a “**New Daycare Operator**”), (ii) written approval of any Daycare Sublease and Management Agreement to be entered into between Project Owner and any such New Daycare Operator (a “**New Daycare Sublease and Management Agreement**”), and (iii) submit any such proposed New Daycare Operator and/or New Daycare Sublease and Management Agreement to the City Manager no sooner than 60 days prior to the expiration or termination of the then existing agreement for the operation of the Early Learning Childcare Center.

12. INSURANCE; INDEMNITY.

(A) Insurance during Construction. Until such time as all Project construction has been completed, the Developer Parties shall each maintain the following insurance: (i) Commercial General Liability insurance of at least \$5,000,000 per occurrence, combined single limit (through a combination of primary and excess/umbrella coverage), naming the City as an additional insured, (ii) customary builder’s risk insurance in the amount of 100% of the value of the improvements for their respective improvements, (iii) worker’s compensation insurance in such amount as required by law, (iv) all insurance as may be required by 3CDC’s or Project Owner’s lenders, and (v) such other insurance as may be reasonably required by the City. All insurance policies (excluding worker’s compensation insurance) 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. Prior to commencement of construction of the Project, the Developer Parties shall send proof of all such insurance to the City at 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202, or such other address as may be specified by the City from time to time.

(B) Waiver of Subrogation in Favor of City. 3CDC, OTR Holdings, and Project Owner each hereby waives all claims and rights of recovery, and on behalf of their respective insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all damage to or loss of property that is covered or that would be covered by the insurance required under this Agreement to be maintained by 3CDC, OTR Holdings, and Project Owner, 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 3CDC, Master, Developer and Project Owner shall at all times protect

themselves against such loss or damage by maintaining adequate insurance. 3CDC, OTR Holdings, and Project Owner shall cause their respective property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) Waiver of Subrogation in Favor of the Developer Parties. 3CDC, OTR Holdings, and Project Owner each hereby waives all claims and rights of recovery, and on behalf of their respective insurers, rights of subrogation, against each other and their respective employees, agents, contractors and subcontractors with respect to any and all damage to or loss of property that is covered or that would be covered by the insurance required under this Agreement to be maintained by 3CDC, OTR Holdings, and Project Owner even if such loss or damage arises from the negligence of the other party or its employees, agents, contractors or subcontractors; it being the agreement of the parties that 3CDC, OTR Holdings, and Project Owner shall at all times protect themselves against such loss or damage by maintaining adequate insurance. 3CDC, OTR Holdings, and Project Owner shall cause their respective property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(D) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, the Developer Parties each agree to defend, indemnify and hold the Indemnified Parties (as defined in this Section 12) 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 City, its officers, council members, employees, and agents (the "**Indemnified Parties**") as a result of or arising from the acts of such party or their respective agents, employees, contractors, subcontractors, licensees, invitees, or anyone else acting at their request in connection with their respective portion of the Project. The Developer Parties shall undertake, at their sole expense and through counsel satisfactory to the City, the defense of the City in any lawsuit commenced or threatened as the result, or alleged to be the result, of injury or damage occurring by reason of the construction contemplated in this Agreement. As provided on Exhibit M hereto, the Developer Parties shall cause laborers and mechanics performing work in connection with the Project to be paid wages in accordance with Ohio prevailing wage requirements. In the event the State of Ohio determines or alleges that 3CDC, OTR Holdings, or Project Owner has violated Ohio's prevailing wage laws with respect to the Project, 3CDC, OTR Holdings, or Project Owner (as applicable) shall protect, defend, indemnify, and hold the City harmless from and against any and all liabilities, claims, costs, and expenses arising therefrom.

13. CASUALTY. If the Project is damaged or destroyed by fire or other casualty during construction, 3CDC and Project Owner shall repair and restore the damaged improvements within 6 months or, if justifiably required, within longer period as approved by the City prior to the commencement of such repair and restoration, subject to available insurance proceeds and requirements of the Permitted Mortgagee (as defined below) for such site. The Developer Parties shall not be relieved of any obligations under this Agreement during any period in which the Project is being repaired or restored.

14. DEFAULT; REMEDIES.

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

(i) The dissolution of 3CDC, OTR Holdings, or Project Owner or the filing of any bankruptcy or insolvency proceedings by or against either of them, the appointment of a receiver (temporary or permanent) for 3CDC, OTR Holdings, or Project Owner, the attachment of, levy upon, or seizure by legal process of any property of 3CDC, OTR Holdings, or Project Owner, provided, however, if any involuntary bankruptcy, insolvency, attachment, receivership or levy proceedings is dismissed within 60 days of filing, the same shall not be considered an "event of default" hereunder;

(ii) A default by Project Owner under the *Findlay Community Center Ground Lease*, a default by a Developer Party under the *Grant Agreement*, a default by the Project Owner under the *Findlay Community Center Sublease*, or a default by Findlay Operator under the *Findlay Community Center Management Agreement* or the *Republic ROW Management Agreement* (after, in each case, giving effect to any notice or grace period provided for therein); or

(iii) The failure of 3CDC, OTR Holdings, Project Owner, or Findlay Operator to perform or observe any of their respective obligations, duties, or responsibilities under this Agreement (including, without limitation, the failure to timely complete the Project), and failure by such defaulting party to correct such failure within 30 days after receipt of written notice thereof from the City; *provided, however*, that if the nature of the default is such that it cannot reasonably be cured within 30 days, an event of default shall not be deemed to have occurred if the defaulting party commences to cure the default within such 30 day period and thereafter diligently completes such cure within 90 days after its receipt of the City's initial notice of default. The foregoing notwithstanding, if 3CDC's, OTR Holdings's, Project Owner's, or Findlay Operator's failure to perform or observe any of their obligations, duties, or responsibilities 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 the defaulting party fails to take corrective action immediately upon discovering such dangerous condition or emergency.

(B) Remedies. Upon the occurrence of an event of default under this Agreement, the City shall be entitled to (i) terminate this Agreement by giving 3CDC, Project Owner, and OTR Holdings 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 default, all at the expense of the defaulting party, 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 against the defaulting party. The defaulting party shall be liable for all costs and damages, including, without limitation, reasonable attorneys' fees, suffered or incurred by the City as a result of such event of default under this Agreement or the City's termination of this Agreement. Upon the occurrence of an event of default and within 5 business days after the City's demand, the Developer Parties shall deliver to the City all pertinent documents, records, invoices, and other materials pertaining to the Project that are in the Developer Parties' possession or under their control, including, without limitation, as built-drawings (to the extent that improvements have been completed), appraisals, warranty information, operating manuals, and copies of all third-party contracts entered into by the Developer Parties or their affiliates in connection with the Project. 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.

(C) Permitted Mortgages – Notice & Opportunity to Cure. Notwithstanding the foregoing provisions of this Section 14, the City acknowledges and agrees that: (i) upon request, the City agrees to execute any and all estoppels, consents, and/or subordination agreements in such form as approved by the City, with such approval not to be unreasonably upheld, as needed with respect to the Project Site and the Project, (ii) 3CDC, OTR Holdings, or Project Owner may have obtained or may obtain one or more loans in connection with the construction of the Project, (iii) following the parties' execution of this Agreement, 3CDC, OTR Holdings, or Project Owner may, following the prior written consent of the City, grant to its lenders a leasehold mortgage, strictly limited to the interest of Project Owner under the Findlay Community Center Ground Lease, and other security instruments with respect to Project Owner's leasehold interests in the Project Site, the Findlay Community Center, and the Early Learning Childcare Center as security for the repayment of such loans (a "**Permitted Mortgage**", with the holder of each such Permitted Mortgage being referred to herein as a "**Permitted Mortgagee**"), (iv) if the City sends a notice of default to 3CDC, OTR Holdings, or Project Owner under this Agreement and intends to exercise any right it may have under this Agreement to terminate this Agreement by reason of such default, the City shall, prior to exercising such right, send a copy of such notice of default (in the manner described in Section 15 (*Notices*) below) to each Permitted Mortgagee (but only if the Permitted Mortgagee shall have previously provided the City with the address to which such notices to the Permitted Mortgagee shall be sent), and (v) the City shall permit each Permitted Mortgagee a reasonable opportunity to cure 3CDC's, OTR Holdings's or Project Owner's default; *provided, however*, that if the Permitted Mortgagee has not notified the City in writing, within 60 days after receiving a copy of the notice of default, that the Permitted Mortgagee has commenced to cure the default (by way of instituting foreclosure proceedings or otherwise), or if the Permitted Mortgagee notifies the City in writing, within 60 days after receiving a copy of the notice of default, that the Permitted Mortgagee has commenced to cure the default but the Permitted Mortgagee fails to completely cure the default to the City's reasonable satisfaction within 120 days after receiving a copy of the notice of default, the City shall be free to exercise its right to terminate this Agreement. Nothing in this Agreement shall be construed as requiring any Permitted Mortgagee to cure defaults of 3CDC, OTR Holdings, or Project Owner under this Agreement. If the nature of the default is such that the Permitted Mortgagee determines that, in order to cure such default, it is necessary to hire a contractor or other third party to do work on-site, all such persons and companies shall

be subject to the City's prior written approval and grant of right of entry, and shall perform such work in accordance with all legal requirements.

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

To the City:
City of Cincinnati
Department of Community and Economic Development
Attn: Director
805 Central Avenue, Ste. 700
Cincinnati, Ohio 45202

To 3CDC:
Cincinnati Center City Development Corporation
Attn: _____

Cincinnati, Ohio _____

To OTR Holdings
OTR Holdings, Inc.
Attn: _____

Cincinnati, Ohio _____

To Project Owner
Findlay Community Center LLC
Attn: _____

Cincinnati, Ohio _____

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

16. REPRESENTATIONS, WARRANTIES, AND COVENANTS. 3CDC, OTR Holdings, and Project Owner each, respectively, as applicable, make the following representations, warranties, and covenants to induce the City to enter into this Agreement:

(i) 3CDC and OTR Holdings are each a nonprofit corporation duly organized and validly existing under the laws of the State of Ohio, each has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and neither is in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement.

(ii) Project Owner is a limited liability company duly organized and validly existing under the laws of the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement.

(iii) Each of the Developer Parties has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for therein. This Agreement has by proper action been duly authorized, executed and delivered by 3CDC, OTR Holdings, and Project Owner, respectively, and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid and binding obligations of the Developer Parties.

(iv) The execution, delivery and performance by each of 3CDC, OTR Holdings, and Project Owner of this Agreement and the consummation of the transactions contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or the organizational documents of any of 3CDC, OTR Holdings, or Project Owner, or any mortgage, indenture, contract, agreement or other undertaking to which any of 3CDC, OTR Holdings, or Project Owner is a party or which purports to be binding upon 3CDC, OTR Holdings, or Project Owner, as the case may be, or upon any of their respective assets, nor is any of 3CDC, OTR Holdings, or Project Owner in violation or default of any of the foregoing.

(v) There are no actions, suits, proceedings or governmental investigations pending, or to the knowledge of 3CDC, OTR Holdings, or Project Owner, threatened against or affecting any of 3CDC, OTR Holdings, or Project Owner, at law or in equity or before or by any governmental authority.

(vi) 3CDC, OTR Holdings, and Project Owner shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute or governmental proceeding or investigation affecting 3CDC, OTR Holdings, or Project Owner that could reasonably be expected to interfere substantially with its normal operations or materially and adversely affect its financial condition.

(vii) The statements made in the documentation provided by 3CDC, OTR Holdings, and Project Owner to the City that are descriptive of 3CDC, OTR Holdings, Project Owner or the Project have been reviewed by 3CDC, OTR Holdings, and Project Owner 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.

(viii) Pursuant to Section 301-20 of the Cincinnati Municipal Code (“**CMC**”), neither 3CDC, OTR Holdings, or Project Owner, nor any of their 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.

17. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Until such time as the Project has been completed, 3CDC 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 3CDC, OTR Holdings, Project Owner, Findlay Operator, 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 3CDC furnished to the City shall be in such form as the City may from time to time require.

(B) City’s Right to Inspect and Audit. From and after the Effective Date and for a period of three years after termination of all agreements contemplated hereunder with respect to the Project, 3CDC shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit 3CDC’s, OTR Holdings’s, Project Owner’s and Findlay Operator’s Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by 3CDC, OTR Holdings, Project Owner or Findlay Operator to the City, 3CDC, OTR Holdings, Project Owner or Findlay Operator, as applicable, shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

18. GENERAL PROVISIONS.

(A) Assignment. 3CDC, OTR Holdings, and Project Owner shall not assign their respective rights or interests under this Agreement without the prior written consent of the City Manager; provided that assignments to their respective affiliates (with prior written notice to the City), and a collateral assignment of their respective rights under this Agreement to their respective lenders for the Project, shall be permitted. An assignment of rights by 3CDC, OTR Holdings, or Project Owner under this Agreement shall not relieve such party from any obligations or liability under this Agreement.

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

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

(D) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and 3CDC, OTR Holdings, and Project Owner agree that venue in such court is proper. The Developer Parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

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

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

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

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

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

(J) Recognition of City Assistance. The Developer Parties shall acknowledge the financial support of the City with respect to this Agreement in all printed promotional materials (including, without limitation, informational releases, pamphlets, and brochures, construction signs, project and identification signage, and stationery) and any publicity (such as, but not limited to, materials appearing on the Internet, television, cable television, radio, or in the press or any other printed media) relating to the Project. In identifying the City as a funding source, the Developer Parties shall use either the phrase "Funded 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.

(K) No Third Party Beneficiaries. The parties hereby agree that, except for the rights of Permitted Mortgagees under Section 14 (*Default; Remedies*) hereof, no third party beneficiary rights are intended to be created by this Agreement.

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

(M) 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.

(N) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the Project shall have any personal financial

interest, direct or indirect, in any Developer Party or in the Project, and the Developer Parties shall take appropriate steps to assure compliance.

(O) Administrative Actions. To the extent permitted by applicable laws, 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 or the funding hereunder.

(P) Contingency for Legislative Authorization from City Council. Notwithstanding anything to the contrary in this Agreement, the City shall not be in breach of this Agreement, or any of the other agreements contemplated hereby, if for any reason City Council does not pass any and all additional ordinances, including appropriation of funds, as may be necessary for the City to carry out the terms of this Agreement

(Q) Joint and Several Liability. The obligations and liability of 3CDC, OTR Holdings, and Project Owner under this Agreement are joint and several, except as otherwise expressly indicated. In dealing with said entities, the City shall be entitled to rely upon information, notices, documents, and the like received by the City from only one of said entities to the same extent as if the same had been provided to the City by all entities.

(R) 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.

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

Exhibit A – *Site Map*

Exhibit B – *Legal Description – 1829 Vine*

Exhibit C – *Vacation Plat – Republic Street*

Exhibit D – *Legal Description – Republic Street*

Exhibit E – *Project Site Plan*

Exhibit F – *Preliminary Budget*

Exhibit G – *Form of Ground Lease*

Exhibit H – *Form of Community Center Sublease*

Exhibit I – *Form of Professional Services Management Agreement – Findlay Community Center*

Exhibit J – *Form of Professional Services Management Agreement – Republic ROW*

Exhibit K – *Sources of Project Funds*

Exhibit L – *Form of Developer Parcel Deed*

Exhibit M – *Additional Requirements*

SIGNATURES ON FOLLOWING PAGES

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

CITY OF CINCINNATI

By: _____
Sheryl M. M. Long, City Manager

Date: _____, 2025

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code : _____

Amount: _____

By: _____
Karen Alder, City Finance Director

[Signature Page for Funding and Development Agreement – Findlay Community Center]

CINCINNATI CENTER CITY DEVELOPMENT CORPORATION
an Ohio nonprofit corporation

By: _____

Printed Name:

Title:

Date: _____, 2025

OTR HOLDINGS, INC.
an Ohio corporation

By: _____

Printed Name:

Title:

Date: _____, 2025

FINDLAY COMMUNITY CENTER LLC
an Ohio limited liability company

By: _____

Printed Name:

Title:

Date: _____, 2025

[Signature Page for Funding and Development Agreement – Findlay Community Center]

Exhibit A

Site Map






-  CITY PARCELS
-  DEVELOPER PARCEL
-  FORMER CITY ROW
-  REPUBLIC ROW

Exhibit B

Legal Description – 1829 Vine

Property Address: 1829 Vine Street, Cincinnati, Ohio 45202
Auditor's Parcel No.: 094-0008-0352-00

The Land referred to herein below is situated in the County of Hamilton, State of Ohio and is described as follows:

Situated in the City of Cincinnati, Hamilton County, Ohio: Being a part of Lot 25 of James Findlay's Northern Liberties Subdivision as recorded in Deed Book R-2, Page 334 of Hamilton County, Ohio records, described as follows:

Beginning in the West line of Vine Street, a distance of 51.66 feet northwardly from the intersection of the West line of Vine Street and the North line of a twelve foot alley, said intersection being also the southeast corner of said lot 25; thence South 74° 02' West a distance of 59.81 feet; thence North 15° 38' West enclosing an angle of 89° 40' a distance of 38.69 feet to the South line of Registered Land #1121 of the Hamilton County, Ohio Registered Land Records; thence North 74° 02' East along the South line of Registered Land enclosing an angle of 90° 20' a distance of 59.92 feet to the West line of Vine Street; thence South 15° 48' East along the West line of Vine Street enclosing an angle of 89° 50' a distance of 38.69 feet to the place of origin, forming an interior angle of 98° 10'. Containing 0.0532 acres, more or less.

Exhibit C

Vacation Plat – Republic Street

TO BE ATTACHED

Exhibit D

Legal Description – Republic Street

Berding Surveying



GPS Surveying • 3D Laser Scanning

Description for: 3CDC – 0.1341 Acre Vacation
Location: Findlay Recreation, City of Cincinnati

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

COMMENCING at a set iron pin at the intersection of the south line of Findlay Street and the west line of Republic Street;

Thence along the west line of said Republic Street, South 09°40'02" East, 64.35 feet to a set cross notch and the **POINT OF BEGINNING**;

Thence North 80°00'47" East, 30.00 feet to a set cross in the east line of said Republic Street, said point also being the southwest corner of a tract conveyed KC Speed Investments LLC in Official Record 14424, Page 1531 of the Hamilton County Recorder's Office;

Thence along the east line of said Republic Street, South 09°40'02" East, 194.73 feet to a set iron pin in the west line of Hamilton County Auditor's parcel 094-0008-0345 conveyed to City of Cincinnati in Official Record 7041, Page 2282;

Thence South 80°15'45" West, 30.00 feet to a set iron pin in the west line of aforementioned Republic Street, said point also being in the east line of Hamilton County Auditor's parcel 094-0008-0330 conveyed to City of Cincinnati in Deed Book 3884, Page 238;

Thence along the west line of said Republic Street, North 09°40'02" West, 194.60 feet to the **POINT OF BEGINNING**.

CONTAINING 0.1341 ACRES. Together with and subject to all easements of record.

Being part of the right of way of Republic Street.

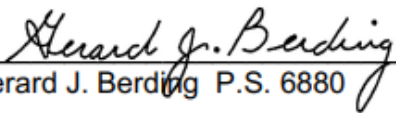
G.J. Berding Surveying, Inc.

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



Bearings are based on State Plane Coordinate System Ohio South Zone (NAD83).
All iron pins set are 5/8" x 30" rebar with cap stamped "G.J. Berding Surveying, Inc."

Prepared by G.J. BERDING SURVEYING, INC. on March 10, 2025. Based on a
vacation plat prepared by G.J. BERDING SURVEYING, INC. on January 10, 2025, last
revised on March 10, 2025.


Gerard J. Berding P.S. 6880

03/10/2025
Date



G.J. Berding Surveying, Inc.

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

Exhibit E

Project Site Plan



 FINDLAY COMMUNITY CENTER PROJECT SITE

 REPUBLIC STREET STUB

Exhibit F

Preliminary Budget

| Uses | |
|--------------|---------------------|
| Acquisition | \$416,000 |
| Hard Costs | \$33,431,236 |
| Soft Costs | \$12,253,395 |
| | |
| TOTAL | \$46,100,631 |

Exhibit G

Form of Ground Lease

SEE ATTACHED

COMMUNITY CENTER GROUND LEASE

(City's lease of property near Findlay Market to Findlay Community Center LLC for redevelopment and construction of a community center and childcare center for a term of 75 years)

THIS COMMUNITY CENTER GROUND LEASE (this "**Lease**") 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 **FINDLAY COMMUNITY CENTER LLC**, an Ohio limited liability company, the address of which is 1203 Walnut Street, 4th floor, Cincinnati, Ohio 45202 ("**Ground Lessee**"), a subsidiary of Cincinnati Center City Development Corporation, an Ohio nonprofit corporation ("**3CDC**").

RECITALS:

A. The City is the fee owner of certain real property located at 1811 Vine Street, 1829 Vine Street, and 1820 Republic Street in the Over-the-Rhine neighborhood of Cincinnati and State of Ohio, as more particularly depicted on Exhibit A (*Depiction of Leased Premises*) and described on Exhibit B (*Legal Description of Leased Premises*) hereto (the "**Leased Premises**"), all as more particularly described in Section 1 below.

B. Pursuant to a certain *Funding and Development Agreement* dated _____, 2025 (the "**Development Agreement**"), by and between the City, 3CDC, Ground Lessee, and OTR Holdings, Inc., an Ohio corporation (an affiliate of 3CDC), Ground Lessee is redeveloping the Leased Premises, at an estimated total project cost of \$[45,968,411], into (i) an approximately [59,700] square foot community center and approximately [7,900] square foot public outdoor play area (collectively, the "**Findlay Community Center**"), and (ii) an approximately [8,400] square foot early learning childcare center and approximately [4,900] square foot childcare center playground (collectively, the "**Early Learning Childcare Center**"; and, together with the Findlay Community Center, the "**Project**" and such improvements, collectively, the "**Improvements**"). The Findlay Community Center will offer traditional recreation amenities such as an aquatics center, gymnasium, roller skating rink, and fitness center in addition to multipurpose spaces to serve community activities. The Early Learning Childcare Center will serve 60-75 children ages 6 weeks through 5 years.

C. Pursuant to a separate *Sublease*, dated as of the Effective Date, between Ground Lessee and the City (the "**Sublease**"), Ground Lessee is subleasing the Findlay Community Center to the City.

D. Pursuant to a separate *Professional Services Management Agreement*, dated as of the Effective Date (the "**Management Agreement**"), between the City and Findlay Community Center Manager, LLC ("**Manager**"), a wholly owned subsidiary of 3CDC, the City has engaged Manager, following the construction of the Findlay Community Center improvements, to manage and operate the Findlay Community Center throughout the term of the Sublease.

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

F. The City's Real Estate Services Division has determined, by appraisal, that the current fair market rental value of the Leased Premises is approximately \$130,500 per year.

G. The City has determined that (i) leasing the Leased Premises to Ground Lessee for less than its fair market rental value, and (ii) eliminating competitive bidding in connection with the City's lease of the Leased Premises is in the best interest of the City because of the economic development, financial, and societal benefits that the City will achieve from the Project for the benefit of Cincinnati residents and particularly the people of the Over-the-Rhine neighborhood.

H. There is no City funding being provided under this Lease.

I. Notwithstanding anything in the Sublease to the contrary, and based on the terms of this Agreement, the City has determined that the Leased Premises will not be needed for other municipal purposes during the Term.

J. City Planning Commission, having the authority to approve the change in use of the Leased Premises, approved the City's lease of the Leased Premises to Ground Lessee at its meeting on January 17, 2025.

K. Cincinnati City Council authorized the execution of this Lease to facilitate the Project pursuant to Ordinance No. _____-2025, duly passed on [_____], 2025.

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

1. LEASE OF LEASED PREMISES.

(a) Definitions. Notwithstanding the definitions set forth in the recitals hereof, as used hereinafter, "**Leased Premises**" means the property located at 1811 Vine Street, 1829 Vine Street, and 1820 Republic Street in the City of Cincinnati and State of Ohio, including all land, as shown on Exhibit A (Depiction of Leased Premises) and described on Exhibit B (Legal Description of Leased Premises) hereto, and, where applicable, together with the appurtenant easements that benefit the Leased Premises as described in Section 1(b) below.

(b) Grant. On the terms and conditions set forth in this Lease, the City does hereby lease the Leased Premises to Ground Lessee, and Ground Lessee does hereby lease the Leased Premises from the City, for the Term (as defined below). The City leases the Leased Premises to Ground Lessee (i) subject to the easements that encumber the Leased Premises, and (ii) together with the easements that benefit the Leased Premises.

(c) Duke Energy, GCWW, MSD, and AltaFiber. Ground Lessee acknowledges that the local utility providers, Duke Energy, Greater Cincinnati Water Works, Metropolitan Sewer District of Greater Cincinnati, and AltaFiber may have existing aboveground and underground facilities in the area. Ground Lessee shall (i) ensure that such existing facilities are not disturbed and that the utility providers' access to the Leased Premises is not denied or unreasonably impaired, (ii) be responsible for paying all costs of relocating such utilities if relocation is desired in connection with the Project, and (iii) be responsible for reimbursing the utility providers for the cost of repairing any and all damage to such facilities caused by Ground Lessee, its employees, agents, contractors, subcontractors, licensees, or invitees in connection with the Project.

(d) As-Is Condition. The parties acknowledge and agree that, as part of the redevelopment of the Leased Premises, Ground Lessee will be conducting its own title search, survey work, environmental assessments, soil and geotechnical studies, and other due diligence in order to familiarize itself with the condition and characteristics of the Leased Premises. The City has not made any representations or warranties concerning the title, condition, or characteristics of the Leased Premises or the suitability or fitness of the Leased Premises for the operation of a community center or early learning childcare center, and Ground Lessee acknowledges and agrees that Ground Lessee is not relying upon any such representations or warranties from the City. Without limitation of the foregoing, under no circumstances shall the City be responsible or liable for any preexisting environmental conditions affecting the Leased Premises. On the Commencement Date (as defined below), Ground Lessee shall accept the Leased Premises in "as is" condition.

(e) Title Matters. The rights herein granted to Ground Lessee are subject and subordinate to the rights of utility providers and others to enter upon the Leased Premises from time to time pursuant to recorded easements, those easements granted by law under Ohio Revised Code Section 723.041, and the

like affecting the Leased Premises (if any). Ground Lessee shall not take any actions that would violate any easements, covenants, restrictions, or other matters of record affecting the Leased Premises. Ground Lessee shall not have the right to grant any easements or otherwise encumber the City's title to the Leased Premises without the City's prior written consent, and Ground Lessee acknowledges that any further encumbrances may require approval of City Council under the Cincinnati Municipal Code. The City shall have the right to grant easements to third parties and to take whatever other actions affecting the Leased Premises as may be deemed reasonably necessary by the City so long as such actions do not unreasonably impair the rights granted to Ground Lessee under this Lease; however, the City shall not grant a mortgage on the Leased Premises to any third party. The foregoing notwithstanding, the City represents to Ground Lessee that, to the best of its actual knowledge, (i) the City has not previously leased the Leased Premises or any portion thereof to any third party, and (ii) there is no litigation, pending or threatened, that would affect the City's performance under this Lease or impair Ground Lessee's rights hereunder.

(f) Coordinated Report Conditions. Ground Lessee acknowledges that it has received a copy of, and must satisfy any and all conditions set forth in, the City Coordinated Reports #4-2025 and #27-2024, unless and until each condition set forth therein has been satisfied or waived in writing by the City, in the City's sole and absolute discretion. Said Coordinated Report #4-2025 and Coordinated Report #27-2024, and the conditions provided for therein, are hereby incorporated herein as material terms, conditions, and obligations of Ground Lessee under this Lease, including, without limitation, creating new utility easements if required by the responding utility companies.

(g) City's Right to Access Leased Premises. The City shall have the right for its employees and agents to enter upon the Leased Premises from time to time, for any purpose, including, without limitation, accessing adjacent City-owned property and any City-owned utilities on the Leased Premises; *provided, however,* that in exercising such rights (i) the City shall not unreasonably disrupt Ground Lessee's use of the Leased Premises for the approved permitted uses, and (ii) except in emergencies, the City shall give Ground Lessee reasonable written notice prior to entering the Leased Premises. Notwithstanding the foregoing, nothing in this paragraph shall in any way limit the inspection rights the City otherwise legally possesses, whether in connection with its police powers, permitting, or otherwise.

2. CONSTRUCTION; OWNERSHIP OF IMPROVEMENTS.

(a) Construction. Ground Lessee shall commence construction at the Leased Premises promptly following the Effective Date and shall thereafter diligently pursue the same until completion, in accordance with the requirements set forth on Exhibit C (Construction Requirements) and Exhibit D (Additional Requirements) hereto.

(b) Ownership of Improvements. Throughout the Term, Ground Lessee shall be deemed to be the owner of the Improvements for federal income tax purposes (by way of clarification, this provision shall mean the Improvements only, and Ground Lessee's interest in the land shall be only the leasehold interest created under this Lease), and the parties hereto shall take no position to the contrary.

3. TERM. The term (the "**Term**") of this Lease shall commence on the Effective Date (also referred to herein as the "**Commencement Date**"), and, unless sooner terminated in accordance with the provisions of this Lease, shall expire on the date that is **seventy-five (75) years** after the Commencement Date (herein, the "**Expiration Date**"). All obligations of Ground Lessee under this Lease that have accrued but have not been fully performed as of the Expiration Date or sooner termination date of this Lease, including, without limitation, indemnity obligations, shall survive such expiration or termination until fully performed. If the parties desire to extend the Term of this Lease upon the expiration of the initial Term, the parties shall negotiate in good faith the terms and conditions of such extension.

4. PERMITTED USE. The Leased Premises shall be used solely for the redevelopment, leasing, and operation of a community center and early learning childcare center, and any and all ancillary uses reflected on the Final Plans (as defined in the Development Agreement), and for no other purpose. Ground Lessee shall maintain the Leased Premises in compliance with all applicable federal, state, and local laws, codes, ordinances, and other governmental requirements applicable to the Leased Premises, including, without limitation, all environmental laws and those set forth on Exhibit D hereto (collectively, "**Legal**

Requirements). Ground Lessee's temporary closing of portions of the Leased Premises for maintenance and repairs shall not constitute a violation of this section provided that such activities are done in accordance with all Legal Requirements.

5. RENT.

(a) Base Rent. On the Commencement Date, and on each anniversary thereof throughout the Term, Ground Lessee shall pay the City base rent ("**Base Rent**") in the amount of One Dollar (\$1.00) per year. Ground Lessee shall pay the City Base Rent in advance for the Term concurrently with its execution of this Lease.

(b) Additional Expenses. This is a "triple net" lease, and throughout the Term, Ground Lessee shall pay all costs and expenses associated with the Leased Premises. Ground Lessee shall make (or cause to be made) payments for all such costs or expenses directly to the persons or entities to whom such payments are owed. In the event that Ground Lessee fails to make, or cause to be made, payment for any cost or expense associated with the Leased Premises in a timely manner, the City shall have the right, but not the obligation, to make such payment on behalf of Ground Lessee. Except as otherwise set forth in the Sublease, to the extent that the City, rather than Ground Lessee, pays any cost or expense that would otherwise be payable by Ground Lessee under this Lease, Ground Lessee shall reimburse the City for such costs or expenses, as additional rent, within 30 days after Ground Lessee's receipt of documentation substantiating the same.

(c) Late Charge. If Ground Lessee fails to pay Base Rent or any other amount due and payable to the City under this Lease when due, and the same remains overdue for longer than 30 days past the due date, the overdue amount shall thereafter bear interest until paid at the greater of 10% or the rate that is 4% higher than the prime rate then most recently published in the Wall Street Journal, but in no case greater than the highest legal rate.

6. REAL ESTATE TAXES. If the Leased Premises is or becomes subject to real estate taxes, then Ground Lessee shall pay (or cause to be paid) all real estate taxes and assessments levied against the Leased Premises that become due and payable during the Term, if any. Upon each such payment, Ground Lessee shall furnish the City with appropriate evidence of payment. If Ground Lessee institutes proceedings to contest the validity or amount of such taxes, the City, at no cost to the City, shall cooperate with Ground Lessee to the extent that the participation of the owner of the lessor's interest under this Lease is required, but Ground Lessee may not defer or fail to timely make payment of such taxes during such contest. Ground Lessee shall be entitled to any and all amounts recovered which relate to tax payments previously made by Ground Lessee. Notwithstanding the foregoing, the City reserves the right to evaluate, on a case by case basis, the merit of Ground Lessee's contest and reserves the right not to cooperate in such contest if, in the reasonable determination of the City, such contest would not be in the best interest of the public. In the event that any taxes are levied against the Leased Premises, for any reason, and the same are not paid in a timely manner by Ground Lessee, the City shall have the right, but not the obligation, to pay such taxes on behalf of Ground Lessee and any payment so made shall be due to the City from Ground Lessee in the manner described in Section 5(b) above for other costs and expenses and be subject to the late charge of Section 5(c).

7. MAINTENANCE AND REPAIRS; GROUND LESSEE'S OPERATION OF LEASED PREMISES FOLLOWING TERMINATION OF SUBLEASE; COVENANT AGAINST WASTE.

(a) Maintenance and Repairs. During the Term of this Lease, Ground Lessee shall assume all responsibility for the maintenance and repair of the Leased Premises and the Improvements, including, without limitation, the maintenance and repair of foundations, interior and exterior walls, the roofs and other structural components, heating, ventilation and air conditioning systems, plumbing fixtures, electrical and mechanical systems, and abutting sidewalk areas and signage. Lessee shall further assume all responsibility for cleaning and daily upkeep of the Leased Premises and the Improvements and shall keep the same in a continuous state of good, safe, orderly, and sanitary state of condition and repair, including keeping the Leased Premises and the sidewalks, curbs, and landscaping clean and in good condition free of accumulations of dirt, rubbish, snow, and ice. *The City shall not have any maintenance or repair obligations*

or any obligation to provide services for the benefit of the Leased Premises under this Lease. (For clarity, this paragraph (a) shall not be deemed as modifying or superseding any of the provisions set forth in the Management Agreement or the Sublease concerning the parties' maintenance and repair obligations under those agreements.) In the event that Ground Lessee fails to properly maintain, repair, or keep any part of the Leased Premises or Improvements in a good, safe and sanitary state and condition of repair, and such failure continues for a period of 30 days after notice of the same from the City, the City may, but shall not be obligated to, take any action necessary to correct such condition to the satisfaction of City. Should such condition be of a nature which presents an imminent risk of further damage to the Leased Premises, the Improvements, abutting property, or to the health or safety of persons on or near the Leased Premises, the City may, but shall not be obligated to, immediately take any action necessary to correct such condition to the satisfaction of the City. Any cost or expense incurred by the City as a result of the City performing any maintenance or repairs under this provision shall be due to the City from Ground Lessee as an additional expense in the manner described in Sections 5(b-c) above.

(b) Covenant Against Waste. During the Term of this Lease, Ground Lessee shall not cause or permit any waste, damage, or injury to the Leased Premises.

8. ALTERATIONS; SIGNS; NO LIENS.

(a) Alterations. From and after substantial completion of the construction of the Improvements, Ground Lessee shall not make any material alterations, additions, or other changes to the Leased Premises without the prior written consent of the City, which consent shall not be unreasonably withheld, including, without limitation, changes that affect the structural portions of the Improvements, the mechanical equipment serving the Improvements or the Leased Premises, the utility systems serving the Improvements or the Leased Premises, or the ingress, egress, or traffic flow within the Leased Premises, nor shall Ground Lessee make any alterations, additions, or other changes that would diminish the fair market value of the Leased Premises or which are not consistent with the purposes of the Project. Ground Lessee shall have the right to make all minor and cosmetic type alterations to the Leased Premises without having to obtain the City's prior consent. All alterations made by Ground Lessee shall be made in a good and workmanlike manner, in compliance with all Legal Requirements, shall not diminish the value of the Leased Premises, and shall be consistent with the quality, design, functionality, and aesthetic appeal of the Leased Premises. Once installed, Ground Lessee shall not remove such alterations (unless such removal shall have been consented to in writing by the City), and Ground Lessee shall surrender the same to the City at the end of the Term as described in Section 15 (*Surrender; Holdover*) below.

(b) Signs. Ground Lessee shall be permitted to install such directional, informational, advertising, and other signs at the Leased Premises as Ground Lessee deems appropriate provided that all such signs comply with all Legal Requirements. Ground Lessee shall, at its expense, keep all signs in good condition and repair.

(c) No Liens. If any mechanics' lien or other similar lien is filed against the Leased Premises as a result of labor or material furnished at Ground Lessee's request, Ground Lessee shall cause the lien to be released or bonded off within 30 days following the filing of such lien.

9. PERMITTED LEASEHOLD MORTGAGES.

(a) Permitted Mortgages. The parties acknowledge and agree that (i) Ground Lessee has obtained or will obtain one or more loans in connection with the redevelopment of the Leased Premises, and (ii) following the parties' execution of this Lease, Ground Lessee may grant to its lenders a leasehold mortgage and other security instruments with respect to Ground Lessee's leasehold interests in the Leased Premises as security for the repayment of such loans (herein, a "**Permitted Mortgage**," with the holder of each such Permitted Mortgage being referred to herein as a "**Permitted Mortgagee**"). Prior to the execution of a Permitted Mortgage, Ground Lessee shall deliver to the City the form of the proposed Permitted Mortgage and proposed Permitted Mortgagee and such other financial and other information about the proposed Permitted Mortgagee as the City may reasonably request. The City shall review such information and documentation for the purpose of determining whether the proposed Permitted Mortgagee is financially capable of performing the obligations of Ground Lessee under this Lease should it succeed to the interest of

Ground Lessee hereunder upon foreclosure of the Permitted Mortgage. The City shall use reasonable efforts to notify Ground Lessee of the City's determination within 10 days after receiving Ground Lessee's request for approval and all requested pertinent information. The failure of the City to respond shall be deemed as a denial of approval. From and after the date of the parties' execution of this Lease, Ground Lessee shall not refinance the debt on the Leased Premises without prior written authorization from the City (including written recommendation by the City's Finance Director). At the end of the Term, Ground Lessee shall surrender the Leased Premises to the City free and clear of all Permitted Mortgages.

(b) Notice to Permitted Mortgagees and Opportunity to Cure. If the City sends a notice of default to Ground Lessee under this Lease and intends to exercise any right it may have under this Lease to terminate this Lease by reason of such default, the City shall, prior to exercising such right, send a copy of such notice of default to each Permitted Mortgagee pursuant to Section 16 hereof and at the address set forth therein. The City shall send notices to the Permitted Mortgagees in the same manner in which the City sends notices to Ground Lessee under this Lease. Notwithstanding anything in Section 12 (*Default; Remedies*) below to the contrary, the City shall permit each Permitted Mortgagee a reasonable opportunity to cure Ground Lessee's default; provided, however, that if the Permitted Mortgagee has not notified the City in writing, within 60 days after receiving a copy of the notice of default, that the Permitted Mortgagee has commenced to cure the default (by way of instituting foreclosure proceedings or otherwise), or if the Permitted Mortgagee notifies the City in writing, within 60 days after receiving a copy of the notice of default, that the Permitted Mortgagee has commenced to cure the default but the Permitted Mortgagee fails to completely cure the default to the City's reasonable satisfaction within 120 days after receiving a copy of the notice of default, the City shall be free to exercise its right to terminate this Lease. Nothing in this Lease shall be construed as requiring any Permitted Mortgagee to cure defaults of Ground Lessee under this Lease. If the nature of the default is such that the Permitted Mortgagee determines that, in order to cure such default, it is necessary to hire a contractor or other third party to do work on-site, all such persons and companies shall be subject to the City's prior written approval and shall perform such work in accordance with all Legal Requirements.

(c) Ground Lessee's Default under Permitted Mortgages. If Ground Lessee receives a notice of default from any Permitted Mortgagee, Ground Lessee shall promptly send a copy of each such notice to the City. If, as a result of Ground Lessee's default under a Permitted Mortgage, the Permitted Mortgagee exercises any right that it may have under the Permitted Mortgage to institute foreclosure proceedings, the acquisition of Ground Lessee's leasehold estate by the Permitted Mortgagee or purchaser at foreclosure shall not be effective unless and until (i) if Ground Lessee is then in default under this Lease, all rent and other amounts then owed by Ground Lessee under this Lease shall have been paid and all nonmonetary defaults under this Lease that are capable of being cured shall have been cured, (ii) the City shall have received financial and business information that establishes to the City's satisfaction that such Permitted Mortgagee or purchaser at foreclosure has the financial strength and business experience to satisfactorily perform the obligations of Ground Lessee under this Lease (provided that each of [Fifth Third SubCDE, LLC, a ____ limited liability company,] and MBS-UI Sub-CDE __, LLC, a _____ limited liability company, shall be deemed to satisfy the requirements of this clause provided the financial condition of each shall have remained stable since the Effective Date hereof); and (iii) the City shall have received a copy of the fully executed instrument evidencing such acquisition containing an express assumption by the Permitted Mortgagee or purchaser at foreclosure of all of Ground Lessee's obligations and liability under this Lease. The City may waive any or all of such requirements in the preceding sentence at its sole discretion. Ground Lessee shall reimburse the City for any and all out of pocket costs incurred by the City in connection with any such mortgage foreclosure.

(d) Subordination of City's Rights of Distraint with Respect to Ground Lessee's Personal Property. Notwithstanding any existing or future statute, law or rule of law to the contrary, the City hereby agrees that any rights of distraint arising in favor of the City under this Lease to any machinery, equipment, apparatus, appliances, goods, chattels, and any other personal property located upon the Leased Premises, or any portion thereof, and belonging to Ground Lessee shall be subject and subordinate to the rights of any holder of a Permitted Mortgage. Although the foregoing subordination shall be self-operative without the necessity for any further instrument or document, the City hereby agrees, upon written request from Ground Lessee, to furnish written confirmation thereof to Ground Lessee and any vendor, supplier, holder of a security interest in Ground Lessee's property, or any other third party designated by Ground Lessee.

(e) City's Transfer of its Interest in the Leased Premises. If during the Term of this Lease the City sells or otherwise transfers its interest in the Leased Premises to a third party, such sale or transfer shall be subject to this Lease and to the rights of each Permitted Mortgagee hereunder.

10. **INSURANCE; INDEMNITY.**

(a) Insurance. From and after substantial completion of construction and thereafter throughout the Term, Ground Lessee shall maintain, or shall cause to be maintained, the following insurance:

(i) special peril (formerly known as "all-risk") full replacement cost insurance on the Improvements, naming the City and Ground Lessee as their interests may appear;

(ii) property insurance on any and all personal property of Ground Lessee from time to time located at the Leased Premises in the amount of the full replacement cost thereof;

(iii) Commercial General Liability insurance covering claims for bodily injury, personal injury or death, and property damage occurring at the Leased Premises in an amount not less than \$3,000,000 per occurrence, combined single limit or such additional amount as the City or its insurance or risk advisors may determine from time to time to be customary for comparable facilities in the Cincinnati area, naming the City as an additional insured;

(iv) workers' compensation insurance as required by law; and

(v) such other or additional amounts of insurance as may be required under any and all Permitted Mortgages.

The insurance requirements during the initial construction of the Improvements are set forth on Exhibit C hereto.

(b) Policy Requirements. Ground Lessee's insurance policies shall (i) be written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better, (ii) provide that they may not be canceled or modified without at least 30 days prior written notice to the City, and (iii) be primary and noncontributory with respect to insurance maintained by the City. Prior to the date on which the newly renovated Leased Premises is opened to the public, and annually thereafter, Ground Lessee shall provide the City with a certificate of insurance evidencing the insurance required to be maintained by Ground Lessee hereunder.

(c) Waiver of Subrogation. Ground Lessee hereby waives all claims and rights of recovery, and on behalf of Ground Lessee'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 Lease to be maintained by Ground Lessee, 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 Ground Lessee shall at all times protect itself against such loss or damage by maintaining adequate insurance. Ground Lessee shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(d) Indemnity. The City assumes no responsibility for any acts, errors, or omissions of Ground Lessee or any employee, agent, representative, or any other person acting or purporting to act for or on behalf of Ground Lessee. Ground Lessee shall defend (with counsel reasonably acceptable to the City), indemnify, and hold the City, its officers, council members, employees, agents, contractors, and subcontractors (collectively, the "**Indemnified Parties**") harmless from and against all costs (including, without limitation, legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against the Indemnified Parties or any one or more of them as a result of or arising from (i) the acts of Ground Lessee, its agents, employees, licensees, invitees, contractors, subcontractors or anyone else acting at the request of Ground Lessee in connection with Ground Lessee's activities at or with respect to the Leased Premises, (ii) in connection with any breach by Ground Lessee (or sublessee pursuant to the Early Learning Childcare Center Lease (as defined below), or

any other permitted sublessee or assignee), in each case under this Lease, or (iii) any and all claims arising during the Term of this Lease from any condition of the Leased Premises, or of any space therein or appurtenant or adjoining thereto.

11. CASUALTY; EMINENT DOMAIN. If the Improvements are damaged or destroyed by fire or other casualty, or if any portion of the Leased Premises is taken by exercise of eminent domain (federal, state, or local), Ground Lessee shall repair and restore the Leased Premises, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which the Leased Premises and the Improvements were in immediately prior to such occurrence. The City and Ground Lessee shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If insurance proceeds under Ground Lessee's insurance policies are paid to the City as the owner of the fee simple title to the land, the City shall turn over such proceeds to Ground Lessee for Ground Lessee's use in repairing and restoring the Leased Premises and Improvements. If the proceeds are insufficient to fully repair and restore the Leased Premises and Improvements, the City shall not be required to make up the deficiency. Ground Lessee shall handle all construction in accordance with the applicable requirements set forth herein, including, without limitation, complying with all Legal Requirements and obtaining the City's approval of the plans and specifications if they deviate from the Final Plans. Ground Lessee shall not be relieved of any obligations, financial or otherwise, under this Lease during any period in which the Leased Premises and Improvements are being repaired or restored.

12. DEFAULT; REMEDIES.

(a) Default. Each of the following shall constitute an event of default by Ground Lessee under this Lease:

(i) If Ground Lessee fails to pay rent or any other sum payable to the City hereunder when due, and such failure to pay continues for longer than 30 days after Ground Lessee receives written notice thereof from the City;

(ii) If Ground Lessee fails to perform or observe any of the other covenants, terms, or conditions contained in this Lease, and such failure continues for longer than 30 days after Ground Lessee receives written notice thereof from the City; provided, however, that if such failure is not reasonably susceptible of being cured within such 30 day period, an event of default shall not be deemed to have occurred if Ground Lessee commences to cure such failure within such 30 day period and thereafter diligently pursues such cure to completion and, in fact, cures such failure within 90 days after Ground Lessee receives written notice of the default from the City. If any default is of the nature which is not reasonably susceptible of being cured within 30 days, Ground Lessee shall provide written notice to the City of such fact within 30 days of receipt of the notice of default. The foregoing notwithstanding, if the failure 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 Ground Lessee fails to take corrective action immediately upon discovering such dangerous condition or emergency;

(iii) The commencement of levy, execution, or attachment proceedings against Ground Lessee, any principal (which shall be defined as any individual or entity having an ownership interest in Ground Lessee of more than 25%) or partner of Ground Lessee, or any of the assets of Ground Lessee, or the application for or appointment of a liquidator, receiver, custodian, sequester, conservator, trustee, or other similar judicial officer; or the insolvency in the bankruptcy or equity sense, of Ground Lessee or any principal or partner of Ground Lessee; or the assignment for the benefit of creditors, or the admission in writing of an inability to pay debts generally as they become due, or the ordering of the winding up or liquidation of the affairs of Ground Lessee or any principal or partner of Ground Lessee; or the commencement of a case by or against Ground Lessee or any principal or partner of Ground Lessee under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar laws, state or federal, or the determination by any of them to request relief under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar proceeding, state or federal, including, without limitation, the consent by any of them to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, sequester or similar official for it or for any of its respective property or assets (unless, in the case of involuntary proceedings, the same shall be dismissed within 90 days after institution); or

(iv) Any event of default under either the Management Agreement or the Development Agreement.

(b) Remedies. Upon the occurrence of an event of default that continues beyond the applicable notice and cure period (if any) provided for under Section 12(a) above, the City shall be entitled to (i) solely as it relates to events of default pursuant to Section 12(a)(i)-(iii) above, terminate this Lease by giving Ground Lessee 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 default, including retaking the Leased Premises and excluding Ground Lessee from the same, and seizing and enforcing liens against any personal property of Ground Lessee at the Leased Premises, all at the expense of Ground Lessee; and (iii) exercise any and all other rights and remedies under this Lease or available at law or in equity, including, without limitation, pursuing an action for specific performance; all such rights and remedies being cumulative. Ground Lessee shall be liable for all costs and damages, including, without limitation, legal fees, suffered or incurred by the City as a result of a default of Ground Lessee under this Lease or the City's enforcement or termination of this Lease. Ground Lessee shall pay all such costs and damages within 30 days after receiving documentation from the City of the amount due. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Lease shall not constitute a waiver of the breach of such covenant or of such remedy. Nothing contained in this Lease shall limit or prejudice the right of a party to prove for and obtain as damages incident to a termination of this Lease in any bankruptcy, reorganization or other court proceedings, the maximum amount allowed by any statute or rule of law in effect when such damages are to be proved.

(c) Rights of Permitted Mortgagees. Notwithstanding the City's termination rights provided for in Section 12(b) above, prior to exercising such termination rights the City shall provide each Permitted Mortgagee with notice and an opportunity to cure as described in Section 9(b) above.

13. ASSIGNMENT AND SUBLETTING.

(a) Prohibition Against Assignment and Subletting. Ground Lessee acknowledges that the City is entering into this Lease because of the City's confidence that Ground Lessee has the financial backing, business experience, and community support that are necessary to carry out the redevelopment and operation of the Leased Premises as outlined herein. Ground Lessee acknowledges that the City shall not be expected to consent to a proposed assignment by Ground Lessee of its interest under this Lease, or to a proposed sublease of all or any portion of the Leased Premises following the expiration or termination of the Sublease, to any person or entity in which the City does not have similar confidence. Any attempt by Ground Lessee to assign or otherwise transfer its interests under this Lease, or to sublease all or any portion of the Leased Premises following the expiration or termination of the Sublease or that certain [DESCRIBE Early Learning Childcare Center Lease] (the "**Early Learning Childcare Center Lease**"), to a third party without the City's prior written consent (which shall not be unreasonably withheld or delayed) shall be null and void and shall, at the option of the City, constitute a default of Ground Lessee under this Lease. The foregoing notwithstanding, if Ground Lessee transfers its interests under this Lease to an affiliate, or to the surviving entity in a merger involving Ground Lessee, or to the purchaser of all or substantially all of Ground Lessee's assets or ownership interests, such transfer shall not constitute a prohibited assignment or sublease for purposes of this section. As used in the preceding sentence, an "affiliate" of Ground Lessee means an entity that controls, or is controlled by, or is under common control with, Ground Lessee. For purposes hereof "control" shall mean the power, exercisable jointly or severally, to manage and direct the business and affairs of a party through the ownership of more than 50% of membership or partnership interests, corporate stock and/or voting rights. Ground Lessee shall not assign its interests under this Lease pursuant to the preceding three sentences without the prior written consent of the City, which must first be requested by Ground Lessee giving the City at least 60 days prior written notice thereof. No assignment or sublease by Ground Lessee of its rights or obligations under this Lease to a third party shall relieve Ground Lessee from any liability to the City under this Lease.

(b) City's Consent to Ground Lessee's Subletting the Findlay Community Center to the City and the Early Learning Childcare Center to Sublessee. The City hereby consents to the Ground Lessee entering into the Sublease and the Early Learning Childcare Center Lease, *provided that* Ground Lessee shall have provided the City with a copy of the proposed Early Learning Childcare Center Lease, in a form that is

acceptable to and agreed to by the City prior to the execution thereof. Ground Lessee shall provide a copy of the fully executed Early Learning Childcare Center Lease to the City promptly after the execution thereof. Ground Lessee shall provide the City with (i) copies of any proposed amendments to the Early Learning Childcare Center Lease, which amendments shall require the City's prior written approval prior to the execution thereof and (ii) a copy of the fully executed amendment to the Early Learning Childcare Center Lease promptly after the execution thereof.

14. ESTOPPEL CERTIFICATES. Within 15 days after written request from the other party (or, with respect to certificates from the City, within such longer period of time as may be reasonably needed in order to obtain all required governmental authorizations and signatures), each party shall execute and deliver to the requesting party an estoppel certificate (a) certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) stating, to the best of such party's knowledge, whether or not the requesting party is in default under this Lease, and, if so, specifying the nature of such default, and (c) covering such other matters pertaining to this Lease as the requesting party may reasonably request.

15. SURRENDER; HOLDOVER.

(a) Surrender. On the last day of the Term of this Lease, Ground Lessee shall surrender the Leased Premises, including Improvements, to the City in good condition and repair, reasonable wear and tear excepted, and free and clear of all mortgages and other monetary liens (except those, if any, caused by the City). From and after the date of surrender, the City shall be deemed to be the owner of the Improvements for all purposes. On or before the last day of the Term, Ground Lessee shall remove all of Ground Lessee's personal property, and any property not so removed shall be deemed abandoned. Ground Lessee shall not remove any signs, trade fixtures, ordinary fixtures, or equipment used in connection with the Leased Premises and Improvements unless the City approves of such removal in writing. Ground Lessee shall promptly repair any and all damage to the Leased Premises, including the Improvements, caused by its removal of any items under this paragraph.

(b) Holdover. If Ground Lessee fails to surrender possession of the Leased Premises to the City at the end of the Term, such holdover shall be deemed as creating a tenancy at will on all of the same terms and conditions as set forth herein (except for the duration of the Term), terminable immediately by the City at any time by giving written notice thereof to Ground Lessee. Ground Lessee shall be liable for all costs and damages suffered or incurred by the City as a result of Ground Lessee's holding over.

(c) Documents to be Delivered to City. At the end of the Term, Ground Lessee shall deliver to the City originals of all books and records, unpaid invoices, operating manuals, contracts with third parties, warranty information, and all other written materials and documents that are in Ground Lessee's possession or under Ground Lessee's control and that are reasonably needed in order for there to be a seamless transition with respect to the operation of the Leased Premises.

16. NOTICES. All notices required to be given to any party under this Lease shall be in writing and (a) personally delivered, (b) deposited in the United States mail, first class, postage prepaid, or (c) delivered by a nationally recognized overnight courier service, to the parties at the following addresses or such other address as either party may specify from time to time by notice to the other. Notices shall be deemed given upon receipt.

| | |
|---|--|
| <p>To the City:</p> <p>City of Cincinnati 801 Plum Street Cincinnati, Ohio 45202 Attention: City Manager</p> | <p>To Ground Lessee:</p> <p>Findlay Community Center LLC 1203 Walnut Street, 4th Floor Cincinnati, OH 45202 Attention: Stephen Leeper</p> |
|---|--|

| | |
|--------------------------------------|--|
| <p>With a copy to:</p> <p>[CDEs]</p> | <p>With a copy to:</p> <p>Kutak Rock LLP 2001 16th Street, Suite 1800 Denver, CO 80202 Attention: Carol Mihalic, Esq.</p> <p>and to:</p> <p>[CDEs]</p> <p>and to:</p> <p>[Permitted Mortgagee]</p> |
|--------------------------------------|--|

If Ground Lessee sends a notice to the City alleging that the City is in breach of this Lease, Ground Lessee shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, Ohio 45202.

17. REPRESENTATION, WARRANTIES, AND COVENANTS OF GROUND LESSEE. Ground Lessee hereby makes the following representations, warranties, and covenants to induce the City to enter into this Lease:

(a) Ground Lessee is duly organized and validly existing under the laws of the State of Ohio, is qualified to do 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.

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

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

(d) There are no actions, suits, proceedings, or governmental investigations pending, or to the knowledge of Ground Lessee, threatened against or affecting the Project, Ground Lessee 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.

(e) Ground Lessee shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute, or governmental proceeding or investigation affecting Ground Lessee that could reasonably be expected to interfere substantially with its normal operations or materially and adversely affect its financial condition or its operation of the Leased Premises as contemplated hereunder.

(f) The statements made and information contained in the documentation provided by Ground Lessee to the City that are descriptive of Ground Lessee or the Project have been reviewed by Ground Lessee 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.

18. GENERAL PROVISIONS.

(a) Entire Agreement. This Lease (including the exhibits hereto and the other agreements referred to herein, including, without limitation, the Development Agreement, Sublease, and Management Agreement) 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.

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

(c) Governing Law. This Lease 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 Lease shall be brought in the Hamilton County Court of Common Pleas, and Ground Lessee agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Lease.

(d) Binding Effect. This Lease 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.

(e) Captions. The captions of the various sections and paragraphs of this Lease 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 Lease.

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

(g) No Recording. This Lease shall not be recorded in the Hamilton County Recorder's Office. At the request of either party, the parties shall execute a memorandum of lease for recording purposes in substantially the form attached hereto as Exhibit E (*Form of Memorandum of Lease (Ground Lease)*).

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

(i) No Third Party Beneficiaries. The parties hereby agree that, except for the rights of Permitted Mortgagees under section 9 hereof, no third party beneficiary rights are intended to be created by this Lease.

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

(k) Official Capacity. All representations, warranties, covenants, agreements, and obligations of the City under this Lease 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 member, officer, agent, or employee of the City in other than his or her official capacity. No official executing or approving the City's participation in this Lease shall be personally liable under this Lease.

(l) Limitation on Liability. Notwithstanding any provision in this Lease or under applicable law, each of the parties agrees in accepting this Lease that it shall have no recourse to any members (individuals or entities), officers or employees of Ground Lessee, any member (individual or entity) of any committee of Ground Lessee, [or any member (individual or entity) or officer of Ground Lessee or its members,] or any members, officers or employees of any Permitted Mortgagee (collectively, the "**Constituent Entities**"). Each of the parties further agrees that no Constituent Entity shall have any personal liability for any obligation under this Lease.

(m) Representation as to Authority. The City and Ground Lessee each represents to the other that it has the power and authority to enter into and perform its obligations under this Lease without the consent of anyone who is not a party to this Lease and that the execution and performance of this Lease have been duly authorized by all necessary actions on the part of the performing party, including the authorizations and approvals described in the Recitals to this Lease.

(n) Exhibits. The following exhibits are attached hereto and made a part hereof:

- Exhibit A - Depiction of Leased Premises
- Exhibit B - Legal Description of Leased Premises
- Exhibit C - Construction Requirements
- Exhibit D - Additional Requirements
- Exhibit E - Form of Memorandum of Lease (Ground Lease)

SIGNATURES ON FOLLOWING PAGE

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

CITY OF CINCINNATI

FINDLAY COMMUNITY CENTER LLC

By _____
Sheryl M. M. Long, City Manager

By _____
Katie Westbrook
Senior Vice President of Development

Date: _____, 2025

Date: _____, 2025

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, _____ of the CITY OF CINCINNATI, an Ohio municipal corporation, on behalf of the corporation.

Notary Public
My commission expires: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025 by [Stephen Leeper, the President and Chief Executive Officer of] Findlay Community Center LLC, an Ohio limited liability company, on behalf of the company.

Notary Public
My commission expires: _____

Exhibit A
to Ground Lease

Depiction of Leased Premises

TO BE ATTACHED

Exhibit B
to Ground Lease

Legal Description of Leased Premises

TO BE ATTACHED

[Attach Consolidation Legal Description]

Exhibit C
to Ground Lease

Construction Requirements (Improvements)

As used in this exhibit, the term “**Project**” shall mean the construction of the Improvements.

1. Budget. The estimated total cost of the Project is set forth in recital B of this Agreement, as reflected on Ground Lessee’s budget previously submitted to the City (sometimes referred to as the “**Project Budget**”). If Ground Lessee makes changes to the Project Budget during construction, Ground Lessee shall submit each such revised Project Budget to the City.

2. Sources of Funds.

(i) The sources of funds obtained or expected to be obtained by Ground Lessee for the Project are set forth on a schedule previously submitted to the City. If Ground Lessee makes changes to the sources of funds during construction, Ground Lessee shall submit each such revised schedule of its sources of funds to the City.

(ii) Throughout construction of the Project, Ground Lessee shall ensure compliance with all of the provisions of the Development Agreement, all of which are incorporated herein by reference.

3. [Acknowledgement of City Funding. During construction, Ground Lessee shall acknowledge the financial support of the City 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 funder, Ground Lessee shall use either the phrase “Funded 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.]

4. No Liens. Ground Lessee shall not permit any mechanics liens to attach to the Leased Premises in connection with the Project. If any such liens attach, Ground Lessee shall cause them to be released or bonded off within 30 days after filing.

5. Joinder in Applications for Permits, Licenses and Tax Reductions. If the City's participation is required by applicable law, the City shall, upon request by Ground Lessee, and at no expense to the City, (i) join with Ground Lessee in any and all applications for permits, licenses, zoning, rezoning, subdivision, variances, land development plans and any other authorizations sought from any utility, governmental or other body claiming jurisdiction in connection with the Project, to the extent permissible by law; and (ii) grant such easements for electricity, telephone, gas, water, sewer and other public utilities and facilities as Ground Lessee may reasonably require in connection with the Project. Ground Lessee shall be solely responsible, at its own expense, for any and all applications for permits, licenses, zoning, rezoning, subdivision, variances, land development plans and any other authorizations sought from any governmental or other body claiming jurisdiction in connection with the Project.

6. Environmental Issues. During construction, Ground Lessee shall not accumulate, process, store, treat, or dispose of any Hazardous Materials (as hereinafter defined) at the Leased Premises, nor shall Ground Lessee allow any other person or entity to do so, except that Ground Lessee may, in accordance with all applicable Legal Requirements, store, use and dispose of such Hazardous Materials as are necessary or incidental in connection with the Project. Under no circumstances shall the City have any liability to Ground Lessee, nor shall the City be expected to take any remedial or other actions, with respect to preexisting Hazardous Materials or other preexisting environmental conditions at the Leased Premises. For purposes of this Lease, “Hazardous Materials” shall mean: (i) any “hazardous substance,” “pollutant” or “contaminant” as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601(14) and (33) or 40 C.F.R. Part 302 (including asbestos, asbestos containing materials and

polychlorinated biphenyls (PCBs)), and (ii) any substance containing "petroleum," as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §6991(8), or 40 C.F.R. §280.12.

7. Additional Requirements. In addition to the requirements set forth above, Ground Lessee shall comply with the requirements set forth on Exhibit D to this Agreement.

Exhibit D
to Ground Lease

Additional Requirements (Improvements)

As used in this exhibit, the term “**Developer**” shall mean Ground Lessee, and the term “**Project**” shall mean the construction of the Improvements.

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

This Exhibit serves two functions:

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

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

(A) Construction Workforce.

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

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

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

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

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering with Trade Unions.

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

(b) Requirement. This Agreement may be subject to the requirements of City of Cincinnati, Ordinance No. 130-2002, as amended or superseded, providing that, if Developer receives City funds or other assistance, Developer and its general contractor, prior to the commencement of construction of the Project and prior to any expenditure of City funds, and with the aim of reaching comprehensive and efficient project agreements covering all work done by Developer or its general contractor, shall meet and confer with: the trade unions representing all of the crafts working on the Project, and minority, female, and locally-owned contractors and suppliers potentially involved with the construction of the Project. At this meeting, Developer and/or its general contractor shall make available copies of the scope of work and if prevailing wage rates apply, the rates pertaining to all proposed work on the Project. Not later than 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 20 days after the City's written demand.

(F) Business Enterprise Program.

(i) Applicability. The In furtherance of the policy goals established by CMC Chapter 323 (Small Business Enterprise and Local Business Enterprise Program), and CMC Chapter 324 (Minority and Women Business Enterprise Program), the requirements set forth in this Section (F) shall apply to this Agreement as an affirmative contractual obligation, notwithstanding the legal applicability or inapplicability of CMC Chapters 323 and 324 to this Agreement. Developer hereby agrees to comply with this Section (F) and, where applicable, to cause its general contractor to comply with this Section (F) in all respects.

(ii) Requirement. Developer and its general contractor shall use its best efforts to ensure that certified SBEs, MBEs, and WBEs (in each case as such terms are used within CMC Chapters 323 and 324, collectively, "**Certified Firms**") are utilized as sources of supplies, equipment, construction, and services, with (a) the goal of meeting 30% Certified Firm participation for construction contracts and 15% participation for supplies, services, and professional services contracts, and (b) with a sub-goal, being Developer's Project-specific voluntary commitment, of meeting the City's economic inclusion program goals to achieve a standard of no less than: (i) for MBEs, 20% for construction services; and (ii) for WBEs, 10% for construction services. (A list of certified SBEs, MBEs, and WBEs 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 a certified SBE, MBE, or WBE, and applications may also be obtained from such web page. Developer expressly agrees to take (or cause its general contractor to take) at least the following affirmative steps, except as expressly waived in writing by the Director of the Department of Economic Inclusion:

(1) Including qualified Certified Firms on solicitation lists.

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

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

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

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

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

(v) Developer and its general contractor shall periodically document its best efforts and affirmative steps to meet the above Certified Firm 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 of the Ohio Revised Code.

(vi) Failure of Developer or its general contractor to take the affirmative steps specified above, or to provide fair and equal opportunity to Certified Firms, as may be necessary to reach the minimum percentage goals for Certified Firm participation as set forth in CMC Chapters 323 and 324, 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 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 Section 102.03, no officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the Project may have any personal financial interest, direct or indirect, in Developer or in the Project, and Developer shall take appropriate steps to assure compliance.

(L) Ohio Means Jobs. If this Agreement constitutes a construction contract (pursuant to the guidance with respect to the definition of that term provided in Section (A) above), then, pursuant to Ordinance No. 238-2010: To the extent allowable by law, Developer and its general contractor shall use its best efforts to post available employment opportunities with Developer, the general contractor's organization, or the organization of any subcontractor working with Developer or its general contractor with the

OhioMeansJobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-946-7200.

(M) Wage Enforcement.

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

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

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

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

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

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

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

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

(N) Americans With Disabilities Act; Accessibility.

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

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

(O) Electric Vehicle Charging Stations in Garages.

(i) Applicability. Cincinnati City Council passed Ordinance No. 89-2017 on May 10, 2017. This ordinance requires all agreements in which the City provides any amount of “qualifying incentives” for projects involving the construction of a parking garage to include a provision requiring the inclusion of certain features in the garage relating to electric vehicles. The ordinance defines “qualifying incentives” as the provision of incentives or support for the construction of a parking garage in the form of (a) the provision of any City monies or monies controlled by the City including, without limitation, the provision of funds in the form of loans or grants; (b) the provision of service payments in lieu of taxes in connection with tax increment financing, including rebates of service payments in lieu of taxes; and (c) the provision of the proceeds of bonds issued by the City or with respect to which the City has provided any source of collateral security or repayment, including, but not limited to, the pledge of assessment revenues or service payments in lieu of taxes. For the avoidance of doubt, “qualifying incentives” does not include (1) tax abatements such as Community Reinvestment Area abatements pursuant to Ohio Revised Code Section 3735.67, et seq., or Job Creation Tax Credits pursuant to Ohio Revised Code Section 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 debarred by any federal, state, or local government agency during the term of this Agreement, Developer shall be considered in default under this Agreement.

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

Exhibit E
to Ground Lease

Form of Memorandum of Lease (Ground Lease)

SEE ATTACHED

----- space above for recording -----

MEMORANDUM OF LEASE

(Ground Lease – Findlay Community Center – 75 years)

This Memorandum of Lease is executed this ____ day of _____, 2025, by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, OH 45202 (the “**City**”), and **FINDLAY COMMUNITY CENTER LLC**, an Ohio limited liability company, the address of which is 1203 Walnut Street, 4th Floor, Cincinnati, OH 45202 (“**Ground Lessee**”).

1. The City and Ground Lessee entered into a certain *Ground Lease* on _____, 2025 (the “**Ground Lease**”), pertaining to certain real property owned by the City located at 1811 Vine Street, 1829 Vine Street and 1820 Republic Street in the Over-the-Rhine neighborhood of the City of Cincinnati, which property is depicted and more particularly described on Exhibit A (Site Plan) and Exhibit B (Legal Description) hereto (the “**Leased Premises**”).
2. The term of the Ground Lease commenced on the date set forth in paragraph 1 above (“**Commencement Date**”) and expires seventy-five (75) years thereafter.
3. This Memorandum of Lease is executed solely for recording purposes, and nothing herein shall be deemed as modifying any of the terms or conditions of the Ground Lease.

[Signatures on Next Page]

CITY OF CINCINNATI

FINDLAY COMMUNITY CENTER LLC

By: _____
Sheryl M. M. Long, City Manager

By: _____
Katie Westbrook
Senior Vice President of Development

Approved as to Form:

Assistant City Solicitor

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, _____ of the CITY OF CINCINNATI, an Ohio municipal corporation, on behalf of the corporation.

Notary Public
My commission expires: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025 by Stephen Leeper, the President and Chief Executive Officer of Findlay Community Center LLC, an Ohio limited liability company, on behalf of the company.

Notary Public
My commission expires: _____

This instrument prepared by:

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

Exhibits:
Exhibit A – Site Plan
Exhibit B – Legal Description

Exhibit A
to Memorandum of Lease

Site Plan

[TO BE ATTACHED TO EXECUTION VERSION]

Exhibit B
to Memorandum of Lease

Legal Description

[TO BE ATTACHED TO EXECUTION VERSION]

Exhibit H

Form of Community Center Sublease

SEE ATTACHED

Contract No: _____

Project: Findlay Community Center

COMMUNITY CENTER SUBLEASE

(Findlay Community Center LLC lease of Findlay Community Center to the City, following construction of the Findlay Community Center for a term of 75 years)

THIS COMMUNITY CENTER SUBLEASE (this "**Lease**") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between **FINDLAY COMMUNITY CENTER LLC**, an Ohio limited liability company, the address of which is 1203 Walnut Street, 4th floor, Cincinnati, Ohio 45202 ("**Lessor**"), and the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**").

RECITALS:

A. The City is the fee owner of certain real property located at 1811 Vine Street, 1829 Vine Street, and 1820 Republic Street in the Over-the-Rhine neighborhood of Cincinnati and State of Ohio, which property is depicted and more particularly described on Exhibit A (*Depiction of Leased Premises*) and Exhibit B (*Legal Description of Leased Premises*) hereto (the "**Leased Premises**"), and which property the City (as lessor) has leased to Lessor (as lessee) pursuant to that certain *Ground Lease* dated as of the Effective Date hereof (the "**Ground Lease**").

B. Pursuant to that certain *Funding and Development Agreement* dated _____, 2025, by and between Lessor, Cincinnati Center City Development Corporation, an Ohio nonprofit corporation ("**3CDC**"), OTR Holdings, Inc., an Ohio corporation, and the City (the "**Development Agreement**"), Lessor is redeveloping the Leased Premises, at an estimated total project cost of \$[45,968,411], into (i) an approximately [59,700] square foot community center and approximately [7,900] square foot public outdoor play area (collectively, the "**Findlay Community Center**"), and (ii) an approximately [8,400] square foot early learning childcare center and approximately [4,900] square foot childcare center playground (collectively, the "**Early Learning Childcare Center**"; and, together with the Findlay Community Center, the "**Project**" and such improvements, collectively, the "**Improvements**"). The Findlay Community Center will offer traditional recreation amenities such as an aquatics center, gymnasium, roller skating rink, and fitness center in addition to multipurpose spaces to serve community activities.

C. Pursuant to this Lease, Lessor is subleasing the Findlay Community Center to the City, at base rent of \$[___]/year, for a term of 75 years. The Findlay Community Center is shown on Exhibit C (*Depiction of Findlay Community Center*) and described on Exhibit D (*Legal Description of Findlay Community Center*) hereto.

D. Pursuant to a separate *Professional Services Management Agreement*, dated as of the Effective Date hereof, between the City and Findlay Community Center Manager, LLC ("**Manager**", an Ohio limited liability company and affiliate of 3CDC (the "**Management Agreement**"), the City has engaged Manager, following the construction of the Improvements, to manage and operate the Findlay Community Center throughout the term of this Lease.

E. In order to facilitate Lessor's redevelopment and construction of the Improvements, Lessor has entered into, among other documents, that certain [Loan Agreement] dated as of the Effective Date hereof, by and among [Fifth Third SubCDE, LLC, a ___ limited liability company,] and MBS-UI Sub-CDE __, LLC, a ___ limited liability company, as lenders (collectively, the "**Lenders**") and Lessor (the "**Loan Agreement**"), pursuant to which the Lenders made loans to Lessor in the aggregate principal amount of \$[16,085,000] (the "**Loans**").

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

G. City Planning Commission, having the authority to approve the change in use of City property, approved the Project at its meeting on January 17, 2025.

H. Execution of this Lease was authorized by City Council by Ordinance No. _____-2025, passed on _____, 2025.

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

1. SUBLEASE OF FINDLAY COMMUNITY CENTER.

(a) Grant. On the terms and conditions set forth in this Lease, Lessor does hereby sublease the Findlay Community Center to the City, and the City does hereby sublease the Findlay Community Center from Lessor, for the Term established under Section 2 below. Lessor leases the Findlay Community Center to the City (i) subject to the easements that encumber the Findlay Community Center, and (ii) together with the easements that benefit the Findlay Community Center. For the avoidance of doubt, for purposes of this Lease, the Findlay Community Center shall be the full leased premises leased to Lessor pursuant to the Ground Lease, less only the Early Learning Childcare Center.

(b) Duke Energy, GCWW, MSD, and Cincinnati Bell. The City acknowledges that the local utility providers, Duke Energy, Greater Cincinnati Water Works, Metropolitan Sewer District of Greater Cincinnati, and Cincinnati Bell may have existing aboveground and underground facilities in the area. The parties acknowledge and agree that, under the Ground Lease, Lessor shall be responsible for paying for the cost of relocating such facilities if needed in connection with the Project and for repairing any and all damage to such facilities caused by Lessor, its employees, agents, contractors, subcontractors, licensees, or invitees.

2. TERM. The term (“**Term**”) of this Lease shall commence on the date on which the Improvements have been substantially completed (herein, the “**Commencement Date**”), and shall expire on the date that is **seventy-five (75) years** after the Commencement Date (the “**Expiration Date**”). The parties shall confirm the Commencement Date once the Commencement Date has been determined by executing a commencement certificate in substantially the form attached hereto as Exhibit E (Declaration of Commencement Date (Community Center Sublease)); however, failure of the parties to do so shall not affect the Commencement Date or Expiration Date. The foregoing notwithstanding, if the Ground Lease is terminated prior to the scheduled Expiration Date, the Term of this Lease shall automatically terminate on the same date on which the Ground Lease is terminated.

3. PERMITTED USE. Pursuant to the Ground Lease, the Findlay Community Center shall be used solely for traditional recreation amenities such as an aquatics center, gymnasium, roller skating rink, and fitness center in addition to multipurpose spaces to serve community activities, and any and all ancillary uses reflected on the Final Plans, as such term is defined in the Ground Lease) and for no other purpose.

4. RENT.

(a) Base Rent. On the Commencement Date, and on each anniversary thereof throughout the Term, the City shall pay Lessor base rent (“**Base Rent**”) in the amount of [_____]Dollars (\$[_____.00]) per year. The City shall pay Base Rent, in advance, without demand, deduction or setoff, at such address as Lessor shall specify in writing from time to time. Base Rent for the last year of the Term, if less than twelve full calendar months, shall be prorated accordingly.

(b) Additional Expenses. This is a “triple net” lease, and throughout the Term, the City shall pay all utility and other services costs and expenses supplied to the Findlay Community Center. The City shall make payments for all such costs or expenses directly to the persons or entities to whom such payments are owed. To the extent that Lessor, rather than the City, pays any costs or expenses that would otherwise be

payable by the City under this Lease, the City shall reimburse Lessor for such costs, as additional rent, within 30 days after the City's receipt of documentation substantiating such costs. Without duplication of the foregoing, the City shall pay all amounts in respect of utilities that Lessor is obligated to pay pursuant to the Ground Lease to the extent such amounts are allocable solely to the Findlay Community Center. Notwithstanding the foregoing, nothing herein shall modify or supersede any of the provisions (if any) set forth in the Management Agreement concerning the parties' obligations in regard to paying such costs and expenses under that agreement.

5. REAL ESTATE TAXES. The City shall pay all real estate taxes and assessments levied against the Findlay Community Center, if any (or, if levied against the Leased Premises, the Findlay Community Center's proportionate amount), that become due and payable during the Term. Without duplication of the foregoing, the City shall pay all amounts in respect of real estate taxes and assessments that Lessor is obligated to pay pursuant to the Ground Lease to the extent such amounts are allocable solely to the Findlay Community Center. Notwithstanding the foregoing, nothing herein shall modify or supersede any of the provisions (if any) set forth in the Management Agreement concerning the parties' obligations in regard to paying such amounts under that agreement.

6. MAINTENANCE AND REPAIRS. During the term of this Lease the City shall provide for day-to-day maintenance, care, and cleaning of the Findlay Community Center, including, without limitation, the following services: (i) litter, trash, and debris removal; (ii) light bulb replacement; (iii) granite and other surface cleaning; (iv) bathroom oversight and cleaning; (v) leaf, snow, and ice removal; (vi) vector control; (vii) care and minor maintenance of all improvements and amenities related to the Findlay Community Center; and (viii) all other activities, including minor repairs, necessary to keep the Findlay Community Center in a clean, safe, and attractive condition and to prevent degradation of the Findlay Community Center and the recreational equipment therein. Notwithstanding the foregoing, nothing herein shall modify or supersede any of the provisions (if any) set forth in the Management Agreement concerning the parties' obligations in regard to paying such costs and expenses under that agreement. Lessor shall retain all other responsibility for the Leased Premises and the Findlay Community Center and the Improvements, including, without limitation, the maintenance and repair of foundations, interior and exterior walls, the roofs and other structural components, heating, ventilation and air conditioning systems, plumbing fixtures, electrical and mechanical systems, abutting sidewalk areas and signage, and any other repair or maintenance needs other than those day-to-day maintenance, care and cleaning requirements described above. In the event that Lessor fails to make any reasonably required repairs to the Findlay Community Center, and such failure continues for a period of 30 days after the City has provided notice of the same, the City shall have the right, but not the obligation, to make the necessary repairs. The cost or expense of any repairs so made by the City shall be credited from the next due rental payment.

7. WASTE, NUISANCE AND LIENS. During the term of this Lease, the City shall comply with all applicable laws affecting the Findlay Community Center, the breach of which might result in any penalty on Lessor or forfeiture of Lessor's interest in the Findlay Community Center or its leasehold interest in the rest of the Leased Premises. The City shall not commit any waste at the Findlay Community Center or the rest of the Leased Premises or allow any nuisance thereon, and shall keep the Findlay Community Center free of any liens or encumbrances resulting from the City's tenancy of the Findlay Community Center.

8. ALTERATIONS; SIGNS; NO MECHANIC'S LIENS. During the Term, neither party shall make any material alterations, additions, or other changes to the Findlay Community Center without the prior written consent of the other party. During the Term, Lessor shall be permitted to install such signs at the Findlay Community Center as permitted under the Ground Lease. During the Term, neither party shall permit any mechanic's lien or other similar lien to be filed against the Findlay Community Center as a result of labor or material furnished at such party's request. If any such lien is filed, the party causing such lien shall cause the lien to be released or bonded off within 30 days following the filing of such lien.

9. INSURANCE. The parties acknowledge that Lessor is required to maintain certain insurance under the Ground Lease and the Loan Agreement. Lessor acknowledges and agrees that the City self-insures and shall not be required to maintain insurance under this Lease.

10. CASUALTY; EMINENT DOMAIN. If the Findlay Community Center is damaged or destroyed by fire or other casualty, or if any portion of the Findlay Community Center is taken by exercise of eminent domain (federal, state, or local), the parties' respective rights and obligations shall be as set forth in the Ground Lease.

11. SUBORDINATION; LOAN DOCUMENTS.

(a) Superior Liens. Lessor hereby represents and warrants that the Leased Premises, including the Findlay Community Center, is not subject to any mortgage, deed of trust, ground lease interest or security interest that is superior to this Lease, other than the Ground Lease and that certain [Leasehold Mortgage, Security Agreement and Assignment of Leases and Rents] executed by Lessor in favor of the Lenders (as may be amended from time to time, the "**Deed of Trust**").

(b) Loan Documents. The City acknowledges the receipt of the Loan Agreement and related documents (collectively, the "**Loan Documents**") and the City has reviewed and is familiar with the provisions of such Loan Documents. The City hereby covenants and agrees that the City shall not violate or cause a violation of any of the Loan Documents, and that the City shall perform its obligations hereunder on a prompt and timely basis to enable Lessor to comply with such Loan Documents. Any failure by the City to observe or comply with the foregoing provisions that is not cured by (i) the end of any applicable cure period set forth in this Lease, or (ii) the applicable cure period afforded to Lessor under the provisions of the Loan Documents (whichever is the shorter period) shall constitute a breach and default under this Lease.

(c) Subordination. This Lease is expressly made subject and subordinate to the [Deed of Trust] granted by Lessor to Lenders and any other encumbrance executed and delivered in connection with the Loan Documents. The City agrees to give Lenders a copy of any notice of default served upon Lessor *provided that* the City has received address(es) to which such notices shall be delivered to Lenders. If Lessor shall have failed to cure such default within 30 days from the effective date of such notice of default, and such additional time as may be necessary to cure such default (including the time necessary to foreclose or otherwise terminate its Deed of Trust, if necessary to effect such cure), then this Lease shall not be terminated so long as such remedies are being diligently pursued.

12. RIGHTS OF LIENHOLDERS. Lessor and the City hereby acknowledge that Lessor has assigned its rights under this Lease to the Lenders pursuant to the terms of the [Deed of Trust] to secure amounts owing under the Loan Documents. If the Lenders or any other beneficiary of a permitted assignment of Lessor's rights and interest in this Lease (collectively, an "**Assignee**") shall succeed to the interest of Lessor under this Lease, the City will recognize Assignee as Lessor under the terms of this Lease and shall continue to perform under this Lease for so long as Assignee continues to perform on its obligations as Lessor under this Lease. If Lessor shall give any written notice of default under this Lease (hereafter "**Default Notice**") to the City under this Lease, Lessor shall concurrently send a copy of each such Default Notice to Lenders in accordance with the notice requirements in Section 18 hereof. If a monetary default of the City shall occur under any provision of this Lease, then Lessor shall take no action with respect to such default if one or more Lenders resolve such default no later than 30 days after Lessor's giving of a Default Notice relating to such default to Lenders. If a non-monetary default of the City shall occur under any provision of this Lease, then Lessor shall take no action with respect to such default if one or more Lenders resolve such default not later than 60 days after Lessor's giving of a Default Notice relating to such default to Lenders; further provided that such period of time shall be extended by any period within which Lenders are prevented from commencing foreclosure proceedings by reason of the bankruptcy of Lessor. If a default by the City under this Lease occurs, then Lenders shall, without prejudice to its rights against the City, have the right to cure such default within the applicable grace periods provided for in this Section 12, and Lessor shall accept such performance on the part of Lenders as though the same had been performed by the City. Lessor shall not transfer or encumber any of its interests in this Lease without the prior written consent of Lenders. Notwithstanding any provision in this Lease to the contrary, this Lease shall not be amended or modified in any way that would materially, adversely affect the rights of the Lenders herein without the prior written consent of the Lenders. In no event shall Lenders, or any Assignee be liable for any act or omission of any prior landlord; subject to any offsets or defenses which the City may have against any prior landlord; bound by any payment of rent or additional rent which the City might have paid to any prior landlord for more than the current quarter; or bound by any material amendment, modification, or termination of this Lease made

without the written consent of Lenders. The provisions of this Section 12 are for the benefit of Lenders and may be relied upon and shall be enforceable by Lenders as if Lenders were a party to this Lease.

13. COMPLIANCE WITH GROUND LEASE. The City shall not take or permit any action that is reasonably likely to cause a default under, or violate any terms of, the Ground Lease without the prior written consent of Lessor and Lenders.

14. DEFAULT; REMEDIES. If either party fails to perform or observe any of the covenants, terms, or conditions contained in this Lease, and such failure continues for longer than 30 days after receipt of written notice thereof from the other party (a "default"), the nondefaulting party shall have all rights and remedies available at law or in equity, including, with respect to a default by the City, the right of Lessor to re-enter the Findlay Community Center and terminate this Lease.

15. ASSIGNMENT AND SUBLETTING. Without the prior written consent of Lessor, the City may not further sublease the Findlay Community Center. Notwithstanding the forgoing, any sublease agreement shall contain, at a minimum, a clause prohibiting the operation of any Tenant Excluded Business (as defined below) on any portion of the Findlay Community Center and the proposed assignee or sublessee shall furnish Lessor and Lenders with such assurances concerning such assignee's or sublessee's compliance with the requirements of Section 45D of the Internal Revenue Code of 1986, as amended (the "**Code**") as Lessor and Lenders may reasonably require; further, such sublease shall contain terms, protective of Lessor's and Lenders' respective rights at least equal in effect to this Lease. No such approved assignment or sublease shall release the City from any of its obligations hereunder, unless Lessor, with the consent of Lenders, in writing, so releases the City; and, unless released, any default or material breach of any provisions of this Lease by any assignee or sublessee shall, for purposes of this Lease, also be deemed the default or material breach of the City, unless previously released from the City's obligations hereunder. The City acknowledges and understands that repayment of the Loans depends, in material part, on the City's full and prompt performance and payment under this Lease. Notwithstanding anything to the contrary herein, the City shall not have the right to grant any mortgages, permit any liens, or otherwise encumber the Findlay Community Center without the prior written consent of Lessor and Lenders, except easements which may be reasonably necessary for the operation of the Findlay Community Center.

16. ESTOPPEL CERTIFICATES. Within 15 days after written request from the other party (or, with respect to certificates from the City, within such longer period of time as may be reasonably needed in order to obtain all required governmental authorizations and signatures), each party shall execute and deliver to the requesting party an estoppel certificate (a) certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) stating, to the best of such party's knowledge, whether or not the requesting party is in default under this Lease, and, if so, specifying the nature of such default, and (c) covering such other matters pertaining to this Lease as the requesting party may reasonably request.

17. SURRENDER. On the last day of the Term of this Lease, the City shall surrender possession of the Findlay Community Center to Lessor. (For clarity, thereafter the City shall continue to be the ground lessor under the Ground Lease).

18. NOTICES. All notices required to be given to any party under this Lease shall be in writing and (a) personally delivered, (b) deposited in the United States mail, first class, postage prepaid, or (c) delivered by a nationally recognized overnight courier service, to the parties at the following addresses or such other address as either party may specify from time to time by notice to the other. Notices shall be deemed given upon receipt.

| | |
|--|--|
| To the City: City of Cincinnati 801 Plum Street Cincinnati, Ohio 45202 Attention: City Manager | To Lessor: Findlay Community Center LLC 1203 Walnut Street, 4th Floor Cincinnati, Ohio 45202 Attention: Stephen Leeper |
|--|--|

| | |
|---|---|
| <p>With a copy to:</p> <p>:</p> <p>[CDEs]</p> | <p>With a copy to:</p> <p>Kutak Rock LLP 2001 16th Street, Suite 1800 Denver, CO 80202 Attention: Carol Mihalic, Esq.</p> <p>and to:</p> <p>[CDEs]</p> |
|---|---|

If Lessor sends a notice to the City alleging that the City is in breach of this Lease, Lessor shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, Ohio 45202.

19. NEW MARKETS TAX CREDIT COVENANTS AND TENANT EXCLUDED BUSINESSES.

(a) Tenant Excluded Businesses. The City shall not operate and shall not allow any sublessee to operate on or in the Findlay Community Center any trade or business consisting of any of the following (each, a “**Tenant Excluded Business**”): (i) the rental to others of “Residential Rental Property” (as such term is defined in § 168(e)(2) of the Code, or any corresponding provision or provisions of prior or succeeding law, including any temporary or final regulations promulgated under the Code, as such regulations may be amended from time to time, including corresponding provisions of succeeding regulations thereunder, in addition to administrative and judicial interpretations thereof); (ii) the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, or suntan facility, any race track or other facility used for gambling, any store the principal business of which is the sale of alcoholic beverages for consumption off premises; (iii) any trade or business consisting predominantly of the development or holding of intangibles for sale or license; (iv) farming (within the meaning of Section 2032A(e)(5)(A) or (B) of the Code); or (v) the operation of any bank, credit union, or other financial institution. The City shall comply with the terms of any financing documents related to the Leased Premises and applicable to a lessee of the Findlay Community Center, including, without limitation, all requirements relating to the operation of a “qualified business” under Section 45D of the Code and the Treasury Regulations thereunder.

(b) Federal Income Tax Treatment. The City and Lessor shall report this Lease as a lease and Lessor as the owner of the Findlay Community Center, each for federal income tax purposes, and neither Lessor nor the City shall take any position inconsistent or contrary to such treatment. Failure of the City or any subtenant to comply with the prohibitions of this Section 19, or failure of the City to enforce prohibitions set forth in this Section 19 against any subtenant, will be a basis for immediate termination of this Lease.

(c) Program Data Collection Reporting. For so long as the Loan Agreement remains in effect, the City shall provide such information as may be reasonably requested by Lessor on behalf of any Lender in order to comply with requirements of the CDFI Fund (as hereinafter defined) with respect to program data collection for the New Markets Tax Credits program. The Findlay Community Center shall be operated in a manner that satisfies and shall continue to satisfy all restrictions applicable to the Findlay Community Center and real property on which the Findlay Community Center is located and qualified businesses under Section 45D of the Code and Treasury Regulations and Guidance (both as hereinafter defined). “**CDFI Fund**” means the Community Development Financial Institutions Fund of the United States Department of Treasury, or any successor agency charged with oversight responsibility for the New Markets Tax Credit program. “**Treasury Regulations and Guidance**” means and includes any temporary and/or final regulations promulgated under the Code and any guidance, rule, or procedure published by the CDFI Fund, including, without limitation, the Community Development Entity Certification Application and the New Markets Tax Credit Allocation Application.

20. GENERAL PROVISIONS.

(a) Entire Agreement. This Lease (including the exhibits hereto and the other agreements referred to herein, including, without limitation, the Development Agreement, the Ground Lease, the Management Agreement, and the Loan Documents) 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.

(b) Amendments. This Lease may be amended only by a written amendment signed by both parties and the consent of the Lenders.

(c) Governing Law. This Lease 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 Lease shall be brought in the Hamilton County Court of Common Pleas, and Lessor agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Lease.

(d) Binding Effect. This Lease 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.

(e) Captions. The captions of the various sections and paragraphs of this Lease 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 Lease.

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

(g) No Recording. This Lease shall not be recorded in the Hamilton County Recorder's Office. At the request of either party, the parties shall execute a memorandum of lease for recording purposes in substantially the form attached hereto as Exhibit F (*Form of Memorandum of Lease (Community Center Sublease)*).

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

(i) No Third Party Beneficiaries. The parties hereby agree that, except for the Lenders, no third party beneficiary rights are intended to be created by this Lease.

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

(k) Official Capacity. All representations, warranties, covenants, agreements, and obligations of the City under this Lease 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 member, officer, agent, or employee of the City in other than his or her official capacity. No official executing or approving the City's participation in this Lease shall be personally liable under this Lease.

(l) Limitation on Liability. Notwithstanding any provision in this Lease or under applicable law, each of the parties agrees in accepting this Lease that it shall have no recourse to any members (individuals or entities), officers or employees of Lessor, any member (individual or entity) of any committee of Lessor, or any member (individual or entity) of the Board of Directors of Lessor, or any members, officers or employees of any Permitted Mortgagee (collectively, the "**Constituent Entities**"). Each of the parties further agrees that no Constituent Entity shall have any personal liability for any obligation under this Lease.

(m) Representation as to Authority. The City and Lessor each represents to the other that it has the power and authority to enter into and perform its obligations under this Lease without the consent of anyone who is not a party to this Lease and that the execution and performance of this Lease have been duly authorized by all necessary actions on the part of the performing party.

(n) Exhibits. The following exhibits are attached hereto and made a part hereof:

- Exhibit A - Depiction of Leased Premises
- Exhibit B - Legal Description of Leased Premises
- Exhibit C - Depiction of Findlay Community Center
- Exhibit D - Legal Description of Findlay Community Center
- Exhibit E - Declaration of Commencement Date (Community Center Sublease)
- Exhibit F - Form of Memorandum of Lease (Community Center Sublease)

SIGNATURES ON FOLLOWING PAGE

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

CITY OF CINCINNATI

CINCINNATI CENTER CITY DEVELOPMENT CORPORATION

By _____
Sheryl Long, City Manager

By _____
Katie Westbrook
Senior Vice President of Development

Date: _____, 2025

Date: _____, 2025

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Steve Webb, City Finance Director

[Grant Funds for the Project are certified under the Grant Agreement]

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, _____ of the CITY OF CINCINNATI, an Ohio municipal corporation, on behalf of the corporation.

Notary Public
My commission expires: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025 by Stephen Leeper, the President and Chief Executive Officer of CINCINNATI CENTER CITY DEVELOPMENT CORPORATION, an Ohio nonprofit corporation, on behalf of the corporation.

Notary Public
My commission expires: _____

Exhibit A
to Community Center Sublease
Depiction of Leased Premises

TO BE ATTACHED

Exhibit B
to Community Center Sublease
Legal Description of Leased Premises

TO BE ATTACHED

Exhibit C
to Ground Lease

Depiction of Findlay Community Center

TO BE ATTACHED

Exhibit D
to Community Center Sublease
Legal Description of Findlay Community Center

TO BE ATTACHED

Exhibit E
to Community Center Sublease

Declaration of Commencement Date (Community Center Sublease)

SEE ATTACHED

DECLARATION OF COMMENCEMENT DATE (COMMUNITY CENTER SUBLEASE)
[to be completed once the Findlay Community Center Improvements have been completed]

This Declaration of Commencement Date (Community Center Sublease) is executed this ____ day of _____, 202____, by **FINDLAY COMMUNITY CENTER LLC**, an Ohio limited liability company ("**Lessor**"), and the **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**").

1. Lessor and the City are parties to a *Community Center Sublease* dated _____, 2025 (the "**Community Center Sublease**"), pursuant to which Lessor subleased to the City the Findlay Community Center, as defined in the Community Center Sublease.

2. The Commencement Date, as defined in Section 2 of the Community Center Sublease (and being the date on which the Improvements, as defined therein, are substantially completed), is hereby confirmed to be _____, 202__.

CITY OF CINCINNATI

By: _____
Sheryl M. M. Long, City Manager

FINDLAY COMMUNITY CENTER LLC

By: _____
_____, Member

Approved as to Form:

Assistant City Solicitor

Exhibit F
to Community Center Sublease

Form of Memorandum of Lease (Community Center Sublease)

SEE ATTACHED

----- space above for recording -----

MEMORANDUM OF LEASE

(Community Center Sublease – [] years)

This Memorandum of Lease is executed this ____ day of _____, 2025, by and between **FINDLAY COMMUNITY CENTER LLC**, an Ohio limited liability company, the address of which is 1203 Walnut Street, 4th Floor, Cincinnati, Ohio 45202 ("**Lessor**"), and the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**").

1. The City and Lessor entered into a certain (i) *Ground Lease* dated _____, 2025, pursuant to which the City leased to Lessor, for a term of 75 years, certain land owned by the City located at 1811 Vine Street, 1829 Vine Street and 1820 Republic Street in the Over-the-Rhine neighborhood of Cincinnati and State of Ohio (the "**Leased Premises**"), and (ii) a certain *Community Center Sublease* dated _____, 2025 (the "**Community Center Sublease**"), pursuant to which Lessor subleased the Findlay Community Center (as defined in the Community Center Sublease) to the City. The Findlay Community Center occupies a portion of the Leased Premises, and is depicted and more particularly described on Exhibit A (Site Plan) and Exhibit B (Legal Description) hereto.

2. The term of the Community Center Sublease shall commence on the date on which the portion of the Improvements (as such term is defined in the Community Center Sublease) related to the Findlay Community Center have been substantially completed ("**Commencement Date**") and expires [] () years thereafter.

3. This Memorandum of Lease is executed solely for recording purposes, and nothing herein shall be deemed as modifying any of the terms or conditions of the Community Center Sublease.

[Signatures on Next Page]

CITY OF CINCINNATI

CINCINNATI CENTER CITY DEVELOPMENT CORPORATION

By: _____
Sheryl M. M. Long, City Manager

By: _____
Katie Westbrook
Senior Vice President of Development

Approved as to Form:

Assistant City Solicitor

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, _____ of the CITY OF CINCINNATI, an Ohio municipal corporation, on behalf of the corporation.

Notary Public
My commission expires: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025 by Stephen Leeper, the President and Chief Executive Officer of CINCINNATI CENTER CITY DEVELOPMENT CORPORATION, an Ohio nonprofit corporation, on behalf of the corporation.

Notary Public
My commission expires: _____

This instrument prepared by:

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

Exhibits:
Exhibit A – *Site Plan*
Exhibit B – *Legal Description*

Exhibit A
to Memorandum of Lease

Site Plan

[TO BE ATTACHED TO EXECUTION VERSION]

Exhibit B
to Memorandum of Lease

Legal Description

[TO BE ATTACHED TO EXECUTION VERSION]

Exhibit I

Form of Professional Services Management Agreement – Findlay Community Center

SEE ATTACHED

PROFESSIONAL SERVICES MANAGEMENT AGREEMENT

(Engagement of [Findlay Community Center Manager, LLC] to manage the Findlay Community Center)

THIS PROFESSIONAL SERVICES MANAGEMENT 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 [**FINDLAY COMMUNITY CENTER MANAGER, LLC**], an Ohio limited liability company, the address of which is 1203 Walnut Street, 4th floor, Cincinnati, Ohio 45202 (“**Manager**”, being a wholly-owned subsidiary of Cincinnati Center City Development Corporation, an Ohio nonprofit corporation (“**3CDC**”).

RECITALS:

A. The City is the fee owner of certain real property located at 1811 Vine Street, and 1820 Republic Street in the City of Cincinnati and State of Ohio, as shown on Exhibit A (*Depiction of Findlay Site*) and described on Exhibit B (*Legal Description of Findlay Site*) hereto (the “**Findlay Site**”).

B. Findlay Community Center LLC, an Ohio limited liability company, (“**Ground Lessee**”), is leasing the Findlay Site from the City pursuant to that certain Ground Lease dated as of April __, 2025, by and between the City, as lessor, and Ground Lessee, as lessee.

C. Ground Lessee is redeveloping the Findlay Site into a 59,700-square-foot community center, approximately 7,900 square foot public outdoor play area (collectively, the “**Findlay Community Center**”), as depicted on Exhibit A hereto, an 8,400-square-foot early learning childcare center, and an approximately 4,900 square foot childcare center playground.

D. Pursuant to that certain Community Center Sublease dated as of April __, 2025, by and between the Ground Lessee, as lessor, and the City, as lessee, (the “**Sublease**”), the City is subleasing the Findlay Community Center from the Ground Lessee.

E. The City desires to engage Manager to offer traditional recreation amenities at the Findlay Community Center, including, without limitation, an aquatics center, gymnasium, roller skating rink, and fitness center (collectively, the “**Recreational Amenities**”), and to operate an public outdoor play area and multipurpose spaces located within the Findlay Site to provide activities that will serve and benefit the residents of Cincinnati and particularly the residents of the Over-the-Rhine, Pendleton, West End, Mt. Auburn, and Downtown neighborhoods of Cincinnati.

F. The City believes that offering the Recreational Amenities and making the multipurpose space available for rent at the Findlay Community Center are in the vital and best interests of the City and the health, safety, and welfare of its residents and is consistent with the public purposes and provisions of applicable federal, state, and local laws and requirements, and the City, through this Agreement, seeks to secure high quality management services for the Findlay Community Center.

G. Manager acknowledges that its actions at all times during performance of this Agreement must conform with the level of responsibility and respect merited for the manager of a community center as important as the Findlay Community Center.

H. Pursuant to that certain Parking Lot Sublease dated as of April __, 2025, by and between [Crossroad], as lessor, and Manager, as lessee (the “**Parking Lot Lease**”), Manager is subleasing the parking lot located at 19 W. Elder Street (the “**Parking Lot**”) and will operate the Parking Lot for the benefit of the general public, including the adjacent Crossroad Health Center and the Findlay Community Center.

I. Pursuant to this Agreement, the City is engaging Manager to manage and oversee the operations of the Findlay Community Center throughout the Term (as defined below), and the parties acknowledge that the Services (as defined below) are considered “professional services” (as defined in Cincinnati Municipal Code (“**CMC**”) Section 321-1-P) and require exercise by Manager of discretion and independent judgment to perform the Services.

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

1. MANAGER ACKNOWLEDGEMENT. Manager acknowledges that the Findlay Community Center is a community center that is of paramount importance as it will generate health services and social activities and other benefits for the City and its citizens. Manager shall at all times manage and operate the Findlay Community Center in a first-class manner equal to other comparable community centers of such caliber, and shall render the usual and customary services incidental thereto in a professional, businesslike and efficient manner, and Manager’s actions at all times must conform with the level of responsibility, and respect merited for the manager of a community center as important as the Findlay Community Center.

2. TERM; RENEWAL OPTIONS; SCOPE.

(a) Term. The term (“**Term**”) of this Agreement shall commence on the Commencement Date (as defined in the Sublease) and, unless otherwise terminated in accordance with the terms herein, shall expire on the [30]-year anniversary of the Commencement Date (the “**Expiration Date**”), subject to extension in accordance with Section 2(b) below.

(b) Renewal Options. Effective upon written mutual agreement of the City and Manager, the Term of this Agreement may be extended for [2 consecutive renewal periods of 5 years each]. For clarity, in order for a renewal option to be effective, both parties must mutually agree to such extension in writing for each individual renewal option. As used herein, the “**Term**” of this Agreement means the initial Term plus any applicable renewal periods, and the “**Expiration Date**” shall refer to the date at the end of the initial Term plus any applicable renewal periods.

(c) Operation of the Findlay Community Center Following Expiration of this Agreement. In the event that (i) this Agreement has expired or been terminated pursuant to the terms hereof, and (ii) the City has not identified another acceptable manager for the Findlay Community Center and has determined to not manage the Findlay Community Center itself, then the City may, in its sole and absolute discretion and at any time before the Expiration Date, provide written notice to Manager offering to extend the Term of this Agreement on a rolling month-to-month basis. Upon receipt of such written notice from the City, Manager shall have 15 days to respond either accepting the City’s offer for extension or denying the City’s offer for extension. At any time during any such month-to-month extension of the Term, the City may provide at least 30 days’ written notice to Manager of termination, and the Term shall then end 30 days after the date of such notice provided by the City.

(d) Scope. This Agreement is intended to grant Manager, during the Term of this Agreement, access to the Findlay Community Center as is necessary for carrying out the Services; provided however, nothing herein is intended to grant Manager a real property interest in the Findlay Community Center.

3. DUTIES. During the Term of this Agreement, Manager shall perform its obligations under this Agreement with a reasonable standard of care and diligence, using its efforts, skill, and judgment to further the interests of the City. Manager shall provide the City with the following management and oversight services for the Findlay Community Center (collectively, the “**Services**”):

(a) Promotion, Marketing, & Memberships. Manager shall engage in the promotion and marketing of the Findlay Community Center, including the intake, review, and approval of memberships to use the Recreational Amenities (“**Recreational Amenities Memberships**”) and the rental of the multipurpose spaces and other community amenities. Manager shall offer Recreational Amenities Memberships to the general public and the cost of memberships shall be on a sliding scale based on affordability, subject to the City’s annual approval of rate and terms of the Recreational Amenities Memberships as set forth in Section 8.

(b) Programming. Manager shall provide and manage regular programming and activities at the Findlay Community Center in connection with the Recreational Amenities. In partnership with Manager, the Cincinnati Recreation Commission (the “CRC”), may choose to provide services from time to time such as oversight of after-school aged children (excluding ages 0-5), summer day camps, and unique programs such as “Recreation at Night”. In addition to CRC, the City may request that Manager work, from time to time, with other City departments to help implement programming and activities. Within 12 months of the Effective Date, and continuing no less than every 12 months thereafter during the Term of this Agreement, Manager shall meet with CRC (and with the other City departments when the City makes such request) and outline a plan for how Manager will partner with CRC, and may partner with such other City departments, to program the Findlay Community Center as set forth herein (the “**Programming Plan**”). Such partnerships with CRC and other City departments shall be subject to the acceptance of responsibilities by both Manager and the City. Prior to the Commencement Date, Manager shall prepare and deliver to the City a detailed Programming Plan for the initial year of operation that will take place immediately following the completion of construction of the Findlay Community Center, and will thereafter submit annual Programming Plans for the upcoming year, including a Programming Plan with each Annual Operating Report (as defined below) submitted by Manager. The City shall promptly review each proposed Programming Plan and consult with Manager so that each annual budget can be finalized prior to the commencement of the upcoming year.

(c) Recreational Amenities and Multipurpose Space Oversight and Management. Manager shall oversee and manage the operation of the Findlay Community Center, including all activities related to the Recreational Amenities and the leasing of the multipurpose and outdoor spaces of the Findlay Community Center, and all other activities requiring oversight at the Findlay Community Center, all in accordance with applicable law and regulation [, including CMC Chapter 713 and rules and regulations promulgated from time to time by the City Manager]. The City shall provide rules and regulations promulgated by the City Manager to Manager. Manager shall engage a third-party operator to oversee the Recreational Amenities and assist in the operations of the Findlay Community Center, pursuant to Section 4. The selection and compensation of such third-party operator shall be subject to the review and approval of the City.

Manager shall manage intake, review, and approval of all third-party requests for use of the multipurpose spaces [and outdoor spaces].

Manager agrees and acknowledges that, in accordance with the established guidance with respect to use of the multipurpose spaces or any Recreational Amenities, the City may itself from time to time apply to host events at the Findlay Community Center. Manager agrees to use best efforts to accommodate such City applications and agrees to waive all fees for application for such use and for rental of the multipurpose spaces at the Findlay Community Center; provided however, the City shall be responsible for any fees associated with optional rental equipment or labor requested to be provided by Manager.

(d) Security and Permits. Manager shall work with the City and other applicable parties (including adjacent property owners and event permittees) to develop reasonable and appropriate protocols and requirements for the provision of security personnel for the Findlay Community Center (including for events), such protocols and requirements to ultimately be determined by Manager in its reasonable discretion, and update such protocols and requirements from time to time, as necessary. Manager shall oversee implementation of and compliance with such security protocols and requirements. Notwithstanding the foregoing, any user of the multipurpose spaces shall be responsible for providing the security and obtaining any permits required for their activities in the multipurpose spaces.

(e) Landscaping. Manager shall provide landscaping services to keep all landscaping at the Findlay Community Center in good, presentable condition.

(f) Maintenance, Care, and Cleaning. Manager shall provide for day-to-day maintenance, care, and cleaning of the Findlay Community Center, including but not limited to the following services: (i) litter, trash, and debris removal; (ii) light bulb replacement; (iii) granite and other surface cleaning; (iv) bathroom oversight and cleaning; (v) leaf, snow, and ice removal; (vi) vector control; (vii) care and maintenance of all improvements and amenities related to the Findlay Community Center; (viii) cleaning of all recreational equipment at the Findlay Community Center; and (ix) all other activities, including minor repairs, necessary to keep the Findlay

Community Center and the recreational equipment therein in a clean, safe, and attractive condition and to prevent degradation of the Findlay Community Center and the recreational equipment therein.

(g) Sublease Restrictions. Notwithstanding anything else to the contrary in this Agreement, in no event shall Manager engage in any activities in violation of the Sublease, including, without limitation, allowing any Tenant Excluded Business (as defined in the Sublease) activities to occur at the Findlay Community Center.

(h) Hours of Operation. The City and Manager agree that the Findlay Community Center shall be open for operation during hours mutually agreed upon between the City and Manager. Notwithstanding the foregoing, the Findlay Community Center may be closed on holidays agreed to by the City and Manager, and any proposed change to the hours must be submitted to the City for its written approval no later than 30 days prior to the date of such proposed change approval, with a copy of such City-approved hours being sent to the neighborhood community councils of Over-the-Rhine, Pendleton, Mt. Auburn, the West End, and Downtown following the City's approval.

4. SUBMANAGEMENT AGREEMENT. Manager shall enter into a submanagement agreement (the "**Findlay Community Center Submanagement Agreement**") with a third party (the "**Findlay Daily Operator**") to perform the Services and to manage the daily operations of the Findlay Community Center for Manager. Manager and the City, in coordination with the Cincinnati Recreation Commission (the "**CRC**"), will release a request for proposal to identify the Findlay Daily Operator who will enter into the Findlay Community Center Submanagement Agreement, in a form and substance acceptable to the City, to manage the daily operations of the Findlay Community Center for Findlay Operator. Manager must obtain written approval from the City prior to the execution of the Findlay Community Center Submanagement Agreement. Throughout the Term of this Agreement, Manager must (a) obtain written approval from the City for any change in the Findlay Daily Operator (a "**New Findlay Daily Operator**"), (b) obtain written approval of any Findlay Community Center Submanagement Agreement to be entered into between Manager and any such New Findlay Daily Operator (a "**New Findlay Community Center Submanagement Agreement**"), and (c) submit any such proposed New Findlay Daily Operator and/or New Findlay Community Center Submanagement Agreement to the City Manager no sooner than 60 days prior to the expiration or termination of the then existing agreement for the daily operation of the Findlay Community Center.

5. COMPENSATION FOR SERVICES. The City shall not be required to pay to Manager any fees for provision of the Services under this Agreement.

6. EXPENSES; REVENUES; MEMBERSHIP FEES.

(a) Manager Expenses. Except as specifically provided in this Section, Manager shall be responsible for paying for all costs and expenses related to provision of the Services, including but not limited to, the utility and other service costs and expenses supplied to the Community Center, and any other costs or expenses that are the responsibility of the City pursuant to the *Community Center Sublease* dated as of the Effective Date between the City and Findlay Community Center LLC (the "**Sublease**"), and the City shall have no liability for such expenses unless explicitly stated herein.

(b) City Annual Operating Contribution. The City shall, subject to appropriation by City Council, contribute \$400,000 each calendar year to the operating revenue of the Findlay Community Center (the "**City's Annual Operating Contribution**").

(c) Revenues and Expenses. Manager shall maintain records of all (i) revenue received from the operation of the Findlay Community Center (including all revenue arising from the sale and renewal of Recreational Amenities Memberships, rental of the multipurpose spaces, sponsorship agreements contemplated herein, and any other revenue arising from the operations of the Findlay Community Center), from the Parking Lot Net Operating Income (NOI) (as defined below), all interest accruing from the funds held in the Community Center Reserve Fund (as defined below), and the City's Annual Operating Contribution (collectively, "**Revenues**"), and (ii) expenses incurred in operating the Findlay Community Center in accordance with the terms of this Agreement and the Sublease. Manager shall use all Revenues to pay Authorized Expenses and Actual Expenses incurred by Manager. Manager shall use its best efforts to

ensure that the Actual Expenses do not exceed the Authorized Expenses set forth in the Approved Operating Budget with respect to individual accounting categories or in total. “**Authorized Expenses**” shall mean any anticipated regular costs and expenses of operating and maintaining (excluding capital repairs) the Findlay Community Center and providing the Services, as approved by the City in writing after issuing the Approved Operating Budget (as defined below). “**Actual Expenses**” shall mean the verifiable amount of costs and expenses incurred for operating and maintaining the Findlay Community Center and providing the Services, as distinguishable from Authorized Expenses.

(d) Operating Loss from Excess Expenses. To the extent Actual Expenses exceed Revenues in a single year (an “**Operating Loss**”), then, such excess will be funded as follows:

(i) First, from the Community Center Reserve Fund (as defined below), and

(ii) Second, within [60] days following the last day of such calendar year, the City shall pay to Manager 50% of such remaining excess.

(e) Excess Revenues. To the extent Revenues exceed Actual Expenses in a single year (“**Excess Revenue**”), then, within [60] days following the last day of such year, such Excess Revenue shall be deposited into the Community Center Reserve Fund.

(f) Community Center Reserve Fund. In connection with the construction of the Findlay Community Center project, 3CDC established a [\$2,400,000] reserve fund for the benefit of the operational and maintenance (excluding capital repairs unless approved pursuant to Section 7 below) needs associated with the Findlay Community Center (the “**Community Center Reserve Fund**”), which are held, and shall continue to be held, in an interest-bearing account. Manager shall only use the Community Center Reserve Fund as outlined hereunder and as otherwise approved by the City. Manager shall deposit all Excess Revenue and all Parking Lot NOI (as defined below) in the Community Center Reserve Fund no later than [January [] of each year during the Term]. All interest earned from the amounts deposited in the Community Center Reserve Fund shall be collected and applied as Revenue, as contemplated above. Upon the termination of this Agreement, Manager shall return (or cause to be returned) any remaining funds in the Community Center Reserve Fund to the City.

(g) Operating Loss Reconciliation. If an annual Operating Loss in an amount over \$500,000 is experienced during the Term, then Manager shall submit to the City a budget reconciliation report in sufficient detail acceptable to the City that itemizes all the expenses incurred by Manager for the applicable year (the “**Operating Loss Report**”). Following the City’s receipt of the Operating Loss Report, the City shall have the right to modify (i) the Operating Loss funding structure set forth in Section 6(d) in a manner that is mutually agreeable to the City and Manager, and (ii) the Annual Operating Budget to avoid a future Operating Loss. Any mutually agreed upon modifications to the Operating Loss funding structure shall be memorialized in a written amendment to this Agreement signed by the City and Manager.

7. CAPITAL REPAIRS AND IMPROVEMENTS; EQUIPMENT & FIXTURES; CONTRACTING.

(a) Capital Repairs and Improvements. Manager is not required to undertake material capital repairs or improvements to the Findlay Community Center as part of the Services. However, from time to time the City may request that Manager undertake, contract for, and oversee certain capital repairs or improvements to the Findlay Community Center, and Manager may either accept or reject such request. Notwithstanding the forgoing, the City at all times during the Term of this Agreement retains the ability to perform or undertake any capital repairs or improvements that it deems appropriate, in the City’s sole and absolute discretion and with or without Manager agreement, but only after giving Manager prior notice and an opportunity to perform such repairs or improvements. Manager may also from time to time recommend to the City certain capital repairs and improvements to the Findlay Community Center. The City may, in its sole and absolute discretion approve (unless Manager is not requesting funds from the City in which case the City’s approval shall not be unreasonably withheld, conditioned, or delayed) such recommended capital repair or improvements by providing written authorization to Manager to undertake, contract for, and oversee such capital project in accordance with the terms herein. Manager shall not undertake any material capital repairs or improvements to the Findlay Community Center without such prior written authorization from the

City. Funding of the costs and expenses of any such capital project shall be agreed upon by the parties in writing prior to the expenditure thereof. Notwithstanding the foregoing, the parties may elect to pay for costs and expenses of such mutually agreed upon and approved capital projects with funds from the Community Center Reserve Fund.

(b) Manager Responsible for Sublease Required Repairs and Maintenance. Notwithstanding the above, Manager shall be responsible for undertaking and funding any and all repairs and maintenance required to be made by the City under the Sublease.

(c) Subcontracting with Third Parties. Manager may subcontract to third parties in order to deliver the Services; however, any such subcontracting shall be completed in compliance with all applicable City requirements and Manager shall still remain as the obligor for providing such Services. All third-party contracts shall, unless otherwise approved by the City, be memorialized in a written agreement, have no more than a 12-month term, include a 30-day at-will and without cause termination provision, and require commercially reasonable insurance. Manager shall comply with the procurement procedures attached as Exhibit C (Procurement Procedures) hereto.

(d) Small Business Program and Equal Employment Opportunity Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (“**SBEs**”). Pursuant to Chapter 323 of the CMC, the City’s annual goal for SBE participation shall be 30% percent of the City’s total dollars spent for construction, supplies, services, and professional services (as such terms are defined therein). Accordingly, Manager shall use its best efforts and take affirmative steps to achieve the City’s goal of voluntarily meeting 30% percent SBE participation. A list of SBEs, and additional information about the City’s SBE Program, may be obtained from the City’s Department of Economic Inclusion, Two Centennial Plaza, 805 Central Avenue, Suite 222, Cincinnati, Ohio 45202. Manager may refer interested firms to the City’s Department of Economic Inclusion for review and possible certification as an SBE. Manager shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

- (i) Including qualified SBEs on solicitation lists.
- (ii) Assuring that SBEs are solicited whenever they are potential sources. Manager 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, as applicable.
- (iii) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.
- (iv) If any subcontracts are to be let, Manager shall require the prime contractor (if different from Manager) to take the above affirmative steps.
- (v) Prior to the commencement of work under any subcontracts, Manager shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. Manager shall update the report monthly.
- (vi) Manager shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting such information as may be requested from time to time by the City.

Failure of Manager or its contractors and subcontractors 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 SBE participation as set out in CMC Chapter 323, may be construed by the City as failure of Manager to use its 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. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

(e) Equal Employment Opportunity Program. This Agreement is subject to and hereby incorporates the provisions of the Equal Employment Opportunity Program set forth in CMC Chapter 325

(including, without limitation, CMC Section 325-9). Details concerning the City's Equal Employment Opportunity Program can be obtained from the City's Department of Economic Inclusion.

(f) Living Wage. This Agreement is subject to and hereby incorporates the provisions of CMC Chapter 317. Such provisions require that, unless specific exemptions apply or a waiver is granted, all covered employers (as such term is defined in CMC Section 317-1-C3) under service contracts shall provide payment of a minimum wage to employees at rates no less than those listed within CMC Section 317-3. Such rates shall be adjusted annually pursuant to the terms of the CMC. Pursuant to the provisions of CMC Chapter 317, the City shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies in the event of violations of the provisions of CMC Chapter 317.

(g) Prevailing Wage. Before undertaking any new construction, reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of a permanent improvement on the Findlay Community Center where the total project costs is in excess of \$20,000, Manager shall provide notice to the City of such intent and shall have received a prevailing wage determination from the City prior to contracting for and commencing such project. Notwithstanding anything herein to the contrary, (i) Manager shall at all times comply with applicable local, state, and federal prevailing wage laws and requirements during performance of its obligations under this Agreement; and (ii) all construction, reconstruction, enlargement, alternation, repair, remodeling, renovation or painting shall be in compliance with the terms of the Sublease.

8. BUDGET; REPORTING; INSPECTION RIGHTS.

(a) Budget. Prior to the Commencement Date, Manager shall prepare and deliver to the City a detailed budget for the Findlay Community Center, reflecting the revenue and operating expenses that Manager expects to receive and incur, respectively, during the remainder of the calendar year in which the Commencement Date occurs. Prior to the start of the first calendar year after the year in which the Commencement Date occurs, and continuing every year thereafter, Manager shall prepare and deliver to the City a detailed budget for the Findlay Community Center for each upcoming calendar year no later than [90] days before the beginning of that upcoming calendar year. The City shall promptly review each proposed budget and consult with Manager so that each budget can be finalized prior to the commencement of the upcoming year (each, an "**Approved Operating Budget**"). Manager shall use diligence and reasonable efforts to ensure that the Actual Expenses shall not exceed the budgeted expenses set forth in the Approved Operating Budget with respect to individual accounting categories or in total. The City and Manager may, by mutual agreement, amend the Approved Operating Budget from time to time as they deem necessary or appropriate and such amended budget will become the new Approved Operating Budget.

(b) Recreational Amenities Membership Fees and Terms. Manager shall include in each detailed budget provided to the City pursuant to subsection (a), above, the proposed rate and terms of the Recreational Amenities Memberships and, to the extent Manager desires to change the approved rate and terms of the Recreational Amenities Membership in an Approved Operating Budget, Manager shall submit such proposed change to the City for its written approval no later than 60 days prior to the date such proposed change are to take effect, and send a copy of the City-approved changes to the neighborhood community councils of Over-the-Rhine, Pendleton, Mt. Auburn, the West End, and Downtown, such proposed changes. Upon written approval of the City, such rates and terms shall be amended to reflect the new approved rates and terms and the Approved Operating Budget shall be updated to reflect the same.

(c) Parking Lot NOI. Manager shall include in each detailed budget provided to the City pursuant to subsection (a), above, the Parking Lot Net Operating Income (NOI). For the purposes of this Agreement, "**Parking Lot Net Operating Income NOI**" shall mean the Parking Lot Revenue, less the Operating Expenses, and the Management Fee (each as defined in the Parking Lot Lease). Furthermore, Manager shall, no later than March 1 of each year, provide notice to the City of the parking rates Manager intends to charge for the parking passes and/or spaces in the Parking Lot.

(d) Annual Operating Report. Within 60 days of the end of each calendar year, Manager shall deliver an annual operating report ("**Annual Operating Report**") to the City containing the following information:

- (i) Prior Year Financial Report – Detailing revenues and expenditures for the previous year, the Parking Lot NOI, and any reserves or cash-on-hand at the end of the year;
- (ii) Inspection Report – Detailing an internally generated engineering and building system inspection report on the status of the physical conditions of the Findlay Community Center;
- (iii) Attendance Report – Detailing approximate bi-monthly attendance for the Findlay Community Center in the previous year;
- (iv) Sponsorships – Detailing the existing and proposed sponsors for the Findlay Community Center, including the program sponsored, amount, and term; and
- (v) Additional Information – Such additional information that the City may reasonably request from time to time, including:
 - (A) Financial Statements. By no later than June 30 of each year, Manager shall provide the City with audited financial statements detailing income and expenses for provision of the Services for the previous year, prepared by an independent certified public accountant utilizing generally accepted accounting principles, which statements may be included as a schedule to 3CDC’s consolidated financial statements.
 - (B) Third Party Contracts. Upon request by the City, Manager shall provide to the City copies of all contracts entered into with third parties that relate or pertain to this Agreement, the Findlay Community Center, or the Services.
 - (C) Records; Audit Rights. Manager shall collect, maintain, and furnish to the City from time to time such other accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Manager, the Findlay Community Center, this Agreement, or the Services, including, without limitation, bank statements, loan statements, income tax returns, and such other 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 (all reports, records, statements and other information furnished by Manager under this subsection being referred to herein collectively as “**Records and Reports**”). All Records and Reports compiled by Manager and furnished to the City shall be in such form as the City may from time to time require. During the Term, Manager shall permit the City and its designees and auditors to have access to and to inspect and audit Manager’s Records and Reports. If the City’s inspection or audit reveals a material discrepancy with information previously provided by Manager, Manager shall reimburse the City for the City’s out-of-pocket costs associated with such inspection or audit, and the parties shall work cooperatively to resolve such discrepancy. Manager shall maintain all Records and Reports throughout the Term and for a period of at minimum 3 years following the end of the Term.
 - (D) Public Records. During the Term, Manager shall promptly provide to the City any and all records requested by the City that the City determines are reasonably required in order to comply with the City’s obligations under the Ohio Public Records Act.
 - (E) Reporting of Accidents and Other Significant Occurrences. Manager shall keep the City informed of all reported accidents and other significant, unanticipated occurrences at or otherwise affecting the Findlay Community Center that involve public health or safety issues or that could lead to negative publicity. Manager shall notify the City Manager’s Office within 48 hours of assaults, robberies or

the like. For all incidents for which a police report is filed, Manager shall promptly obtain a copy of the police report and promptly provide a copy of it to the City Manager's Office.

(F) Structural Engineering Report. On the date that is 20 years from the Commencement Date, Manager shall deliver to the City a structural engineering report on the status of the structural condition of the Findlay Community Center.

(G) City's Right to Inspect. The City shall have the right to inspect the Findlay Community Center from time to time for any proper purpose.

9. SCOPE OF AUTHORITY; FUNDRAISING; SIGNAGE.

(a) Relationship. The parties agree that Manager is intended to be an independent contractor of the City, and Manager and its contractors and staff shall not be considered employees of the City. Manager shall not have the authority to enter into any contract or agreement in the name of, or to exercise any rights or make any decision on behalf of the City, without the prior written approval of the City.

(b) Sponsorship and Fundraising. The City acknowledges that Manager or 3CDC may solicit sponsorships for its activities at the Findlay Community Center and may otherwise pursue fundraising to help offset the costs of provision of the Services. Manager or 3CDC may only utilize funds raised pursuant to such solicitations and fundraising for the costs and expenses of providing the Services and improvements to the Findlay Community Center and for no other purpose. The City acknowledges and agrees that Manager or 3CDC may enter into all agreements that are necessary and appropriate to secure such sponsorships and fundraising; however, unless otherwise expressly agreed to by the City in writing, any such agreements shall not be binding on the City in the event of termination of the Management Agreement. Manager and/or 3CDC shall not enter into any agreement for sponsorship that is (i) for a term greater than two years, or (ii) is for an amount greater than \$50,000, without first presenting to the City for its review and written approval of the proposed form of such agreement, and the proposed sponsor. Notwithstanding any of the foregoing to the contrary, Manager shall not enter into any sponsorship agreement with an organization or entity that is a party in active litigation against the City or into any agreements for the naming of the physical assets of the Findlay Community Center. Manager shall not enter into any sponsorship agreement with an organization or entity that (t) promotes candidates, issues, or causes of an ideological or political nature; (u) is discriminatory in nature; (v) contains obscene or pornographic material; (w) promotes tobacco products; (x) promotes or advertises adult bookstores, adult cinemas or adult live entertainment venues, such as strip clubs or gentlemen's clubs; (y) supports or opposes a religion, denomination, or religious creed, tenet, or belief; or (z) advertises the sale of firearms or firearm ammunition.

(c) Signage and Displays on the Findlay Community Center. The City reserves the right to post signage or install other displays on the Findlay Community Center to disseminate messages or information of public interest and concern and in furtherance of valid public purposes. The City and Manager agree to work together in good faith on the installation and location for any such signage or displays.

Notwithstanding anything in this Agreement to the contrary, Manager shall not permit signage related to sponsorship to be posted on the Findlay Community Center that contains any content that (i) promotes candidates, issues, or causes of an ideological or political nature; (ii) is discriminatory in nature; (iii) contains obscene or pornographic material; (iv) promotes tobacco products; (v) promotes or advertises adult bookstores, adult cinemas or adult live entertainment venues, such as strip clubs or gentlemen's clubs; (vi) supports or opposes a religion, denomination, or religious creed, tenet, or belief; or (vii) advertises the sale of firearms or firearm ammunition.

Any signage related to sponsorships shall contain text identifying such signage as signage arising from a sponsorship.

10. INSURANCE.

(a) Type of Insurance. Throughout the Term of this Agreement, Manager shall carry and maintain or cause to be carried and maintained the following insurance:

(i) Worker's compensation insurance as required by law;

(ii) Automobile liability insurance with a per accident limit of not less than \$1,000,000 per accident and covering all owned, non-owned, hired, and permissive use vehicles; and

(iii) Commercial general liability insurance in the amount of not less than \$5,000,000 per occurrence, combined single limit, \$5,000,000 aggregate.

(b) Policy Requirements. Manager's insurance policies shall (i) be written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better, (ii) provide that they may not be canceled or modified without at least 30 days prior written notice to the City, and (iii) be primary and non-contributory with respect to insurance maintained by the City. On or about the Effective Date, and annually thereafter with the Annual Operating Report, Manager shall provide the City with certificates of insurance evidencing the insurance required to be maintained by Manager hereunder. Insurance policies maintained by Manager under Sections 10(a)(ii) and (a)(iii) above shall name the City as an additional insured. Manager agrees that in the event that the actual insured amounts for any herein required insurance policies are higher than the amounts required under this Agreement, that the City shall be entitled to the full extent of proceeds available under such policies and shall not be limited by the herein described minimum limits.

(c) Subcontractors. Manager shall require all subcontractors doing work at the Findlay Community Center to have commercial general liability insurance coverage, at the subcontractor's expense, in sufficient amounts to protect the interests of Manager and the City. Manager shall obtain and keep on file a certificate of insurance evidencing that each subcontractor is so insured and naming Manager and the City as additional insureds.

(d) Waiver of Subrogation. Manager hereby waives all claims and rights of recovery, and on behalf of Manager'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 Manager, 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 Manager shall at all times protect itself against such loss or damage by maintaining adequate insurance. Manager shall cause its insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

11. INDEMNIFICATION. The City assumes no responsibility for any acts, errors, or omissions of Manager or any employee, agent, representative, or any other person acting for or on behalf of Manager. Manager shall defend, indemnify, and hold the City, its officers, council members, employees, agents, contractors and subcontractors (collectively, the "**Indemnified Parties**") harmless from and against all costs (including, without limitation, attorneys' fees and other legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against the Indemnified Parties or any one or more of them as a result of or arising from the acts of Manager, its agents, employees, licensees, invitees, contractors, subcontractors or anyone else acting at the request of Manager in connection with the Services or the Findlay Community Center, or in connection with any breach by Manager under this Agreement, or in connection with any employment matter arising between Manager and its employees. Manager's indemnification obligations under this section shall survive the expiration or termination of this Agreement.

12. DEFAULT; REMEDIES; TERMINATION

(a) Default. Each of the following shall constitute an "**event of default**" by Manager under this Agreement:

(i) Performance Failure. If Manager fails to perform or observe any of the covenants, terms or conditions contained in this Agreement, and such failure continues for longer than 30 days after Manager

receives written notice thereof from the City; provided, however, that if such failure is not reasonably susceptible of being cured within such 30 day period, an event of default shall not be deemed to have occurred if Manager commences to cure such failure within such 30 day period and thereafter diligently pursues such cure to completion and, in fact, cures such failure within 90 days after Manager receives written notice of the default from the City. The foregoing notwithstanding, if the failure 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 Manager fails to take corrective action immediately upon discovering such dangerous condition or emergency; and

(ii) Bankruptcy; Insolvency. The commencement of levy, execution or attachment proceedings against Manager, any principal (which shall be defined as any individual or entity having an ownership interest in Manager of more than 25%) or partner of Manager, 3CDC, or any of the assets of Manager, or the application for or appointment of a liquidator, receiver, custodian, sequester, conservator, trustee, or other similar judicial officer; or the insolvency in the bankruptcy or equity sense, of Manager or any principal or partner of Manager; or the assignment for the benefit of creditors, or the admission in writing of an inability to pay debts generally as they become due, or the ordering of the winding-up or liquidation of the affairs of Manager or any principal or partner of Manager; or the commencement of a case by or against Manager or any principal or partner of Manager under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar laws, state or federal, or the determination by any of them to request relief under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar proceeding, state or federal, including, without limitation, the consent by any of them to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequester or similar official for it or for any of its respective property or assets (unless, in the case of involuntary proceedings, the same shall be dismissed within 90 days after institution).

(b) Remedies. Upon the occurrence of an event of default that continues beyond the applicable notice and cure period (if any) provided above, the City shall be entitled to (i) immediately terminate this Agreement by giving Manager 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 default, all at the expense of Manager, 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; all such rights and remedies being cumulative. Manager 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 Manager under this Agreement or the City’s enforcement or termination of this Agreement. Manager shall pay all such costs and damages within 30 days after receiving documentation from the City of the amount due. 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. Nothing contained in this Agreement shall limit or prejudice the right of a party to prove for and obtain as damages incident to a termination of this Agreement in any bankruptcy, reorganization or other court proceedings, the maximum amount allowed by any statute or rule of law in effect when such damages are to be proved.

(c) Termination for Convenience. At any time following the [6th anniversary] of the Effective Date, either party may provide written notice to the other that they are exercising its right to terminate this Agreement for convenience pursuant to this subsection; provided however, any such termination for convenience shall not be effective until at minimum [one year] from the date that the terminating party provides such notice of termination to the other.

13. ASSIGNMENT. Manager shall not assign its rights under this Agreement nor delegate its obligations hereunder without the prior written consent of the City. Manager acknowledges that the City is entering into this Agreement because of the City’s confidence that Manager has the financial backing, business experience, and community support that are necessary to properly operate the Findlay Community Center in accordance with the provisions of this Agreement throughout the entire Term. Manager acknowledges that the City shall not be expected to consent to a proposed assignment by Manager of its interests under this Agreement to any person or entity in whom the City does not have similar confidence. Any attempt by Manager to assign or otherwise transfer its interests under this Agreement to a third party without the City’s prior written consent shall be null and void and shall, at the option of the City, constitute a default of Manager under this Agreement. The foregoing notwithstanding, if Manager transfers its interests

under this Agreement to an Affiliate (as defined below), such transfer shall not constitute a prohibited assignment for purposes of this section. As used in the preceding sentence, an “**Affiliate**” of Manager means an entity that is 100% owned and controlled by 3CDC, either directly or through another subsidiary entity that is also 100% owned and controlled by 3CDC. Manager shall not assign its interests to an Affiliate under this Agreement without giving the City at least 60 days prior written notice thereof. No assignment or delegation by Manager of its rights or obligations under this Agreement to a third party shall relieve Manager from any liability to the City under this Agreement.

14. SURRENDER.

(a) Surrender. On or before the last day of the Term of this Agreement, Manager shall remove all of Manager’s personal property from the Findlay Community Center, and any property not so removed shall be deemed abandoned. Manager shall not remove any signs, trade fixtures, lighting, stage equipment, or ordinary fixtures used in connection with the Findlay Community Center unless the City approves of such removal in writing. Manager shall promptly repair any and all damage to the Findlay Community Center caused by its removal of any items under this paragraph.

(b) Documents to be Delivered to City. At the end of the Term of this Agreement, Manager shall deliver to the City originals of all books and records, unpaid invoices, operating manuals, contracts with third parties, warranty information, and all other written materials and documents that are in Manager’s possession or under Manager’s control and that are reasonably needed in order for there to be a seamless transition with respect to the operation of the Findlay Community Center.

15. NOTICES. All notices required to be given to any party under this Agreement shall be in writing and (a) personally delivered, (b) deposited in the United States mail, first class, postage prepaid, or (c) delivered by a nationally recognized overnight courier service, to the parties at the following addresses or such other address as either party may specify from time to time by notice to the other. Notices shall be deemed given upon receipt.

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| <p>To the City:</p> <p>City of Cincinnati 801 Plum Street Cincinnati, Ohio 45202 Attention: City Manager</p> | <p>To Manager:</p> <p>[Findlay Community Center Manager, LLC] 1203 Walnut Street, 4th Floor Cincinnati, Ohio 45202 Attention: Chief Legal Officer</p> |
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If Manager sends a notice to the City alleging that the City is in breach of this Agreement, Manager shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, Ohio 45202.

16. REPRESENTATIONS, WARRANTIES, AND COVENANTS. Manager makes the following representations, warranties, and covenants to induce the City to enter into this Agreement:

(a) Manager is an Ohio limited liability company duly organized and validly existing under the laws of the State of Ohio and qualified to do 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 of the State of Ohio relevant to the transactions contemplated by this Agreement.

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

(c) The execution, delivery, and performance by Manager of this Agreement and the consummation of the transactions contemplated hereby will not violate any applicable laws, or any writ or

decree of any court or governmental instrumentality, or the organizational documents of Manager, or any mortgage, indenture, contract, agreement or other undertaking to which Manager is a party or which purports to be binding upon Manager or upon any of its assets, nor is Manager in violation or default of any of the foregoing.

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

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

(f) The statements made in the documentation provided by Manager to the City that are descriptive of Manager or the Services have been reviewed by Manager 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.

(g) Neither Manager nor its affiliates owes any outstanding fines, penalties, judgments, water or other utility charges or other amounts to the City.

17. GENERAL PROVISIONS.

(a) Entire Agreement. This Agreement contains the entire agreement between the parties and 3CDC 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.

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

(c) 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 Manager agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(d) 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.

(e) 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.

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

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

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

(i) No Third-Party Beneficiaries. The parties hereby agree that no third-party beneficiary rights are intended to be created by this Agreement.

(j) 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 member, officer, agent or employee of the City in other than his or her official capacity. No official executing or approving the City's participation in this Agreement shall be personally liable under this Agreement.

(k) Limitation on Liability. Notwithstanding any provision in this Agreement or under applicable law, the City agrees in accepting this Agreement that, except in the case of fraud or intentional misconduct, it shall have no recourse to any members, officers, or employees of Manager or 3CDC; any member of any committee of Manager or 3CDC; or any member of the Board of Directors of Manager or 3CDC (each a "**Constituent Entity**"). For clarity, the term "Constituent Entity" shall solely include individuals and shall not include any legal entities. Each of the parties further agrees that no Constituent Entity shall have any personal liability for any obligation under this Agreement.

(l) Representation as to Authority. The City and Manager each represents to the other that it has the power and authority to enter into and perform its obligations under this Agreement without the consent of anyone who is not a party to this Agreement and that the execution and performance of this Agreement has been duly authorized by all necessary actions on the part of the performing party, including the authorizations and approvals described in the Recitals to this Agreement

(m) Compliance. Manager in the performance of the Services shall comply with all applicable statutes, ordinances, regulations, and rules of the federal government, the State of Ohio, the County of Hamilton, and the City of Cincinnati.

(n) No Liens. If any mechanics' lien or other similar lien is filed against the Findlay Community Center as a result of labor or material furnished at Manager's request, Manager shall cause the lien to be released or bonded off within 30 days following the filing of such lien.

(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.

(p) Acknowledgement of Sublease Agreement. Manager hereby acknowledges the receipt of the Sublease and Manager has reviewed and is familiar with the provisions of the Sublease. Manager hereby covenants and agrees that it shall not violate or cause a violation of any of the terms of the Sublease, and that Manager shall perform its obligations hereunder on a prompt and timely basis to enable the City to comply with the Sublease. Any failure by Manager to observe or comply with the foregoing provisions that is not cured by (i) the end of any applicable cure period set forth in this Agreement, or (ii) the applicable cure period afforded to City under the provisions of the Sublease (whichever is the shorter period) shall constitute an event of default under this Agreement.

18. EXHIBITS. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A – *Depiction of Findlay Site*
- Exhibit B – *Legal Description of Findlay Site*
- Exhibit C – *Procurement Procedures*

SIGNATURES ON FOLLOWING PAGE

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

CITY OF CINCINNATI

By _____
Sheryl M. M. Long, City Manager

Date: _____, 2025

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

FINDLAY COMMUNITY CENTER MANAGER, LLC

By _____
Katie Westbrook,
Senior Vice President of Development

Date: _____, 2025

Exhibit A
to Professional Services Management Agreement
Depiction of Findlay Site and Findlay Community Center

TO BE ATTACHED

Exhibit B
to Professional Services Management Agreement

Legal Description of Findlay Site

TO BE ATTACHED

Exhibit C
to Professional Services Management Agreement

Procurement Procedures

- A. Purchases of goods and services for which the City has a preferred contractor (“**City Contractor**”): Manager shall comply with the provisions below but shall request a quote from the City Contractor.

- B. Purchases of goods and services not performed by a preferred City Contractor:
 - 1. Purchases up to \$1,000 – No bid
 - a. May be done without securing competitive quotes and bids if the price quote is reasonably considered to be reasonable and the terms and delivery dates are conducive to the requirements.
 - b. If a quote is determined to not be reasonable, Manager will obtain competitive quotes.

 - 2. Purchases \$1,000 to \$5,000 – Informal bid
 - a. Manager shall obtain at least two written quotes that address pricing, delivery, discounts, terms, conditions, and other factors critical to a decision.
 - b. Manager shall select the bid most conducive to what is required considering price, delivery, and other factors critical to the project.

 - 3. Purchases \$5,000 and above – Formal bid
 - a. Manager shall issue a formal RFP and obtain at least three written quotes.
 - b. Manager shall select the bid most conducive to what is required considering price, delivery, and other factors critical to the project.

- C. Single Source: Manager may single source goods or services associated with the following:
 - 1. Landscaping services
 - 2. Management and oversight services, together or separately, for each of the following: the Aquatics Center, Gymnasium, Roller Skating Rink, and Fitness Center
 - 3. Such other items approved in advance by the City Manager

Manager shall not divide or break down costs for a larger project to avoid issuing a formal RFP.

Exhibit J

Form of Professional Services Management Agreement – Republic ROW

TO BE ATTACHED

Exhibit K

Sources of Project Funds

| SOURCES | |
|---------------------------------|---------------------|
| Federal NMTC Equity | \$4,446,000 |
| Federal Grant - HUD | \$4,500,000 |
| State Capital Grant | \$1,350,000 |
| Fundraising | \$10,000,000 |
| City Grant - Predevelopment TIF | \$1,554,631 |
| City Grant | \$24,250,000 |
| TOTAL SOURCES | \$46,100,631 |

Exhibit L

Form of Developer Parcel Deed

SEE ATTACHED

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

GENERAL WARRANTY DEED

OTR Holdings, Inc., an Ohio corporation ("**Grantor**"), for valuable consideration paid, hereby grants and conveys, with general warranty covenants, to the **City of Cincinnati**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 ("**Grantee**"), all of Grantor's right, title, and interest in and to the real property more particularly described on Exhibit A (*Legal Description of the Property*) hereto (the "**Property**") to wit:

Project: Findlay Community Center

Property Address: 1829 Vine St., Cincinnati, Ohio 45202

Auditor's Parcel No. 0094-0008-0352

Prior Instrument Reference: Official Record _____, Page _____, Hamilton County, Ohio Recorder's Office

Funding for the City's acquisition of the described Property was authorized by Ordinance No. _____, passed by City Council on _____.

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

Exhibit A – Legal Description of the Property

Executed on the date of acknowledgement below.

Grantor: OTR Holdings, Inc., an Ohio corporation

By: _____

Printed Name: _____

Its: _____

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2025,
by **OTR Holdings, Inc., an Ohio corporation** by _____, its
_____.

Notary Public
My commission expires: _____

Accepted by:

CITY OF CINCINNATI

By: _____

Printed Name: Sheryl M. M. Long

Title: City Manager

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, the City Manager of the _____, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street, #122
Cincinnati, OH 45202

EXHIBIT A
to General Warranty Deed

Legal Description of the Property

The Land referred to herein below is situated in the County of Hamilton, State of Ohio and is described as follows:

Situated in the City of Cincinnati, Hamilton County, Ohio: Being a part of Lot 25 of James Findlay's Northern Liberties Subdivision as recorded in Deed Book R-2, Page 334 of Hamilton County, Ohio records, described as follows:

Beginning in the West line of Vine Street, a distance of 51.66 feet northwardly from the intersection of the West line of Vine Street and the North line of a twelve foot alley, said intersection being also the southeast corner of said lot 25; thence South 74° 02' West a distance of 59.81 feet; thence North 15° 38' West enclosing an angle of 89° 40' a distance of 38.69 feet to the South line of Registered Land #1121 of the Hamilton County, Ohio Registered Land Records; thence North 74° 02' East along the South line of Registered Land enclosing an angle of 90° 20' a distance of 59.92 feet to the West line of Vine Street; thence South 15° 48' East along the West line of Vine Street enclosing an angle of 89° 50' a distance of 38.69 feet to the place of origin, forming an interior angle of 98° 10'. Containing 0.0532 acres, more or less.

Exhibit M

Additional Requirements

As used in this Exhibit, the term "Developer" shall mean the Developer Parties.

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:

(iii) 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.

(iv) Affirmatively Imposing Contractual Obligations.

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

(A) Construction Workforce.

(i) Applicability.

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

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

(ii) Requirement.

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

within 60 days of beginning the construction contract) (collectively, the “**Construction Workforce Goals**”).

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering with Trade Unions.

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

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

(ii) Contracts and Subcontracts; Competitive Bidding.

(a) Applicability. This clause (ii) is applicable to “construction contracts” under CMC Chapter 321. CMC 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.

(c) 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.

(d) 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 CMC 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) Business Enterprise Program.

(i) Applicability. In furtherance of the policy goals established by CMC Chapter 323 (Small Business Enterprise and Local Business Enterprise Program), and CMC Chapter 324 (Minority and Women Business Enterprise Program), the requirements set forth in this Section (F) shall apply to this Agreement as an affirmative contractual obligation, notwithstanding the legal applicability or inapplicability of CMC Chapters 323 and 324 to this Agreement. Developer hereby agrees to comply with this Section (F) and, where applicable, to cause its general contractor to comply with this Section (F) in all respects.

(ii) Requirement. Developer and its general contractor shall use its best efforts to ensure that certified SBEs, MBEs, and WBEs (in each case as such terms are used within CMC Chapters 323 and 324, collectively, "**Certified Firms**") are utilized as sources of supplies, equipment, construction, and services, with (a) the goal of meeting 30% Certified Firm participation for construction contracts and 15% participation for supplies, services, and professional services contracts, and (b) with a sub-goal, being Developer's Project-specific voluntary commitment, of meeting the City's economic inclusion program goals to achieve a standard of no less than: (i) for MBEs, 20% for construction services; and (ii) for WBEs, 10% for construction services. (A list of certified SBEs, MBEs, and WBEs 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 a certified SBE, MBE, or WBE, and applications may also be obtained from such web page. Developer expressly agrees to take (or cause its general contractor to take) at least the following affirmative steps, except as expressly waived in writing by the Director of the Department of Economic Inclusion:

- (1) Including qualified Certified Firms on solicitation lists.
- (2) Assuring that Certified Firms are solicited whenever they are potential sources, including by advertising, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to Certified Firms to provide services, to supply materials or to bid on construction contracts for the Project. Developer and its general contractor are encouraged to use the internet and similar types of advertising to reach a broader audience, but these additional types of advertising cannot be used as substitutes for the above.
- (3) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum Certified Firm participation.
- (4) When needs permit, establishing delivery schedules that will encourage participation by Certified Firms.

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

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

obtain instructions, the proper internet link, login information, and password to access the site and set up the necessary reports.

(v) Developer and its general contractor shall periodically document its best efforts and affirmative steps to meet the above Certified Firm 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 of the Ohio Revised Code.

(vi) Failure of Developer or its general contractor to take the affirmative steps specified above, or to provide fair and equal opportunity to Certified Firms, as may be necessary to reach the minimum percentage goals for Certified Firm participation as set forth in CMC Chapters 323 and 324, 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. CMC Chapter 325 (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. CMC Chapter 325 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 CMC Chapter 325 (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 CMC Chapter 319, which provides for a "Prompt Payment System", may apply to this Agreement. CMC 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 Section 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 CMC Chapter 326 (Wage Enforcement) (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. CMC 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 CMC. 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 CMC Chapter 326) 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 CMC Chapter 326, 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 CMC Chapter 326, 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 CMC Chapter 326, 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 CMC Chapter 326, 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 CMC Chapter 326, Wage Enforcement, as

administered by the City of Cincinnati Department of Economic Inclusion. Such notice shall include contact information for the Department of Economic Inclusion as provided by the department.

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

(N) Americans With Disabilities Act; Accessibility.

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

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

(O) Electric Vehicle Charging Stations in Garages.

(iii) 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 Section 3735.67, et seq., or Job Creation Tax Credits pursuant to Ohio Revised Code Section 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.

(iv) 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 debarred by any federal, state, or local government agency during the term of this Agreement, Developer shall be considered in default under this Agreement.

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

Addendum I
to
Additional Requirements Exhibit
City's Prevailing Wage Determination

DEI - Request for Wage Determination (Form 217)

| REQUEST FOR PROJECT WAGE DETERMINATION | |
|---|---|
| IF THIS IS A REVISION REQUEST, ENTER ORIGINAL ASSIGNED NUMBER: | CHOOSE SOURCE & WRITE IN THE FUND NUMBER |
| DEPARTMENT * DCED | CITY <input checked="" type="radio"/> Yes <input type="radio"/> No FUND * 980 |
| CONTACT PERSON * MARC VON ALLMEN | STATE <input checked="" type="radio"/> Yes <input type="radio"/> No FUND * 000 |
| Phone # * (513)352-6109 | COUNTY <input type="radio"/> Yes <input checked="" type="radio"/> No FUND |
| Email * MARC.VONALLMEN@CINCINNATI-OH.GOV | FEDERAL <input checked="" type="radio"/> Yes <input type="radio"/> No FUND * 000 |
| Requested Date: 03/26/2025 | IS THIS PROJECT BEING COMPETIVLY BID? <input type="radio"/> Yes <input checked="" type="radio"/> No |
| Estimated Advertising Date: 04/01/2025 | PROJECT ACCOUNT NUMBER: |
| Estimated Bid Opening Date: | AMT. OF PUB. FUNDING \$: * \$31,782,371.00 |
| Estimated Starting Date: 05/01/2025 | TOTAL PROJECT DOLLARS: * \$46,228,371.00 |
| | NAME OF PROJECT (Maximum 100 Letters) * FINDLAY COMMUNITY CENTER |

Type of Project: (E.g., residential building, commercial building, heavy work, highway work, demolition, mixed use building, roads, parking lot, sewer, parks) *
Commercial building

Project Location: (Include both the address and parcel number.) *

The Project is located on five separate parcels in Over-the-Rhine. The Project also includes (i) a 0.135-acre portion of Republic Street which will be vacated and consolidated with the aforementioned parcels and (ii) a 0.05-acre portion of Republic Street that will not be vacated but will be managed by 3CDC or a related entity. More specifically (collectively, the "Property"):

- Clifton Avenue - PID #: 094-0008-0330 (Partial)
- 1811 Vine Street - PID #: 094-0008-0345
- Clifton Avenue - PID #: 094-0008-0360
- 1823 Vine Street - PID #: 094-0008-0351
- 1829 Vine Street - PID #: 094-0008-0352
- A 0.135-acre portion of Republic Street, between 1826 Republic Street and Bardes Alley, that will be vacated and consolidated with the aforementioned parcels
- An approximately 0.05-acre portion of Republic Street, between Findlay Street and 1826 Republic Street, that will not be vacated but will be managed by 3CDC or a related entity.

Owner of Project Site: (Include the current owner and any lease or transfer of ownership that will occur before, during, or after completion of the project as part of the agreement.) *

The City currently owns the majority of the Project Site and intends to take title to 1829 Vine Street. The 0.135-acre portion of Republic Street will be vacated by the City and consolidated into a single parcel along with the other five parcels that make up the Project Site. The consolidated parcel will be owned by the City, along with future improvements made to the site via the Project. The City intends to enter into a long-term ground lease with a 3CDC controlled entity for the City-owned property at 1811 Vine Street (current Findlay Playground) and 1829 Vine Street – a total of approximately 1.052 acres. The 3CDC controlled entity will lease back approximately 0.873 acres to the City for the new community center, and the remaining 0.179 acres adjacent to the community center will be leased by the 3CDC controlled entity to a third-party daycare operator for a future daycare center.

Budget Breakdown: (Provide a description of all funding sources and the use of those funds. Attachments may be included as necessary.) *

See attached. City funding sources include OTR West TIF (\$1,554,631) and NTR bond proceeds (\$24,377,740). State source is a capital grant from the Ohio Department of Natural Resources. Federal funding comes from Community Project Funding administered by HUD.

Project Scope: (Provide a detailed description of the entire project scope under the agreement. If applicable, please include information about the numbers of stories in the building, the number of residential units, or the number of HOME units.) *

The Project involves the construction of a new two-story, approximately 65,000 square foot community and recreation facility that will create:

- A roller rink
- An aquatics pool
- Gymnasium space
- An outdoor playfield
- Locker room facilities
- Various multipurpose rooms
- A child watch facility
- A community/after school program facility
- A preschool facility
- An elevated walking track with cardio machine deck
- A large fitness and cardio machine space

The Total Project Cost is estimated to be approximately \$47,011,000 including an estimated \$33,037,000 of Hard Construction Costs.

Upload Supporting Documents (4)

Supporting Documents

[FINDLAY COMMUNITY CENTER BUDGET 2025 0318.XLSX - Von Allmen, Marc, 3/26/2025 9:55:42 AM](#)[04.1 - SOURCES OF FUNDS - B-24-CP-OH-1766 \(\\$500K\) AWARD LETTER.PDF - Von Allmen, Marc, 3/26/2025 9:55:42 AM](#)[04.2 - SOURCES OF FUNDS -B-24-CP-OH-1798 \(\\$4.5M\) AWARD LETTER.PDF - Von Allmen, Marc, 3/26/2025 9:55:42 AM](#)[04.4 - SOURCES OF FUNDS -OHIO CAPITAL APPROPRIATIONS FY2023-2024.PDF - Von Allmen, Marc, 3/26/2025 9:55:42 AM](#)**DEI USE ONLY****Federal Rate Document (1)**

Federal Rate *

[OH82.TXT - Halty, Karim, 3/26/2025 2:46:55 PM](#)

| Assigned Number | Dept Submitted Date | DEI Received Date |
|-----------------|---------------------|-------------------|
| 57749763 | 03/26/2025 | |

Original Assigned Number**Funding Guidelines:**

State
 Federal
 Prevailing Wage Will Not Apply

Rates That Apply:

Building
 Heavy
 Highway
 Residential

Decision Number:
 OH20250082

Modification Number:
 3

Publication Date:
 03/14/2025

Determination By:

| Name * | Title | Date * |
|-------------|---------------------------|------------|
| KARIM HALTY | Contract Compliance Spec. | 03/26/2025 |

Decision Summary: *

Comments:

The project as described exceeds the Davis-Bacon prevailing wage threshold for construction work, which is \$2,000. Therefore, Federal building rates will apply under USDOL guidelines.

NOTE: Any changes to the scope or funding of the project will require revision to this wage determination.

Director Approval Signature
 LAURA CASTILLO

Director Approval Date
 03/28/2025