

EMERGENCY

City of Cincinnati

KMG

AWB

An Ordinance No. _____

- 2021

AUTHORIZING the City Manager to execute a *Development Agreement* with Oakley Yards Land, LLC, an affiliate of Neyer Properties, Inc., pertaining to the redevelopment of property located at 2800 Robertson Avenue in the Oakley neighborhood of Cincinnati, pursuant to which the City will assign service payments in lieu of taxes received by the City of Cincinnati to the Port of Greater Cincinnati Development Authority to facilitate the mixed-use project.

WHEREAS, Oakley Yards Land, LLC, an affiliate of Neyer Properties, Inc. (“Developer”), and the City of Cincinnati desire to enter into a *Development Agreement*, substantially in the form of Attachment A hereto (the “Development Agreement”), pertaining to Developer’s redevelopment of property located at 2800 Robertson Avenue in Cincinnati (the “Project” and the “Project Site,” as applicable); and

WHEREAS, the Project consists of (i) approximately 350 to 400 market-rate residential apartments; (ii) approximately 150 to 200 units of senior housing; and (iii) approximately 105 single-family homes (collectively, the “Private Improvements”); and

WHEREAS, the Project also consists of certain eligible public infrastructure improvements, including public right of way, park space, roads, and utilities (as more particularly described in the Development Agreement, the “Public Infrastructure Improvements”); and

WHEREAS, the total estimated cost (including, without limitation, hard construction costs, soft costs, and acquisition costs) of (i) the Private Improvements is approximately \$148,825,000; and (ii) the Public Infrastructure Improvements is \$16,000,000; and

WHEREAS, the Project is expected to result in the creation of approximately (i) 500 full-time equivalent temporary jobs at the Project Site at an annual payroll, during the construction period, of approximately \$30,000,000; and (ii) 80 full-time equivalent permanent jobs at the Project Site at an annual payroll of approximately \$3,000,000 following completion of construction; and

WHEREAS, on December 11, 2019, this Council passed Ordinance No. 493-2019 (the “TIF Ordinance”), pursuant to which the City declared that the Improvement (as defined in Ohio Revised Code (“ORC”) Section 5709.40(A)(4)) to the Project Site constitutes a public purpose and exempted 100% of the Improvement from real property taxation for a period of 30 years pursuant to ORC Section 5709.40(B) (the “TIF Exemption”); and

WHEREAS, pursuant to the TIF Ordinance, the parties intend to execute one or more service agreement(s), in substantially the form attached as an exhibit to the Development

Agreement, pursuant to which Developer will make semiannual service payments in lieu of real property taxes (“Service Payments”); and

WHEREAS, the City anticipates that the Service Payments will be used: (i) to pay certain administrative fees to the Hamilton County, Ohio Auditor and the City; (ii) to make payments to the Board of Education of the Cincinnati School District under the City’s Agreement with the School Board dated July 2, 1999, as amended; (iii) to facilitate a bond issuance by the Port of Greater Cincinnati Development Authority to finance a portion of the Public Infrastructure Improvements; and (iv) to be retained by the City and used for any lawful purpose, in each case in the manner set forth in the Development Agreement; and

WHEREAS, the Project Site is located in the TIF District known as “District 20-Oakley Incentive District” (the “District”), established by Ordinance No. 415-2005, passed by City Council on November 2, 2005; and

WHEREAS, pursuant to Ordinance No. 494-2019, passed by City Council on December 11, 2019, the City kept the Project Site within the District and “layered” the TIF Exemption over the existing exemption provided by the District, by stating that the TIF Exemption has priority over the District exemption; and

WHEREAS, pursuant to the Development Agreement, the City anticipates releasing three sewer easements and restrictions pertaining to advertising signs and filling operations created pursuant to a *Deed* recorded on July 9, 1979, in Deed Book 4162, Page 686, Hamilton County, Ohio Records; and

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

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

WHEREAS, the City believes that the Project will promote urban redevelopment in the Oakley neighborhood of Cincinnati, is in the vital and best interests of the City and the health, safety, and welfare of its residents, and is in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements; now, therefore,

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

Section 1. That the City Manager is hereby authorized to execute a *Development Agreement* with Oakley Yards Land, LLC (“Developer”), in substantially the form attached as Attachment A to this ordinance (the “Development Agreement”), pertaining to a mixed-use

project located at 2800 Robertson Avenue in Cincinnati, as more particularly described in the Development Agreement (the “Project” and the “Project Site”, as applicable).

Section 2. That the proper City officials are hereby authorized to do all necessary and proper actions to fulfill the terms of this ordinance, the Development Agreement, any and all Project-related documents described or contemplated in the Development Agreement (including, without limitation, one or more service agreements and a cooperative agreement, as more particularly described therein), and all ancillary agreements, plats, amendments, and other documents related to the Project and/or the Project Site, including, without limitation, to create new encumbrances or release existing encumbrances (including releasing the sewer easements and restrictions pertaining to advertising signs and filling operations created pursuant to a *Deed* recorded on July 9, 1979, in Deed Book 4162, Page 686, Hamilton County, Ohio Records), all as deemed necessary or appropriate by the City Manager.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to enable the parties to execute the Development Agreement as soon as possible so that Developer can promptly move forward with the Project, thereby creating additional housing, jobs and other significant economic benefits to the City at the earliest possible time.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

ATTACHMENT A

Contract No: _____

DEVELOPMENT AGREEMENT

between the

CITY OF CINCINNATI,
an Ohio municipal corporation;

and

OAKLEY YARDS LAND, LLC,
an Ohio limited liability company

Project Name: Three Oaks
(development of property along Robertson Avenue)

Dated: _____, 2021

DEVELOPMENT AGREEMENT
(Three Oaks)

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into effective as of the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and **OAKLEY YARDS LAND, LLC**, an Ohio limited liability company, 2135 Dana Avenue, Ste 200, Cincinnati, Ohio 45207 ("**Developer**"). Developer is an affiliate of Neyer Properties, Inc., an Ohio corporation ("**Neyer**").

Recitals:

A. Developer desires to undertake the redevelopment of approximately 30 acres of real property located at 2800 Robertson Avenue in the Oakley neighborhood of Cincinnati, as depicted on Exhibit A-1 (Site Plan) hereto, and more particularly described on Exhibit B (Legal Description) hereto (the "**Project Site**").

B. Developer currently anticipates redeveloping the Project Site, as depicted on Exhibit A-2 (Concept Plan) hereto, and as more particularly described on Exhibit C-1 (Description of Private Improvements) and Exhibit C-2 (Description of Public Infrastructure Improvements) hereto. The "**Private Improvements**" will consist of Developer's design and construction of (i) approximately 350 to 400 market-rate residential apartment units (the "**Multi-Family Project**"), (ii) approximately 150 to 200 units of senior housing (the "**Senior Project**"), and (iii) approximately 105 single-family homes (the "**Single-Family Project**"). The "**Public Infrastructure Improvements**" include but are not limited to Developer's demolition, environmental remediation, and design and construction of (a) public right of way, (b) public roads, (c) public pedestrian path, (d) park space, (e) stormwater management, (f) utilities, and (g) sitework, *provided that* such improvements, if financed by the Bonds (as defined below), must be eligible for reimbursement pursuant to Ohio Revised Code ("**ORC**") Section 5709.40 in order to constitute Public Infrastructure Improvements that are eligible to be financed by the Bonds (as defined below). The Public Infrastructure Improvements and the Private Improvements are collectively, the "**Project**".

C. The total estimated cost (including, without limitation, hard construction costs, soft costs, and acquisition costs) of (i)(a) the Multi-Family Project is approximately \$60,200,000, (b) the Single-Family Project is approximately \$36,875,000, and (c) the Senior Project is approximately \$39,750,000, for an aggregate total estimated cost for the Private Improvements of \$148,825,000, as more particularly described on Exhibit D-1 (Preliminary Budget – Private Improvements) hereto; and (ii) the Public Infrastructure Improvements is approximately \$16,000,000, as more particularly described on Exhibit D-2 (Preliminary Budget – Public Infrastructure Improvements) hereto. Developer has represented to the City that it intends to use various sources of funds to finance the costs associated with the Project, as set forth on Exhibit E-1 (Sources of Funds – Private Improvements) and Exhibit E-2 (Sources of Funds – Public Infrastructure Improvements) hereto.

D. Developer currently anticipates that it will (i) commence construction of (a) the Public Infrastructure Improvements on or about June 1, 2021, (b) the Multi-Family Project on or about October 1, 2021, (c) the Single-Family Project on or about November 1, 2021, and (d) the Senior Project on or about April 1, 2022; and (ii) complete construction substantially in accordance with the Final Plans (as defined below) of (a) the Public Infrastructure Improvements no later than October 1, 2022, (b) the Multi-Family Project no later than December 31, 2023, (c) the Single-Family Project no later than December 31, 2026, and (d) the Senior Project no later than June 1, 2024, and that the Project will be completed substantially in accordance with the construction schedule shown on Exhibit F (Construction Schedule) hereto.

E. Pursuant to Ordinance No. 493-2019, passed by City Council on December 11, 2019, the City created a so-called project-based TIF for the Project Site under ORC Section 5709.40(B), declaring the Improvement (as defined in ORC Section 5709.40) to the Project Site to be a public purpose and exempt from real property taxation for a period of 30 years (the "**TIF Ordinance**" and the "**TIF Exemption**", as applicable).

F. The parties currently anticipate that the Public Infrastructure Improvements will be financed by the Port of Greater Cincinnati Development Authority (the "**Port Authority**"). Developer presently intends to finance the construction of the Public Infrastructure Improvements by entering into a separate construction agreement, cooperative agreement, service agreement(s), and other ancillary agreements with the City and/or the Port Authority pursuant to which (i) the Port Authority will issue one or more series of special obligation development revenue bonds, with no series having a term in

excess of the maximum maturity allowable at law for such series, in a principal amount not to exceed \$18,000,000 with respect to the financing of the Public Infrastructure Improvements (the "**Senior Bonds**"), (ii) the Port will issue (which may be assigned in accordance with the aforementioned documents) subordinate bonds that will be underwritten to fully amortize no later than December 31, 2041 (which is anticipated to be the eighteenth year of the TIF Exemption) (the "**Subordinate Bonds**", collectively with the Senior Bonds, the "**Bonds**"), and (iii) make the net proceeds from the Senior Bonds and the Subordinate Bonds available to Developer to pay for the construction of the Public Infrastructure Improvements (as determined by the separate agreements that may be entered into by the Port Authority, the City, and Developer).

G. The City will receive from the Hamilton County Treasurer the statutory service payments generated from the Private Improvements pursuant to the TIF Exemption ("**Project TIF Revenue**"), and use the same, (i) first, to pay any fees charged by the Hamilton County Auditor or any other governmental entity (the "**Collection Fees**"), (ii) second, to satisfy the City's obligation to the Board of Education of the City School District of the City of Cincinnati (the "**School Board**") under that certain Agreement by and between the City and the School Board dated July 2, 1999, as amended, (iii) third, to pay the City's fees described in Section 12(B) of this Agreement (the "**City Fees**"), and (iv) fourth, to make payments to the Port Authority in the amount necessary to pay principal, interest, and other amounts due with respect to the Bonds (the "**Bond Obligations**"), with any and all surplus Project TIF Revenue in any given year to be retained by the City or returned to the City, as applicable, and used for any lawful purpose. The aforementioned service agreement(s) to be entered into by and between the City and Developer following the Effective Date hereof shall be substantially in the form of Exhibit G (*Form of Service Agreement*) hereto (the "**Service Agreement**").

H. The parties currently anticipate that the sources of repayment for the Bond Obligations will include the following, in the order of application: (i) first, the available Project TIF Revenue after payment of (a) the Collection Fees, (b) to satisfy obligations to the School Board, and (c) the City Fees; and (ii) second, minimum service payments, to be collected pursuant to and in accordance with the Service Agreement and the cooperative agreement.

I. The cooperative agreement(s) referred to herein, together with such other documents with respect to the Project entered into with the Port Authority and Developer to which the City is a party, are referred to herein as the "**Port Authority Documents**", and the Port Authority Documents, this Agreement, the Service Agreement, the Guaranty (as defined below), the Park Covenant (as defined below), the Multi-Family Project CRA, the Senior Project CRA, and such other ancillary documents and instruments executed by Developer and the City, or executed by Developer in favor of the City, are referred to herein as the "**Project Documents**".

J. All or a portion of the Project Site is located in the TIF District known as "District 20-Oakley Incentive District" (the "**District**"), established by Ordinance No. 415-2005, passed by City Council on November 2, 2005. Pursuant to Ordinance No. 494-2019, the City kept the Project Site within the District and "layered" the TIF Exemption over the existing exemption provided by the District, by stating that the TIF Exemption has priority over the District exemption.

K. Developer anticipates that the Project will create approximately (i) 500 full-time equivalent temporary jobs at the Project Site at an annual payroll, during the construction period, of approximately \$30,000,000; and (ii) 80 full-time equivalent permanent jobs at the Project Site at an annual payroll of approximately \$3,000,000 following completion of construction.

L. Pursuant to Ordinance No. []-2021, passed by City Council on [], 2021, the City and Developer entered into a certain *Community Reinvestment Area Tax Exemption Agreement* dated on or about the Effective Date, pursuant to which, among other things, the City provided a 15-year real property tax abatement for 45% of the amount by which the Senior Project increases the assessed value of the real property described therein (the "**Senior Project CRA**").

M. Pursuant to Ordinance No. []-2021, passed by City Council on [], 2021, the City and Developer entered into a certain *Community Reinvestment Area Tax Exemption Agreement* dated on or about the Effective Date, pursuant to which, among other things, the City provided a 15-year real property tax abatement for 90% of the amount by which the Multi-Family Project increases the assessed value of the real property described therein (the "**Multi-Family Project CRA**").

N. 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.

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

P. The City, upon recommendation of the City's Department of Community and Economic Development ("DCED"), believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements and for this reason the City desires to facilitate the Project by entering into this Agreement and providing the TIF Exemption as described herein and in the Service Agreement and cooperative agreement.

Q. Execution of this Agreement was authorized by the TIF Ordinance and Ordinance No. ___-2021, passed by City Council on _____, 2021. Notwithstanding anything to the contrary in this Agreement, the City's obligations hereunder are conditioned upon the passage of any and all other required legislation by City Council.

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

1. DUE DILIGENCE INVESTIGATIONS.

(A) Due Diligence Items. Following the parties' execution of this Agreement and at such time as such documents become available, Developer, at its sole expense, shall obtain and deliver to the City the following items (the "Due Diligence Items"):

- (i) *Title:* A copy of Developer's Owner's Policy of or Commitment for Title Insurance showing that Developer owns good and marketable fee simple title to the Project Site;
- (ii) *Survey:* One or more ALTA boundary survey(s) of the Project Site showing all easements and other matters of record that can be shown on a survey;
- (iii) *Appraisal:* A projected "as-built" appraisal of the Private Improvements (but only if such an appraisal is required by the Port Authority);
- (iv) *Site Plan:* A detailed site plan showing the proposed location of the Private Improvements and Public Infrastructure Improvements;
- (v) *Environmental:* A copy of whatever environmental reports Developer may obtain or has obtained in connection with the Project, as applicable, including, at a minimum, a Phase I environmental site assessment under current ASTM standards;
- (vi) *Engineering Studies.* Geotechnical or other engineering studies for the parcels upon which the Public Infrastructure Improvements will be constructed;
- (vii) *Construction Schedules:* A detailed construction timeline showing anticipated commencement and completion dates for the Project, including significant milestones;
- (viii) *Budget:* A detailed and updated budget for the Project;
- (ix) *Financing:* Evidence satisfactory to the City that Developer has obtained all financing necessary to complete the Project;
- (x) *New Legal Descriptions and Surveys:* Updated legal descriptions and ALTA property surveys for the Project Site, if applicable;
- (xi) *Service Payment Projections:* A detailed analysis showing the projected statutory service payments in lieu of taxes (the "Statutory Service Payments") that will be generated from the Private Improvements;
- (xii) *Port Authority Documents:* Such other information and documentation as may be required by the Port Authority; and
- (xiii) *Other Information:* Such other information and documents pertaining to Developer or the Project as the City may reasonably require.

(B) Copies of Due Diligence Items to Be Provided to City. Without limitation of Developer's other obligations under this Agreement, prior to the issuance of the Bonds, and as such Due Diligence Items are obtained by Developer, Developer, at no cost to the City, shall provide DCED with copies of the inspection, engineering, and environmental

reports, title reports, surveys, and other materials prepared by third party professionals obtained by Developer that pertain to the Project.

(C) Contingency for City's Satisfaction with Due Diligence Investigations. All reports and the like obtained by Developer from third parties and delivered (or caused to be delivered) to the City shall be recent (*i.e.*, prepared or updated, as the case may be, within three (3) months from the date that the item is delivered to the City, City or such longer period of time as the City may, in its sole discretion, deem reasonable) and shall be prepared by properly licensed and qualified companies or individuals acceptable to the City. In addition to the Due Diligence Items, Developer and the City may conduct whatever additional investigations concerning the Project as they deem necessary, including, without limitation, investigations into the feasibility and likelihood of Developer obtaining all building, zoning, and other approvals from the City's Department of Buildings and Inspections ("**B&I**"), the Department of City Planning ("**Planning**"), the City Planning Commission, and any other applicable City departments, agencies or boards. If, prior to the issuance of the Bonds, any party hereto determines that the Project is not feasible, then, notwithstanding anything in this Agreement to the contrary, such party may terminate this Agreement by giving the other party written notice thereof, whereupon this Agreement shall terminate and the parties hereto shall thereafter have no rights or obligations hereunder as it relates to the Project. Unless otherwise directed by the DCED Director, Developer shall deliver all the Due Diligence Items to be provided by Developer to the City under this Agreement to the DCED Director (for review by DCED and other City departments as deemed necessary or appropriate by DCED) and shall generally coordinate all aspects of the Project (as they relate to the City) through DCED. The termination rights of the parties under this paragraph shall automatically terminate upon the issuance of the Bonds.

2. PLANS AND CONSTRUCTION.

(A) Preparation of Plans and Specifications. Developer shall prepare plans and specifications for the Project and shall submit the same to DCED for review and approval prior to commencement of construction of the Project; *provided that* DCED may only withhold approval if such plans and specifications (i) materially reduce or diminish the size, scope, quality, or site plan of the Project, (ii) could reasonably be expected to materially reduce the hard construction costs of the Project, or (iii) are otherwise inconsistent with zoning laws or any planned development approved by the City Planning Commission and City Council with respect to the Project or are materially inconsistent with Exhibits C-1 and C-2 hereto, in each case as determined in the DCED Director's judgment, exercised in good faith. The approved plans and specifications for the Project (including any and all changes thereto, subject to the City's review and approval on the criteria provided in the immediately preceding sentence) are referred to herein as the "**Final Plans**". Developer shall submit any and all proposed changes to the Final Plans to DCED and as pertaining to the Dedicated ROW, to all governmental departments, agencies, and entities with jurisdiction for review and approval.

(B) Construction Bids. Following the parties' execution of this Agreement, Developer shall obtain construction bids for the Project. Upon Developer's selection of the bids for the Project, Developer shall submit to the City an updated construction budget and construction schedule for the Project.

(C) Commencement and Completion of Construction. Developer shall complete the Project, and all components thereof, in accordance with Exhibits C-1 and C-2, and substantially as reflected in the Final Plans, and in compliance with all applicable laws. Developer shall commence and complete the applicable portions of the Project in accordance with the deadlines specified below. The foregoing notwithstanding, the City may, upon Developer's written request and at the City's sole discretion, permit each deadline below to be extended twice in six (6) month increments.

(i) Public Infrastructure Improvements. Developer shall commence construction of the Public Infrastructure Improvements not later than June 1, 2021. Developer shall complete construction, substantially in accordance with the Final Plans and substantially in accordance with Exhibit F with respect to the Public Infrastructure Improvements, not later than October 1, 2022. The parties acknowledge that, upon completion, Developer intends to dedicate the public right-of-way portion of the Public Infrastructure Improvements, as depicted on Exhibit A-1 (the "**Dedicated ROW**"), for public use, and intends for the City to accept the Dedicated ROW (subject to all approvals as required by the City's Department of Transportation & Engineering ("**DOT**"), the City's Office of Environment and Sustainability, and City Planning Commission, and subject to the passage by Cincinnati City Council of an ordinance to accept the dedication). Developer shall prepare all survey plats, legal descriptions, and other documents as may be required by the City and the Hamilton County Auditor and Recorder in connection with such dedication and acceptance, all at no cost to the City. Developer acknowledges that, (i) if Developer does not construct the Dedicated ROW in accordance with DOTE, Greater Cincinnati Water Works, or Metropolitan Sewer District of Greater Cincinnati

requirements, the City will not accept the dedication of the Dedicated ROW, and (ii) the City makes no guarantee that City Planning Commission will approve the dedication or that Cincinnati City Council will pass an ordinance to accept the dedication.

(ii) Multi-Family Project. Developer shall commence construction of the Multi-Family Project not later than October 1, 2021. Developer shall complete construction, substantially in accordance with the Final Plans with respect to the Multi-Family Project not later than December 31, 2023.

(iii) Senior Project. Developer shall commence construction of the Senior Project not later than April 1, 2022. Developer shall complete construction, substantially in accordance with the Final Plans with respect to the Multi-Family Project not later than June 1, 2024.

(iv) Single-Family Project. Developer shall commence construction, or cause the commencement of construction of the Single-Family Project not later than November 1, 2021. Developer shall use best efforts to complete or cause the completion of construction, substantially in accordance with the Final Plans with respect to the Single-Family Project not later than December 31, 2026.

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

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

(F) Inspection of Work. During construction, 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 Developer is complying with the requirements of this Agreement. Notwithstanding anything to the contrary in this paragraph (F) or this Agreement, nothing herein shall in any way limit the inspection rights the City otherwise legally possesses, whether in connection with its police powers, permitting, or otherwise.

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

(H) Barricade Fees. Developer acknowledges that a barricade permit may be required, and barricade fees will be payable to DOTE for the closure of the sidewalk and the curb lane of the adjacent streets if and when demolition or construction necessitates closing the adjoining streets or portions thereof.

(I) Completion Guaranty. Prior to execution by the City of the Port Authority Documents, Developer shall cause Neyer or another guarantor approved by the City, in the City's sole and absolute discretion (such entity, whether it be Neyer or another guarantor, being hereinafter referred to as "**Guarantor**"), to execute a guaranty of completion with respect to Developer's obligation to complete the Public Infrastructure Improvements, the Multi-Family Project, and the Senior Project, which shall be in substantially the form of Exhibit H (Form of Completion Guaranty) hereto (the "**Completion Guaranty**").

(J) Environmental Indemnity. As a material inducement to the City to enter into this Agreement, Developer does hereby agree that, with respect to any environmental condition on or otherwise affecting the portion of the Project Site related to the Dedicated ROW that exists at or prior to the time of the City's execution of this Agreement (herein, a "pre-existing environmental condition"), and regardless of whether or not such pre-existing environmental condition is described in any environmental assessment or any other environmental report that may have been previously

furnished by Developer to the City, Developer shall (i) at no expense to the City, promptly take all steps necessary to remediate such pre-existing environmental condition in accordance with applicable laws and regulations, within a reasonable time after discovery, to the satisfaction of the City's Office of Environment and Sustainability, and (ii) defend, indemnify, and hold the City harmless from and against any and all actions, suits, claims, losses, costs (including without limitation reasonable attorneys' fees), demands, judgments, liability and damages suffered or incurred by or asserted against the City as a result of or arising from any such pre-existing environmental condition. Developer's remediation and indemnity obligations under this paragraph shall survive the completion of the Project.

3. CITY'S FINANCIAL ASSISTANCE.

(A) **Project TIF Revenue.** The City's funding commitment shall be subject to and contingent upon, without limitation, the execution and continued effectiveness of this Agreement, the Service Agreement, and the cooperative agreement. The City's funding commitment under this Agreement shall be limited to providing the Project TIF Revenue to the Port Authority for payment of the Bond Obligations, all in accordance with one or more separate agreements to be executed by the City, Developer, and the Port Authority. To the extent the Project TIF Revenue provided by the City is insufficient to satisfy the Bond Obligations, Developer shall be solely responsible for the shortfall. As between the City and Developer, and except for the City's agreement to provide the Project TIF Revenue to the Port Authority, Developer shall be solely responsible for all costs associated with the Project. Developer acknowledges and agrees that the City will not provide the Project TIF Revenue to the Port Authority for payment of the Bond Obligations other than with respect to service payments for tax years falling within the period of the TIF Exemption that are actually made in accordance with the Service Agreement and are actually received by the City.

(B) **Excess Project TIF Revenue.** To the extent the Project TIF Revenue in any year exceeds the amount payable to the Port Authority for payment of the Bond Obligations for such year, as more particularly described in one or more separate agreements to be executed by the City, Developer, and the Port Authority, the City shall be entitled to retain and use such excess Project TIF Revenue for any lawful purpose. For the avoidance of doubt, (i) to the extent the Project TIF Revenue associated with any portion of the Project is not to be used to secure Bond Obligations associated with the applicable phase of the Bonds, for any reason, the City shall be entitled to retain and use such excess Project TIF Revenue for any lawful purpose and (ii) the Subordinate Bonds will mature no later than December 31, 2041, and following the maturity of the Subordinate Bonds, any Project TIF Revenue in excess of the Senior Bonds will be retained by the City. For the avoidance of doubt, no Project TIF Revenue will be used to service the Subordinate Bonds after December 31, 2041 (which is anticipated to be the 18th year of the TIF Exemption period).

(C) **Residential CRA.** Pursuant to Ordinance No. [____]-2021, passed on [____], 2021, City Council capped the amount of tax abatements available to single-family homes (the "**Residential CRAs**") that are constructed as part of the Single-Family Project at 50% of any increase in abated value attributable to such single-family home (the "**Residential CRA Cap**"). Developer acknowledges and agrees without this ordinance, the Residential CRA Cap is less than the single-family homes would otherwise be eligible to receive pursuant to the City's ordinance and Developer will include (or will cause to be included) a provision disclosing the Residential CRA Cap in all contracts with any and all future home builders and home buyers.

(D) **No Other City Assistance.** As a material inducement to the City to enter into this Agreement, Developer agrees that it shall not request or expect to receive any additional funding, real estate or income tax abatements (other than the Senior Project CRA, the Multi-Family Project CRA, and the Residential CRAs), or other financial assistance from the City in connection with the Project in the future, either for itself, for the benefit of the tenants or other occupants of the Project Site, or for the benefit of any other third party unless the City agrees to the contrary in writing. Notwithstanding anything to the contrary in this Section, pursuant to Ordinance No. 371-2020, the City appropriated funding for the construction of the Oakley Pedestrian Tunnel.

4. REAL PROPERTY INTERESTS. Pursuant to a Deed recorded on July 9, 1979, in Deed Book 4162, Page 686, Hamilton County, Ohio Records, the City created three (3) sewer easements, and restrictions pertaining to advertising signs and filling operations (collectively, the "**Encumbrances**"). The City's Real Estate Department determined by appraisal that the fair market value associated with the Encumbrances is \$200,000. However, in exchange for the Park Covenant, the City is willing to release the Encumbrances for \$1.00, the form of such release is attached hereto as **Exhibit 1** (*Form of Release of Easements and Restrictions*). Simultaneously with the release of the Encumbrances by the City, Developer will execute a *Restrictive Covenant* for a portion of the Project Site (as more particularly described therein, the "**Park Area**") pursuant to which the Park Area will be designated and maintained by Developer (and any successors in

interest) as greenspace available for use by residents and non-residents of the Project Site, so that it remains open to the public in perpetuity and will be used only as a green-space (the "**Park Covenant**"). In the event that Developer wishes to develop the Park Area, then Developer will request the release of the Park Covenant in writing and the City shall release the Park Covenant in exchange for payment by Developer in the amount of \$200,000 and Developer shall be responsible for all recording costs associated with releasing the Park Covenant.

5. INSURANCE; INDEMNITY.

(A) **Insurance during Construction.** Until such time as all construction work associated with the Project has been completed, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$5,000,000 per occurrence, combined single limit/\$10,000,000 aggregate, naming the City as an additional insured with respect to the Project; (ii) builder's risk insurance in the amount of one-hundred percent (100%) of the value of the improvements constructed as part of the Project; (iii) worker's compensation insurance in such amount as required by law; (iv) all insurance as may be required by Developer's construction lenders or by the Port Authority; and (v) such other insurance as may be reasonably required by the City. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Prior to commencement of construction of the Project, Developer shall send proof of all such insurance to the City at 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202, Attention: Monitoring and Compliance Division, or such other address as may be specified by the City from time to time; *provided that* if the City requests an additional insured endorsement with respect to the Commercial General Liability insurance described above, Developer shall have 6 months following the date of the City's request to obtain such an endorsement from its insurer and provide the original endorsement to the City.

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

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

6. CASUALTY; EMINENT DOMAIN. If the Multi-Family Project, the Senior Project, or the Public Infrastructure Improvements are damaged or destroyed by fire or other casualty during construction, or if any portion of the Project Site related to the foregoing portions of the Project is taken by exercise of eminent domain (federal, state, or local), Developer shall repair and restore the affected property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which the Project Site related to the foregoing portions of the Project was in immediately prior to such occurrence. To the extent the City's participation is required, the City and Developer shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the proceeds are insufficient to fully repair and restore the affected property, the City shall not be required to make up the deficiency. Developer shall handle all construction in accordance with the applicable requirements set forth herein, including, without limitation, obtaining the City's approval of the plans and specifications if they deviate from the original City-approved plans. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the Project Site is being repaired or restored.

7. DEFAULT; REMEDIES.

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

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

(a) the dissolution of Developer (or Guarantor during the term of the Guaranty), the filing of any bankruptcy or insolvency proceedings by any such entity, or the making by any such entity of an assignment for the benefit of creditors; or

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

(ii) The occurrence of a Specified Default (as defined below), or a failure of Developer to perform or observe (or cause to be performed or observed) any obligation, duty, or responsibility under this Agreement or any other Project Document (*provided that* a failure of Guarantor to perform under the Guaranty shall be deemed a failure of Developer to perform under this Agreement; *provided further that* defaults under Project Documents that have been assigned by Developer with the consent of the City shall not be events of default hereunder), and failure by Developer to correct such default within thirty (30) days after the receipt by Developer of written notice thereof from the City (the "Cure Period"), in which case there shall be a Cure Period of 5 business days after Developer's receipt of written notice thereof from the City; *provided, however,* that if the nature of the default is such that it cannot reasonably be cured during the Cure Period, Developer shall not be in default under this Agreement so long as Developer commences to cure the default within such Cure Period and thereafter diligently completes such cure within sixty (60) days after receipt of the City's initial notice of default. Notwithstanding the foregoing, if Developer's failure to perform or observe any obligation, duty, or responsibility under this Agreement creates a dangerous condition or otherwise constitutes an emergency as determined by the City in good faith, an event of default shall be deemed to have occurred if Developer fails to take reasonable corrective action immediately upon discovering such dangerous condition or emergency. As used in this section, "Specified Default" means the occurrence of any of the following:

(a) Development Default. Developer (1) fails to (x) diligently prosecute the work related to the Project as provided herein, or (y) complete the Project in accordance with Exhibits C-1 and C-2 and substantially in accordance with the Final Plans for the Project; or (2) abandons the Project (provided, however, that it is acknowledged that the Developer's obligations to complete the Single-Family Project are best efforts, as set forth in Section 2(C)(iv) hereof).

(b) Misrepresentation. Any representation, warranty, or certification of Developer or Guarantor made in connection with this Agreement or any other Project Document shall prove to have been false or materially misleading when made.

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

8. **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 such party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City:
City Manager
City of Cincinnati
801 Plum Street
Cincinnati, Ohio 45202

To Developer:
Oakley Yards Land, LLC
2135 Dana Avenue, Ste 200
Cincinnati, Ohio 45207
Attention: Jeff Chamot

with a copy to:
Director, Dept. of Community and
Economic Development
City of Cincinnati
805 Central Avenue, Suite 700
Cincinnati, Ohio 45202

with a copy to:
Keating Muething & Klekamp PLL
One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202
Attn: Andrew Spoor, Esq.

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

9. **REPRESENTATIONS, WARRANTIES, AND COVENANTS OF DEVELOPER.** Developer hereby makes the following representations, warranties, and covenants to induce the City to enter into this Agreement:

(i) Developer is a limited liability company duly organized and validly existing under the laws of the State of Ohio, is qualified to do business in the State of Ohio, has properly filed all certificates and reports required to be filed by it in order to have the right to conduct its business under the laws of the State of Ohio, and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement or any other Project Document.

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

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

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

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

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

(vii) With reference to Section 301-20 (*Delinquencies in Accounts Receivable and Loans Receivable; Policy*) of the Cincinnati Municipal Code, to the best of Developer's knowledge, neither Developer nor its affiliates are in breach of any of their obligations to the City under any existing agreements with the City nor does Developer or any of its affiliates owe any fines, penalties, judgment awards, or any other amounts to the City.

10. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Developer shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements, and information as may be requested by the City pertaining to Developer, the Project, or this Agreement, including, without limitation, audited financial statements, bank statements, income tax returns, information pertinent to the determination of finances of the Project, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (collectively, "**Records and Reports**"). All Records and Reports compiled by Developer and furnished to the City shall be in such form as the City may from time to time require. Developer shall retain all Records and Reports until the date that is 3 years following the satisfaction of the Bond Obligations, or such later time as may be required by applicable law (the "**Retention Termination Date**").

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

11. GENERAL PROVISIONS.

(A) Assignment; Change of Control.

(i) Assignment. Developer shall not assign its rights or interests under this Agreement to any third party without the prior written consent of the City Manager; provided, however, that the City will not unreasonably withhold its consent to the assignment by Developer to an entity wholly-owned or controlled by Daniel Neyer. The City may require the execution of an amendment hereto or other clerical documentation to effect such assignment or substitution of parties. The City hereby consents to Developer's collateral assignment of its rights under this Agreement or the Project Documents to its construction lenders or the Port Authority.

(ii) Change of Control. Developer shall not permit a Change of Control (as defined below) without the prior written consent of the City. As used herein, "**Change of Control**" means a change in the ownership of Developer such that Daniel Neyer, or any entity directly or indirectly controlled by him has less than a 50.1% direct or indirect voting interest in Developer and lacks the power to direct or cause the direction of the management and policies of Developer, whether through the ownership of ownership interests in Developer, by contract, or otherwise.

(iii) Notwithstanding clauses (i) and (ii) above, after the date of completion of construction, so long as no event of default has occurred and is continuing under this Agreement or any other Project Document, the City may, in good faith, withhold consent to a Change of Control only if (a) the proposed transfer is prohibited by applicable law or (b) the proposed transferee is, in the City's reasonable judgment, not capable of performing the obligations of Developer under this Agreement and the other Project Documents, which judgment shall exclusively be based on the following factors: (1) the experience of the proposed transferee in operating assets and facilities of the same type as, and otherwise comparable in size and nature to, the Project and performing other projects, and (2) the past performance history and reputation of the proposed transferee and its direct or indirect controlling beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective affiliates (including the absence of criminal, civil or regulatory claims or actions against any such entity or person). The

City Manager shall have 30 business days from the date on which he or she receives written notice in accordance with this Agreement of the proposed assignment or Change of Control (the “**City Manager Review Period**”) to determine whether he or she intends to consent thereto. The City Manager shall provide written notice to Developer of any decision to refuse to consent, including all material supporting information (the “**Rejection Notice**”), within the City Manager Review Period. In the event the City Manager fails to do so, he or she shall be deemed to have consented to such assignment or Change of Control.

(B) Entire Agreement; Conflicting Provisions. This Agreement, together with the other Project 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. In the event that any of the provisions of this Agreement purporting to describe specific provisions of other Project Documents are in conflict with the specific provisions of such other Project Documents, the provisions of such other Project Documents shall control.

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

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

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

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

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

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

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

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

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

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

(M) Recognition of City Support. In connection with the construction and opening of the Project, the parties shall acknowledge the support of the City with respect to the Project in all printed promotional materials (including, without limitation, informational releases, pamphlets and brochures, construction signs, project and identification signage, and stationary) and any publicity (such as but not limited to materials appearing on the Internet, television, cable television, radio, or in the press or any other printed media) relating to the Project. In identifying the City as a Project

partner, the parties shall use either the phrase "Project Assistance by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City.

(N) Reserved.

(O) Counterparts and Electronic Signatures. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same Agreement. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

(P) Transfer of Fee or Leasehold Title to Port Authority. Nothing in this Agreement shall be construed to prohibit Developer from entering into a sale (or lease) and leaseback arrangement with respect to portion(s) of the Project Site in which fee or leasehold title to the Project Site (or any portion thereof) is held by the Port Authority (the "**Port Authority Arrangement**"); *provided, however,* that (i) the purpose for the Port Authority Arrangement is to take advantage of the sales tax exemption on the purchase of Project building materials, and (ii) Developer shall provide the City with such documents and other information with respect to this arrangement as the City may reasonably request, including the final form of the Port Authority Arrangement, at least 10 business days prior to any conveyance of any portion of the Project Site to the Port Authority. Developer may not assign its rights, obligations, or any other interest under this Agreement to any other party except as in accordance with Section 11(A), but at any time, subject to the provisions of this paragraph, once Developer has obtained the fee interest in the Project Site, Developer may convey fee or leasehold interest to the Port Authority, in the manner, and subject to the terms described, above. It is also understood and agreed that the Port Authority may convey such interest back to Developer pursuant to the terms contained in the agreement memorializing the Port Authority Arrangement. Developer hereby provides notice to the City that Developer will enter into the Port Authority Arrangement.

12. FEES AND EXPENSES.

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

(B) Monitoring and Servicing Fee; Out-of-Pocket Expenses. The City shall withhold and retain from the statutory Service Payments and minimum service payments (collectively, the "**Service Payments**") an annual monitoring and servicing fee equal to the greater of (i) 1.0% of the Service Payments paid (or due, if unpaid) with respect to the Project Site for the current tax year; or (ii) the documented, reasonable out-of-pocket fees, costs, charges, and expenses incurred by the City in connection with the negotiation, preparation, execution, delivery, and performance of this Agreement and the other Project Documents, together with the City's monitoring and servicing costs and expenses with respect to the transactions contemplated thereby. To the extent the Service Payments are not made or are ineligible to be made under the Service Agreement for any reason, the City may elect to require Developer to pay such monitoring and servicing fees in another manner. This Section 12(B) shall terminate and cease to be effective in the event the City's obligation to transfer amounts to the Port Authority for payment of the Bond Obligations permanently cease in accordance with the provisions of this Agreement and the other Project Documents. For the avoidance of doubt, suspension (without permanent termination) of the City's transferring amounts to the Port Authority for payment of the Bond Obligations shall not cause the provisions of this Section 12(B) of this Agreement to cease or be modified in any way (either permanently or during the period of any such suspension). The fees described in this Section 12(B) are not refundable once withheld by the City or otherwise paid.

(C) City's Outside Counsel Fees Associated with Bonds. Developer shall pay any and all outside counsel fees incurred by the City related to the negotiations and issuance of the Bonds out of the proceeds of the Bonds, or in some other manner mutually acceptable to Developer and the City.

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

<u>Exhibit A-1</u>	- Site Plan
<u>Exhibit A-2</u>	- Concept Plan
<u>Exhibit B</u>	- Legal Description

- Exhibit C-1 - *Description of Private Improvements*
 - Exhibit C-2 - *Description of Public Infrastructure Improvements*
 - Exhibit D-1 - *Preliminary Budget – Private Improvements*
 - Exhibit D-2 - *Preliminary Budget – Public Infrastructure Improvements*
 - Exhibit E-1 - *Sources of Funds – Private Improvements*
 - Exhibit E-2 - *Sources of Funds – Public Infrastructure Improvements*
 - Exhibit F - *Construction Schedule*
 - Exhibit G - *Form of Service Agreement*
 - Exhibit H - *Form of Completion Guaranty*
 - Exhibit I - *Form of Release of Easements and Restrictions*
 - Exhibit J - *Form of Park Covenant*
 - Exhibit K - *Additional Requirements*
- (incl. Addendum I - City's Prevailing Wage Determination)

[SIGNATURES ON FOLLOWING PAGE]

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

CITY OF CINCINNATI

By: _____
Paula Bogs Muething, City Manager

Date: _____, 2021

OAKLEY YARDS LAND, LLC

By: _____

Printed name: _____

Title: _____

Date: _____, 2021

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

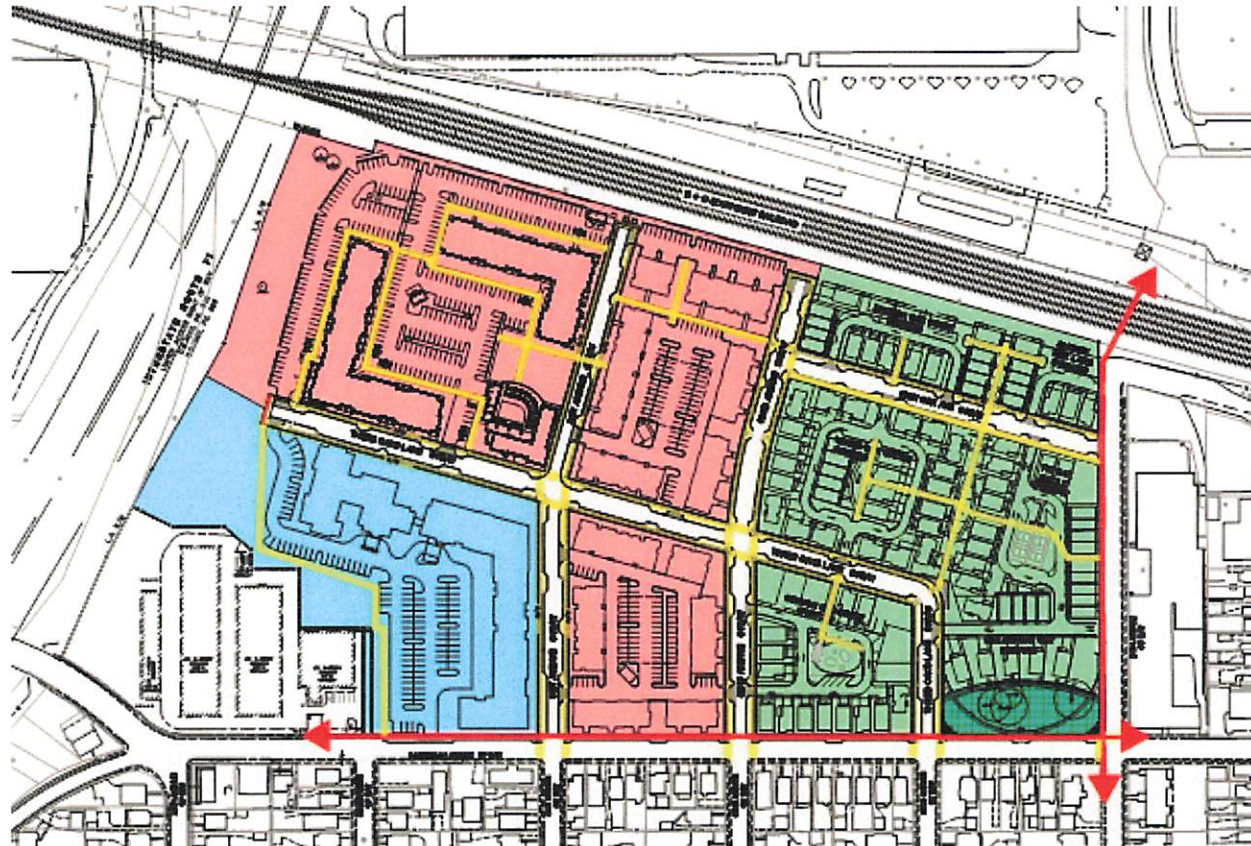
Exhibit A-1
to Development Agreement
(Three Oaks)

Site Plan

SEE ATTACHED

EXHIBIT A-1 SITE PLAN

SCALE: 1"=100'



LEGEND:

- RESIDENTIAL
- MULTI FAMILY
- SENIOR LIVING
- PUBLIC RIGHT OF WAY
- 8 BIKE PATH
- PUBLIC PARK
- PEDESTRIAN CONNECTIONS

THREE OAKS

2800 ROBERTSON AVENUE
COLUMBIANA, OHIO 43084

**DEVELOPMENT
AGREEMENT EXHIBIT**

Project No:

19102

EXHIBIT

1

Exhibit A-2
to Development Agreement
(Three Oaks)

Concept Plan

SEE ATTACHED

EXHIBIT A-2
CONCEPT SITE PLAN

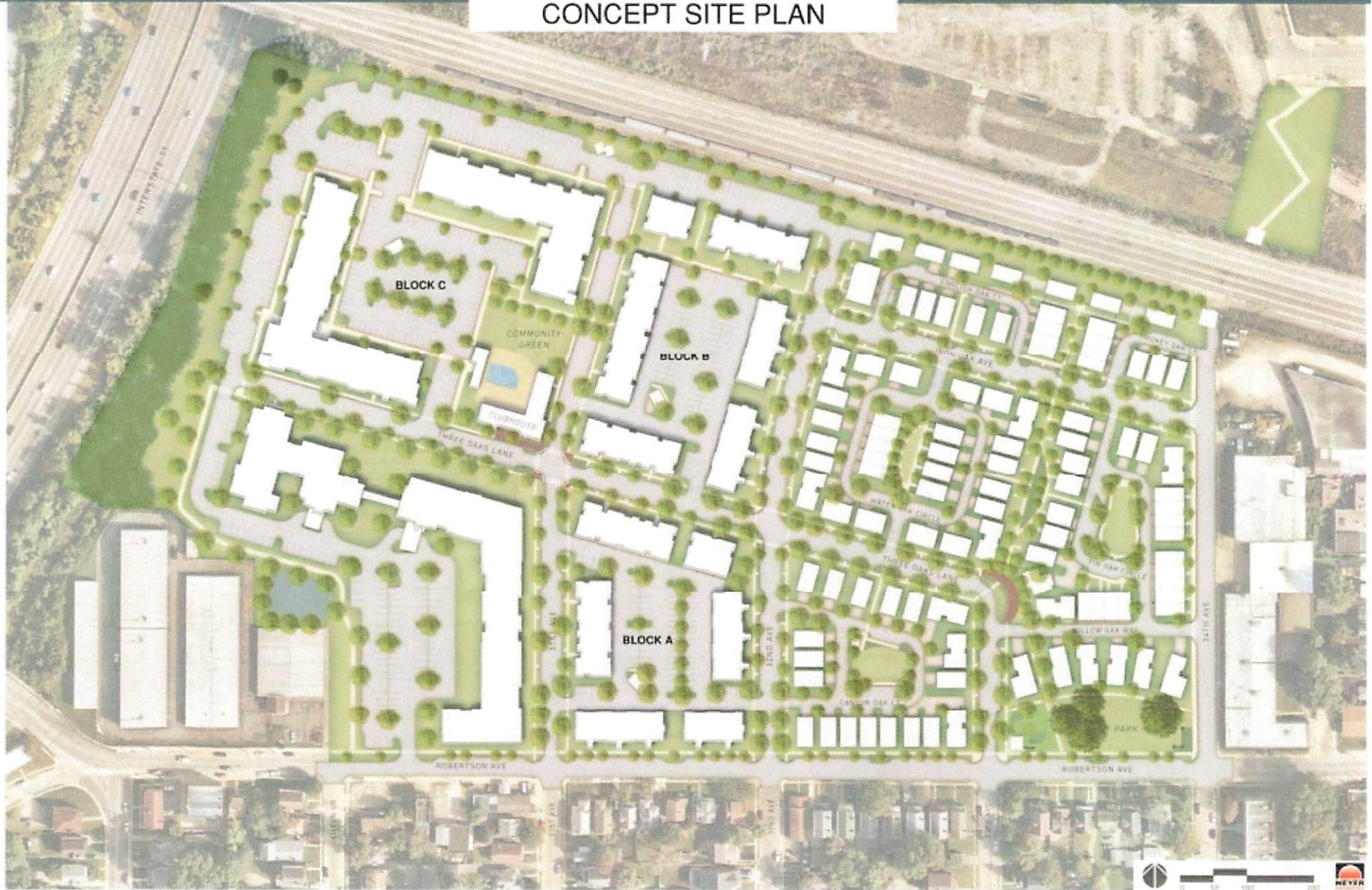


Exhibit B
to Development Agreement
(Three Oaks)

Legal Description

[insert]

Exhibit C-1
to Development Agreement
(Three Oaks)

Description of Private Improvements

Developer will develop the approximately 30.86-acre site located at 2800 Robertson Ave in the Oakley neighborhood, which at full buildout shall include approximately 106 single-family homes, 393 multi-family and townhome units, and 150 – 200 senior living units along with a public park, bike path, and other amenities. The Private Improvements will be developed in a single phase following the completion of public improvements which are described in Exhibit C-2.

Multi-Family: Private Improvements will include 15 buildings consisting of the following components:

- Block A – Private Improvements will consist of Developer's design and construction of 6 three story townhome style apartment buildings and associated parking.
- Block B - Private Improvements will consist of Developer's design and construction of 6 three story garden style apartment buildings and associated parking.
- Block C – Private Improvements will consist of Developer's design and construction of:
 - o 2 four story apartment buildings and associated parking areas.
 - o An Approximately 3,000 square foot amenity building and community green space.

Single-Family: Private Improvements will consist of Developer's design and construction of:

- Approximately 106 single-family detached homes and attached townhome product.
- Alleys will be constructed to access home garages from the rear.
- Amenity spaces throughout as shown on Exhibit A-2.

Senior Living: Private Improvements will consist of Developer's design and construction of:

- Approximately 150 - 200 senior living units designated for Independent Living, Assisted Living, and / or Memory Care and associated building amenities.

Exhibit C-2
to Development Agreement
(Three Oaks)

Description of Public Infrastructure Improvements

The Three Oaks Public Infrastructure Improvement scope includes, but is not limited to, all design and construction associated with demolition, environmental remediation, all new public roads and associated right-of-way, street parking and associated curbs, lighting, alleys, public park space, bike trail, hillside improvements, fences and retaining walls, sidewalks, street trees and landscaping, signage, earth work, storm water management and all other utilities. The location of public infrastructure components is depicted on Exhibits A-1 and A-2 and will all be constructed in a single phase as follows:

1. All design, engineering, plans, specs and soft costs associated with public improvements
2. Demolition
 - a. Demolition of the former approximately 800,000 SF warehouse building(s)
 - b. Removal and crushing of slabs and concrete
 - c. Removal and milling of asphalt
 - d. Removal of underground utilities and foundations
3. Site/Earthwork Improvements
 - a. Removal of vegetation
 - b. Earthwork; rough and fine grading; site preparation of all blocks as necessary for vertical development
 - c. Environmental remediation of soils per Three Oaks Risk Mitigation Plan
 - d. Fences and retaining walls
4. Utilities
 - a. Installation of dedicated public storm system for public infrastructure
 - b. Installation of catch basins and underground storm water detention
 - c. Installation of sanitary sewer system
 - d. Installation of gas, electric and associated lighting, fiber and other communication lines throughout the project site
 - e. Installation of new water mains throughout
 - f. Other new utilities or relocation of existing utilities as needed throughout the project site
5. Roads/Alleys/Public Right of Way

- a. Installation of DOTE approved asphalt roadways with parking, curbs, and bump outs generally as shown on Exhibit A-1 and A-2
- b. Installation of sidewalks and bike paths varying from 5 to 8 feet in width
- c. Installation of street-lights, street trees and vegetation, signage, fixtures, exhibits, and installations
- d. Roadways striped, marked, and designated with wayfinding signage

Exhibit D-1
to Development Agreement
(Three Oaks)

Preliminary Budget – Private Improvements

Land Acquisition	\$12,000,000
Multi-Family Project	
Hard Construction Cost Estimate	\$54,000,000
Soft Cost Estimate	\$4,500,000
Contingency	\$1,700,000
Subtotal Multi-Family Project	\$60,200,000
Single Family Lots	
Hard Construction Cost Estimate – Lots	\$2,400,000
Home Construction Hard Cost Estimate	\$32,700,000
Soft Cost Estimate	\$1,500,000
Contingency	\$275,000
Subtotal Single Family Lots	\$36,875,000
Senior Living Project	
Hard Construction Cost Estimate	\$35,000,000
Soft Cost Estimate	\$3,750,000
Contingency	\$1,000,000
Subtotal Senior Living Project	\$39,750,000
Total Private Improvements Estimate	\$148,825,000

Exhibit D-2
to Development Agreement
(Three Oaks)

Preliminary Budget – Public Infrastructure Improvements

Land for Public Right of Way	\$3,500,000
Building / Site Demo and Environmental Remediation	\$1,575,000
Mass Excavation / Fill	\$1,100,000
Dedicated Public Roadways, Walks, and Curbs	\$2,100,000
Utilities	\$3,800,000
Landscape/ Hardscape	\$1,300,000
Public Park	\$200,000
Estimated Soft Costs	\$1,300,000
Developer Fee	\$625,000
Project Contingency	\$500,000
	<hr/>
TOTAL	\$16,000,000

Exhibit E-1
to Development Agreement
(Three Oaks)

Sources of Funds – Private Improvements

Private Debt - Multifamily & Senior Housing	80,538,975.00
Private Debt - Single Family Homes	32,700,000.00
Single Family Lot Sales	8,739,700.00
Developer Equity	<u>26,846,325.00</u>
Total Sources - Private Improvements	148,825,000.00

Exhibit E-2
to Development Agreement
(Three Oaks)

Sources of Funds – Public Infrastructure Improvements

Net Proceeds from sale of Senior TIF Bond	\$10,000,000
Net Proceeds from sale of Developer Subordinate Bond	<u>\$6,000,000</u>
	\$16,000,000

Exhibit F
to Development Agreement
(Three Oaks)

Construction Schedule

Break Ground on Mass Excavation, Public Utility and Roadway Construction.....	06/01/2021
Closing on multifamily portion of project / break ground.....	10/01/2021
Closings on sale of initial single family lots / break ground on home construction	11/01/2021
Closing on Senior Living Portion of the project/ break ground.....	04/01/2022
Overall project infrastructure substantially complete.....	10/01/2022
Multifamily project substantially complete.....	12/31/2023
Senior Living project substantially complete.....	06/01/2024
Single Family buildout substantially complete.....	12/31/2026

Exhibit G
to Development Agreement
(Three Oaks)

Form of Service Agreement

SEE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE]

Contract No: _____

SERVICE AGREEMENT

(Three Oaks – [APPLICABLE PROJECT/BLOCK/PARCEL])

This Service Agreement (this "**Agreement**") is made and entered into as of the _____ day of _____, 2021 (the "**Effective Date**"), by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and [**PROPERTY OWNER**], an [_____] limited liability company, [ADDRESS] ("**Owner**"), pursuant to the terms of a certain *Development Agreement* between the parties hereto dated [_____] 2021 (the "**Development Agreement**"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Development Agreement.

Recitals:

A. Owner is the fee owner of real property on Robertson Avenue in the Oakley neighborhood of Cincinnati, as more particularly described on Exhibit A (*Legal Description*) hereto (the "**Property**"). Pursuant to the terms of the Development Agreement, Owner will construct or cause to be constructed, among other things, [APPLICABLE BLOCK/PROJECT DESCRIPTION] (the "**Improvements**" or the "**Project**", as applicable). Capitalized terms used, but not defined, herein shall have the meanings ascribed thereto in the Development Agreement.

B. Owner intends to enter into a sale and leaseback arrangement with respect to the Property in which fee title to the Property is to be held by the Port of Greater Cincinnati Development Authority (the "**Port Authority**"), and leased back to Owner. As provided herein, all obligations under this Agreement of Owner become obligations of the then fee owner of the Property, including, without limitation, upon the expiration or termination of Owner's lease of the Property from the Port Authority (the "**Port Authority Lease**") pursuant to such sale and leaseback arrangement.

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

D. In furtherance of the public purpose and to facilitate the Project, and as authorized by Ordinance No. 493-2019 passed by City Council on December 11, 2019 (the "**TIF Ordinance**"), the City has established a so-called project-based TIF for the Property under Ohio Revised Code ("**ORC**") Section 5709.40(B).

E. Under the TIF Ordinance and in accordance with ORC Section 5709.40(B), et seq., and this Agreement, the increase in assessed value of the Property subsequent to the passage of the TIF Ordinance shall be exempt from real property taxes (the "**TIF Exemption**"), and all present and future owners of the Property, or any portion thereof, shall be required to make service payments in lieu of taxes, in semi-annual installments, in an amount equal to the amount of real property taxes that would have been paid on the Property had the TIF Exemption not been granted ("**Statutory Service Payments**").

F. Pursuant to its authority under Ohio law, including, without limitation, its home rule authority and ORC Section 5709.91, the City requires Owner to pay Minimum Service Payments (as defined below) as required hereunder (the payments received by the City in the form of Statutory Service Payments and Minimum Service Payments, less any fees charged with respect to the Statutory Service Payments by Hamilton County, being referred to herein collectively as "**Service Payments**").

G. The Property is located within the City School District of the City of Cincinnati, and the Board of Education of the City School District of the City of Cincinnati ("**Board of Education**") has, by resolution adopted on October 11, 1999, and by an agreement entered into with the City dated July 2, 1999, approved an exemption of 100% of the assessed valuation of the Improvements for thirty (30) years (subject to the obligation of the City to make payments to the Board of Education as provided in Section II.C.2 of that agreement).

H. As provided in the Development Agreement, the City intends to use the Statutory Service Payments, less any fees retained by the Hamilton County Auditor with respect thereto, to (i) satisfy its obligation to make payments to the Board of Education ("the **School District Compensation**"), (ii) cover certain fees to the City provided in the Development Agreement, (iii) pay the Bond Obligations (as defined in the Development Agreement), and (iv) to the extent there are any excess Service Payments, for any lawful purpose.

I. The parties intend that this Agreement, as amended and supplemented from time to time, shall constitute the agreement contemplated by ORC Section 5709.40, et seq. and shall define the obligations of Owner, for itself and its successors-in-interest and assigns, with respect to the Service Payments.

J. Execution of this Agreement has been authorized by City Council by the TIF Ordinance and Ordinance No. ____-2021, passed by City Council on _____, 2021.

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

1. **CONSTRUCTION OF IMPROVEMENTS.** Owner shall cause the Improvements to be constructed in accordance with the terms of the Development Agreement. Failure to use and operate the Improvements as required under the Development Agreement shall not relieve Owner of its obligations to make Statutory Service Payments or Minimum Service Payments as required hereunder. Owner shall use, develop, maintain, operate, and redevelop the Improvements in accordance with the Development Agreement with respect to the Property throughout the Exemption Period (as hereinafter defined), and shall comply with the terms of the Development Agreement as it relates to the Property in all respects. During the Exemption Period, Owner shall not change the principal use of the Improvements without the City's prior written consent.

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

A. **Declaration that Exempt Improvements are a Public Purpose.** The City hereby confirms that, pursuant to ORC Section 5709.40, et seq., and the TIF Ordinance, the City declared that 100% of
{00334590-4}

the increase in the assessed value of the Property subsequent to the passage of the TIF Ordinance (the "**Exempt Improvements**") constitutes a public purpose and is entitled to exemption from real property taxes for a period of thirty (30) years commencing on the first day of the tax year in which any Exempt Improvements resulting from construction of a structure on the Property first appear on the tax list and duplicate of real and public utility property and that commences after the effective date of the TIF Ordinance (the "**Exemption Period**").

B. Commencement of Statutory Service Payments. Owner shall commence paying Statutory Service Payments no later than the final date for payment (the last day that payment can be made without penalty or interest) of the first semi-annual installment of real property taxes in the first calendar year after the first tax year in which any Exempt Improvements resulting from construction of a structure on the Property first appear on the Hamilton County Auditor's tax duplicate. (For example, if Exempt Improvements associated with the construction of a structure on the Property first appear on the tax rolls on January 1, 2022, Owner's first semi-annual tax payment will be for the tax bill for the First Half 2022, which will become due and payable to the County Treasurer on or about January 2023.) Owner shall pay Statutory Service Payments in semi-annual installments (i) on the earlier of such final date for payment of the first semi-annual installment of real property taxes, or February 1, in each year, and (ii) on the earlier of such final date for payment of the second semi-annual installment of real property taxes, or August 1, in each year (each such final date for payment is referred to herein as a "**Service Payment Date**"). Owner shall continue to make Statutory Service Payments until such time as Owner has paid the final Statutory Service Payment applicable to the Exemption Period.

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

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

E. Minimum Service Payments. There is hereby established the "**Total Service Payment Amount**" as shown on Exhibit B (*Schedule of Total Service Payment Amounts*) hereto, which amount is calculated based upon the anticipated amount of real property taxes that would have been payable with respect to the Exempt Improvements, as fully constructed, had an exemption not been granted. If and to the extent that a Statutory Service Payment (net of (1) any fees charged with respect to the Statutory Service Payments by Hamilton County and the City, and (2) the School District Compensation) on any Service Payment Date is less than one-half ($\frac{1}{2}$) of the applicable Total Service Payment Amount, Owner shall pay directly to the trustee for the Bonds (the "**Bond Trustee**"), no later than the applicable Service Payment Date (or on such earlier date as may be reflected on Exhibit B hereto), an amount equal to the

difference (such difference being referred to herein as the "Minimum Service Payment") between the required Total Service Payment Amount and the Statutory Service Payment (net of any fees charged with respect to the Statutory Service Payments by Hamilton County). In the event that Statutory Service Payments are not yet due (for example, because no real property tax has commenced to accrue for the Exempt Improvements) or never come due, Owner shall nevertheless be required to pay Service Payments to the Bond Trustee, on the Service Payment Dates in the amount of the Total Service Payment Amounts shown on Exhibit B hereto. Under such circumstances, Owner shall make all Minimum Service Payments to the Bond Trustee on the Service Payment Dates in the amount of the Total Service Payment Amounts shown on Exhibit B hereto. Owner shall simultaneously send copies of checks (or evidence of electronic payment to the Bond Trustee, if applicable) and any cover letter to the Bond Trustee to the City c/o City Treasurer, Room 202, City Hall, 801 Plum Street, Cincinnati, Ohio 45202. Each payment must be made in immediately available funds by not later than 2:00 p.m. Eastern time on the date such payment is due. The City may certify past due Minimum Service Payments to the Hamilton County Auditor for collection on real property tax bills.]¹

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

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

4. RECORDING; OBLIGATIONS TO RUN WITH THE LAND; ASSIGNMENT.

A. Recording. Promptly after the execution of this Agreement, Owner shall cause this Agreement to be recorded in the Hamilton County, Ohio Recorder's Office, at Owner's expense, prior to any mortgage, assignment, or other conveyance of any part of the Improvements or the Property, and failure to do so shall constitute a default under this Agreement. Owner shall ensure that all instruments of conveyance of the Improvements or the Property, or any portion thereof, or Owner's ownership of the same (or portions thereof) to subsequent mortgagees, successors, lessees, assigns, or other transferees are made expressly subject to this Agreement. Owner shall provide a recorded copy of this Agreement to the City within 5 business days after recording.

¹ Note to Draft: The actual form of MSP will likely be further negotiated prior to the issuance of the Bonds. (00334590-4)

B. Covenants Running with the Land. Owner agrees that the obligation to perform and observe the agreements on Owner's part contained herein shall be covenants running with the land and, in any event and without regard to technical classification or designation, legal or otherwise, shall be binding and enforceable by the City and against Owner and its successors-in-interest and transferees as owners from time to time of the fee simple interest in the Property, without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein to, or in favor of, which these covenants relate.

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

5. PAYMENT OF TAXES; TAX CONTESTS.

A. Payment of Taxes. With respect to real property taxes that are not exempted under the TIF Ordinance, Owner shall pay or cause to be paid, as the same become due, (i) all such taxes, assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Property and/or the non-exempt improvements or any personal property or fixtures of Owner installed or brought thereon (including, without limitation, any taxes levied against Owner with respect to income or profits from operations at the Property and which, if not paid, may become or be made a lien on the Property or the Exempt Improvements), and (ii) all utility and other charges incurred in the operation, maintenance, use, and occupancy of the Property and the Improvements.

B. Tax Contests. Except for Section 6 hereof, nothing in this Agreement is intended to prevent Owner, at its expense and in good faith, from applying for exemption of any non-exempt improvements, or contesting the amount or validity of any such taxes, assessments, or other charges, including contesting the real estate valuation of the Property and the Improvements. Nothing in this paragraph shall be construed to relieve Owner of the duty to make the Minimum Service Payments as required by this Agreement or to reduce the Total Service Payment Amounts hereunder.

6. TAX EXEMPTION. [Owner (including, without limitation, any successors and assigns of Owner, as applicable), shall not seek any tax exemption for the Property, or any portion thereof, other than the exemption provided hereunder and pursuant to the TIF Ordinance during the Exemption Period²]. Owner agrees (on its own behalf and, for the avoidance of doubt, on behalf of its successors and assigns) that the ownership of the Property by a non-profit entity or port authority that would otherwise be exempt from real property taxes shall in no way derogate or limit the obligation to pay Service Payments hereunder (including, without limitation, the obligation to pay Minimum Service Payments). Notwithstanding the foregoing, this Section shall cease to apply once the Bond Obligations are no longer outstanding, as certified by the Trustee, in consult with the City Finance Department.

7. INSURANCE COVERAGE AND PROCEEDS.

² Actual Service Agreements will also reference relevant CRA.
{00334590-4}

A. **Coverage.** Owner shall provide and maintain, or cause to be provided and maintained, special form (formerly known as "all risk") full replacement cost property insurance on the Improvements and other improvements on the Property or any replacements or substitutions therefor (to the extent the same are owned by Owner, or by the Port Authority and leased by Owner) from an insurer that is financially responsible, of recognized standing, and authorized to write insurance in the State. Such insurance policy shall be in such form and with such provisions as are generally considered reasonable and appropriate for the type of insurance involved and shall prohibit cancellation or modification by the insurer without at least thirty days' prior written notice to the City and Owner.

B. **Proceeds.** Upon request, Owner shall furnish to the City such evidence or confirmation of the insurance required under this section. Owner shall give immediate notice to the City of any final settlement or compromise in connection with any claims for or collection of insurance proceeds. The City shall have fifteen (15) days in which it may disapprove of any such settlement or compromise, which shall be deemed approved if not so disapproved. Proof of loss under any applicable insurance policy may be made by the City in the event Owner fails to take such action in a timely manner. The proceeds of any insurance recovery shall be used by Owner to restore, replace, and/or rebuild the Property and the Improvements, excluding Owner's furniture, fixtures, and equipment. Any excess over the amounts required for such purposes shall be the property of Owner or other person or entity to whom the insurance proceeds are payable. Owner, for itself and its successors and assigns, acknowledges that application of the property insurance proceeds hereunder shall be superior to the rights of any and all mortgagees of the Property and the Improvements.

8. **CONDEMNATION PROCEEDS.** In the event any portion of the Property or the Improvements shall be taken as a result of the exercise of the power of eminent domain by any governmental entity or other person, association, or corporation possessing the right to exercise the power of eminent domain, the proceeds of such eminent domain award received by Owner shall be used for the same purposes specified with respect to insurance proceeds in Section 7 above.

9. **NOTICES.** All notices or other communications under this Agreement shall be deemed given on receipt when personally delivered, or 48 hours after being mailed by U.S. registered or certified mail, postage prepaid, addressed to the City at 801 Plum Street, Cincinnati, Ohio 45202, Attention: City Manager, with a copy to the Director of the Department of Community and Economic Development, City of Cincinnati, 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202; and, unless the City has received written notice of a new address, to Owner, at Owner's address set forth in the introductory paragraph hereof. If Owner sends a notice to the City alleging that the City is in default under this Agreement, Owner shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, Ohio 45202. The City and Owner may, by notice given under this Agreement, designate any further or different addresses to which subsequent notices or other communications shall be sent for the respective party.

10. **COVENANTS AND REPRESENTATIONS.** Owner represents that it is a duly organized and existing Ohio entity as identified in the introductory paragraph of this Agreement, that it is in good standing under the laws of the State of Ohio, and that it is qualified to do business in the State of Ohio. Owner covenants that it will remain in existence and so qualified as long as it is required to make Service Payments hereunder.

11. **EXEMPTION APPLICATION.** Owner, or its representatives (as applicable), shall prepare, execute, and (following the City's prior receipt of copies for review and approval in the City's sole and absolute discretion) file, in a timely fashion after the Effective Date (but not later than [____]), 20[]), such applications, documents, and other information with the appropriate officials of the State of Ohio and Hamilton County, or other public body as may be required to effect and maintain during the Exemption Period as described in ORC Chapter 5709 the exemption from real property taxation as contemplated by said Chapter. Owner and the City currently expect that such exemption from real (00334590-4)

property taxation shall apply initially to the 20[___] tax year. As a covenant running with the land, Owner shall continuously use due diligence and employ commercially reasonable efforts to keep such exemption in force, not permitting the same to lapse or be suspended or revoked for any reason within Owner's control. In the event that subsequent to the allowance of such exemption, the same is at any time revoked or suspended due to the act or omission of Owner, Owner shall nevertheless continue to make Service Payments throughout the Exemption Period.

12. DEFAULTS AND REMEDIES. If Owner fails to make any Service Payment when due (time being of the essence), or if Owner fails to observe or perform any other obligation hereunder (including Owner's obligation to comply with the terms of the Development Agreement) and such other non-payment failure continues for more than thirty (30) days after the City notifies Owner in writing thereof, the City shall be entitled to exercise and pursue any and all rights and remedies available to it hereunder, at law or in equity, including, without limitation, (i) foreclosing the lien created hereby, and (ii) terminating Owner's rights hereunder without modifying or abrogating Owner's obligation to make Service Payments; *provided, however*, that if the nature of the default (other than a payment default, with respect to which there is no cure period) is such that it cannot reasonably be cured during such 30-day cure period, Owner shall not be in default under this Agreement so long as Owner commences to cure the default within such cure period and thereafter diligently completes such cure within sixty (60) days after Owner's receipt of the City's initial notice of default. Owner shall pay to the City upon demand an amount equal to all costs and damages suffered or incurred by the City in connection with such default, including, without limitation, attorneys' fees. Waiver by the City of any default shall not be deemed to extend to any subsequent or other default under this Agreement. All rights and remedies hereunder are cumulative.

13. DURATION OF AGREEMENT. This Agreement shall become effective on the Effective Date and, except with respect to those provisions expressly stated to survive the expiration of this Agreement (including, without limitation, the obligation to continue to make Service Payments), shall expire on the day following the date of payment of the final Service Payment applicable to the Exemption Period, unless terminated earlier in accordance with the terms of this Agreement. This Agreement shall survive any foreclosures, bankruptcy, or lien enforcement proceedings. Upon such expiration, the City shall deliver to Owner such documents and instruments as Owner may reasonably request to evidence such expiration.

14. GENERAL PROVISIONS.

A. **Counterparts and Electronic Signatures.** This Agreement may be executed by the parties hereto in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same Agreement. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

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

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

D. **Severability.** If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, it is the intention of the parties that the remainder of this Agreement shall not be affected thereby, and in lieu of each provision that is illegal, invalid, or unenforceable, there shall be added as a

part of this Agreement provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

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

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

15. **EXHIBITS**. The following exhibits are attached hereto and made a part hereof:
- Exhibit A - *Legal Description*
 - Exhibit B - *Schedule of Total Service Payment Amounts*

[*Signature and Notary Pages Follow*]

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

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, City Manager

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Paula Boggs Muething, City Manager of the CITY OF CINCINNATI, an Ohio municipal corporation, on behalf of the corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

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

Exhibit A
to Service Agreement

Legal Description

[TO BE ATTACHED TO EXECUTION VERSION]

Exhibit B
to Service Agreement

Schedule of Total Service Payment Amounts

[TO BE ATTACHED TO EXECUTION VERSION]

Exhibit H
to Development Agreement
(Three Oaks)

Form of Completion Guaranty

SEE ATTACHED

COMPLETION GUARANTY

This Completion Guaranty ("**Guaranty**") is made as of the Effective Date (as defined on the signature page hereof) by **NEYER PROPERTIES, INC.**, an Ohio corporation, whose address is 2135 Dana Avenue, Ste 200, Cincinnati, Ohio 45207 ("**Guarantor**") in favor of the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**").

Recitals:

A. The City and Oakley Yards Land, LLC, an Ohio limited liability company ("**Obligor**"), being an affiliate of Guarantor, are parties to a *Development Agreement* dated [_____], 2021 (the "**Agreement**"). Capitalized terms used, but not defined, herein shall have the meanings ascribed thereto in the Agreement.

B. Pursuant to the Agreement, among other things, Obligor is to construct approximately (i) 350 to 400 market-rate residential apartment units, (ii) 150 to 200 units of senior housing, and (iii) certain public infrastructure improvements, including, without limitation, (a) public right of way, (b) public roads, (c) public pedestrian path, (d) park space, (e) stormwater management, (f) utilities, and (g) sitework (each as more fully set forth in the Agreement, the "**Guaranteed Project**").

C. It is a condition of the Agreement that Guarantor provide this Guaranty to the City with respect to the Guaranteed Project.

NOW, THEREFORE, for and in consideration of the City's execution of the Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby promises and agrees as follows:

1. Guaranty.

(A) Guarantor hereby absolutely, unconditionally, and irrevocably guarantees to the City the full and prompt performance by Obligor of Obligor's obligations under the Agreement to complete construction of the Guaranteed Project in substantial accordance with the Final Plans, as determined by the City in good faith, subject to the terms and conditions of the Agreement, including payment to the City of any and all losses, damages and expenses (including, without limitation, attorneys' fees) suffered or incurred by the City and arising out of the failure by Obligor under the Agreement to do so, regardless of whether such losses, damages or expenses are expressly provided for under the Agreement or are then otherwise allowable by law (collectively, the "**Guaranteed Obligations**").

(B) If Obligor fails to fulfill one or more of the Guaranteed Obligations, resulting in a notice of default from the City to Obligor under the Agreement, the City may notify Guarantor thereof in writing, whereupon Guarantor, within ten (10) days after its receipt of such notice, shall take all steps necessary to cure the default (including, for example, providing additional funding for the Guaranteed Project if necessary). All rights and remedies of the City under this Guaranty are cumulative, and nothing in this Guaranty shall be construed as limiting the City's rights and remedies available under the Agreement or at law or in equity.

(C) The City may from time to time, in the exercise of its sole and absolute discretion and without providing notice to, or obtaining the consent of, Guarantor, and without in any way releasing, altering, or impairing any of Guarantor's obligations and liabilities to the City under this Guaranty: (i) waive compliance with, or any default occurring under, or grant any other indulgence with respect to, the Agreement; (ii) modify or supplement any of the provisions of the Agreement upon written agreement with {00334590-4}

Obligor; (iii) grant any extension or renewal of or with respect to the Agreement upon written agreement with Obligor and/or effect any release, compromise or settlement in connection therewith; and (iv) deal in all respects with Obligor as if this Guaranty were not in effect.

2. Liability of Guarantor.

(A) Guarantor's liability under this Guaranty (i) shall be primary, direct and immediate and is a guaranty of performance and completion and not of collection; (ii) shall not be conditioned or contingent upon the pursuit by Obligor of any remedy that it may have against its contractors, subcontractors or any other person with respect to the Guaranteed Project or at law or in equity; and (iii) shall be unconditional, irrespective of the genuineness, validity, regularity or enforceability of the Agreement, as the case may be, or of the adequacy of any consideration or security given therefor or in connection therewith, or of any other circumstance that might otherwise constitute a legal or equitable discharge of a surety or a guarantor under applicable law. Guarantor hereby waives any and all defenses at law or in equity that may be available to Guarantor by virtue of any such circumstance.

(B) Without limiting the generality of the foregoing provisions of this Section 2, the City shall not be required (i) to make any demand of Obligor or any other person; or (ii) otherwise to pursue or exhaust its remedies against Obligor or any other person or entity or against the Guaranteed Project, before, simultaneously with, or after enforcing any of its rights and remedies under this Guaranty against Guarantor. The City may bring one or more successive and/or concurrent actions against Guarantor, either as part of any action brought against Obligor or in one or more separate actions, as often as the City deems advisable in the exercise of its sole and absolute discretion.

(C) Guarantor's liability under this Guaranty shall continue after any assignment or transfer by the City or Obligor of any of their respective rights or interests under the Agreement or with respect to the Guaranteed Project until the satisfaction of all provisions contained in this Guaranty (but the foregoing shall not be deemed to be or constitute the consent by the City to any such assignment by Obligor, which shall continue to be governed by the terms of the Agreement). Guarantor's liability under this Guaranty shall not be affected by any bankruptcy, reorganization or insolvency of Obligor or any successor or assignee thereof or by any disaffirmance or abandonment by a trustee of Obligor.

(D) Waivers. Guarantor hereby expressly waives: (i) presentment and demand for payment of any sum payable under the provisions of the Agreement, and protest of any nonpayment thereof; (ii) notice of acceptance of this Guaranty and of such presentment, demand and protest; (iii) notice of any default under this Guaranty or under the provisions of the Agreement, except as stated herein; (iv) demand for observance or performance, and enforcement, of any of the terms or conditions of this Guaranty, and/or of the Agreement, except as stated herein; (v) any and all other notices and demands that may otherwise be required by law to be given or made; and (vi) any and all rights that Guarantor may have to a trial by jury in any action brought on or with respect to this Guaranty, all rights and remedies accorded by applicable law to Guarantor, including, without limitation, any extension of time conferred by any law now or hereafter in effect, and all rights of redemption, homestead, dower and other rights or exemptions of every kind, whether common law or statutory. In addition, Guarantor hereby expressly agrees that, if this Guaranty is enforced by suit or otherwise, or if the City exercises any of its rights or remedies under the provisions of the Agreement upon any default by Obligor in performing any of the Guaranteed Obligations thereunder, Guarantor shall reimburse the City, upon demand, for any and all expenses, including without limitation attorneys' fees, that the City incurs in connection therewith, payable within ten (10) days after the City's written demand.

3. Subrogation. No payment by Guarantor under this Guaranty shall give Guarantor any right of subrogation to any rights or remedies of the City against Obligor under the Agreement. Until Obligor has paid and performed the Guaranteed Obligations under the Agreement, Guarantor hereby waives all

rights of contribution, indemnity or subrogation with respect to Obligor that might otherwise arise from Guarantor's performance under this Guaranty.

4. Effect of this Guaranty. Guarantor hereby warrants to the City that: (a) Guarantor (i) [has a financial interest in the Guaranteed Project and] is an affiliate of Obligor; (ii) is duly organized, validly existing and in good standing under the laws of the State of Ohio; (iii) has full power, authority and legal right to execute, acknowledge and deliver this Guaranty; and (iv) there are no actions, suits or proceedings pending or to the knowledge of Guarantor, threatened against Guarantor, at law or in equity, or before any governmental department, commission, board, bureau, agency or instrumentality which involve the possibility of any judgment or order that may result in any material adverse effect upon Guarantor; and (b) this Guaranty constitutes Guarantor's binding and enforceable legal obligation.

5. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (a) upon delivery, if delivered in person; (b) upon receipt or refusal if delivered by overnight delivery with any reputable overnight courier service; or (c) upon receipt or refusal if sent by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to Guarantor and the City, as the case may be, at the addresses set forth in the introductory paragraph of this Guaranty or such other address as may be designated from time to time by notice given to the other party in the manner prescribed herein. Guarantor shall simultaneously send, by U.S. certified mail, a copy of each notice given by Guarantor to the City hereunder to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, Ohio 45202.

6. General Provisions.

(A) Amendment. This Guaranty may be amended or supplemented by, and only by, an instrument executed by the City and Guarantor.

(B) Waiver. Neither party hereto shall be deemed to have waived the exercise of any right that it holds under this Guaranty unless that waiver is made expressly and in writing (and no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right.

(C) Applicable Law. This instrument shall be given effect and construed by application of the laws of the City of Cincinnati and the State of Ohio, and any action or proceeding arising under this Guaranty shall be brought only in the Hamilton County Court of Common Pleas. Guarantor hereto agrees that the City shall have the right to join Obligor in any action or proceeding commenced by the City under this Guaranty.

(D) Time of Essence. Time shall be of the essence as to the performance of Guarantor's obligations pursuant to this Guaranty.

(E) Headings. The headings of the paragraphs and subparagraphs of this Guaranty are provided herein for and only for convenience of reference and shall not be considered in construing their contents.

(F) Construction. As used in this Guaranty, (i) the term "person" means a natural person, a trustee, a corporation, a partnership, a limited liability company, and any other form of legal entity; and (ii) all references made (a) in the neuter, masculine, or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to any paragraph or subparagraph shall, unless herein expressly indicated to the contrary, be deemed to have been made to such paragraph or subparagraph of this Guaranty, and (d) to Guarantor, the City, and Obligor shall be deemed to refer to

each person hereinabove so named and their respective heirs, executors, personal representatives, successors and assigns.

(G) Severability. No determination by any court or governmental body that any provision of this Guaranty or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (i) any other such provision, or (ii) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with applicable law.

(H) Entire Agreement. This Guaranty represents the complete understanding between or among the parties hereto as to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, statements or agreements, either written or oral, between or among the parties hereto as to the same.

(I) Term. This Guaranty shall be effective upon the execution hereof and shall remain in effect until such time as the Guaranteed Obligations are satisfied and discharged in full. At such time, Guarantor may request, and the City will endeavor to promptly provide, a written statement from the City acknowledging the same and confirming that Guarantor has no further obligations hereunder.

[Signature Page Follows]

Executed and effective as of _____, 20__ (the "Effective Date").

GUARANTOR:

NEYER PROPERTIES, INC.

By: _____

Printed: Name: _____

Title: _____

Approved as to Form:

Assistant City Solicitor

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

Exhibit I
to Development Agreement
(Three Oaks)

Form of Release of Easements and Restrictions

SEE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE]

Property: storm sewer easements in Enyart Ave

RELEASE OF EASEMENTS AND RESTRICTIONS

THIS RELEASE OF EASEMENTS AND RESTRICTIONS (this "**Release**") is executed by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), with reference to the following facts:

Recitals:

A. By Deed recorded on July 9, 1979 in Deed Book 4162, Page 686, Hamilton County, Ohio Records, the City created three (3) sewer easements, and restrictions pertaining to advertising signs and filling operations (collectively, the **Encumbrances**"), encumbering real property in the Oakley neighborhood of Cincinnati located along former Enyart Avenue on the north, Robertson Avenue on the south, between Interstate 71 on the west and 34th Avenue on the east, as more particularly described in the Deed. For informational purposes, the real property encumbered by the Encumbrances is generally depicted on the survey drawings attached hereto as Exhibit A, and the Encumbrances are circled and numbered (1), (2), (3) and (4) on the copy of the Deed attached hereto as Exhibit B.

B. The current owner of the encumbered property, Oakley Yards Land, LLC (an affiliate of Neyer Properties, Inc., "**Owner**"), is planning to develop the site for commercial use. Owner and the City are parties to that certain *Development Agreement* dated [____], 2021 (the "**Agreement**"). Pursuant to the Agreement, Owner requested that the City release the Encumbrances for \$1.00 in exchange for Owner providing the Park Covenant (as defined in the Agreement).

C. The City and Greater Cincinnati Water Works have confirmed that the sewer easements and restrictions are not needed for municipal purposes and therefore the City is agreeable to releasing the same to facilitate the development of the site.

D. The City's release of the Encumbrances was authorized by Ordinance No. ____-2021, passed by Cincinnati City Council on _____, 2021.

NOW THEREFORE, for valuable consideration received, the City hereby releases the Encumbrances and confirms that the same are null and void and of no further force or effect.

[Signature Page Follows]

Executed on the date of acknowledgment indicated below.

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, City Manager

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 202__, by Paula Boggs Muething, City Manager of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

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

Exhibits:
Exhibit A – *Survey Drawings*
Exhibit B – *Copy of Deed*

EXHIBIT A

SURVEY DRAWINGS

(2 pages)

[NOTE: THIS DEPICTION IS SERVING AS A PLACEHOLDER.]

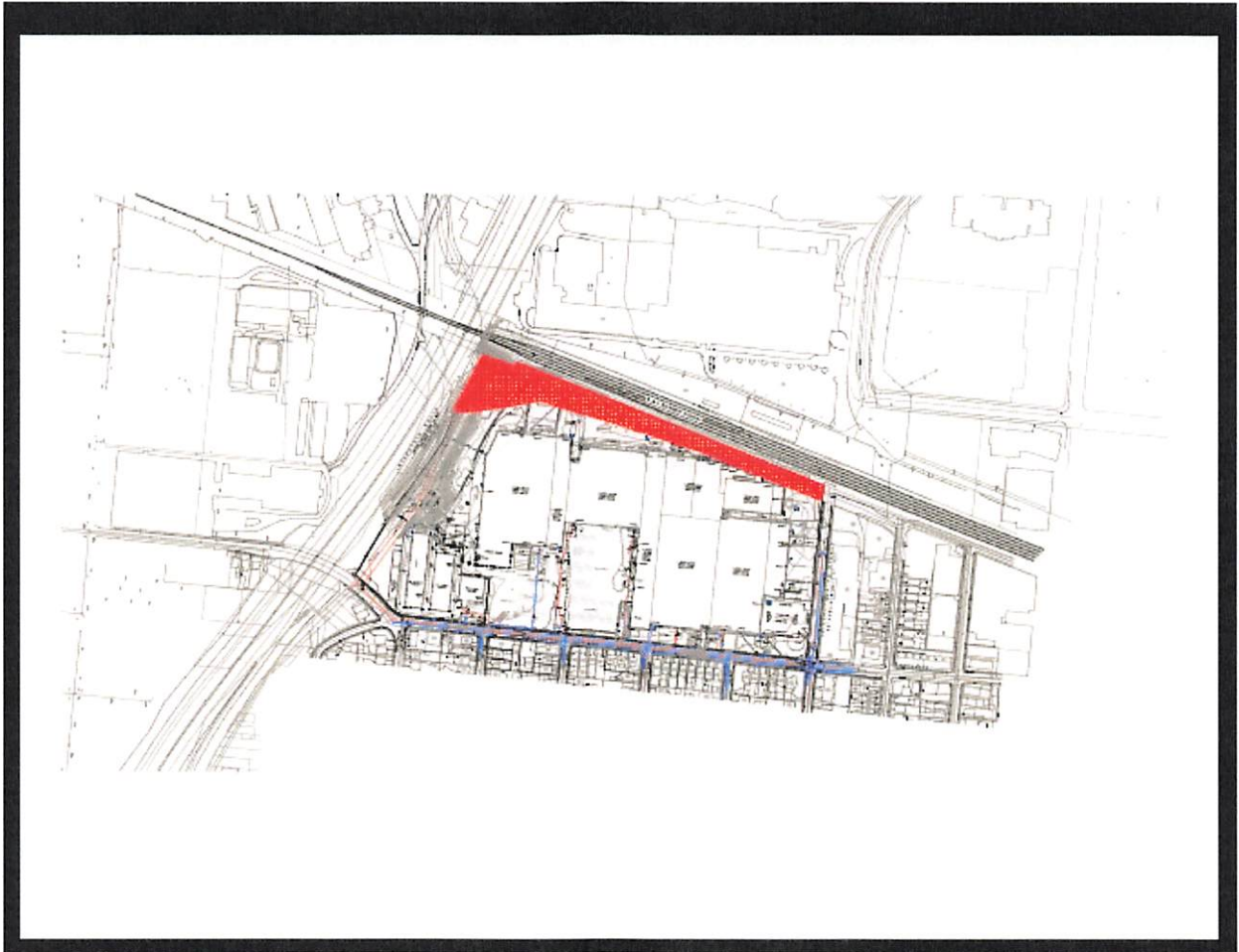


Exhibit A, cont'd

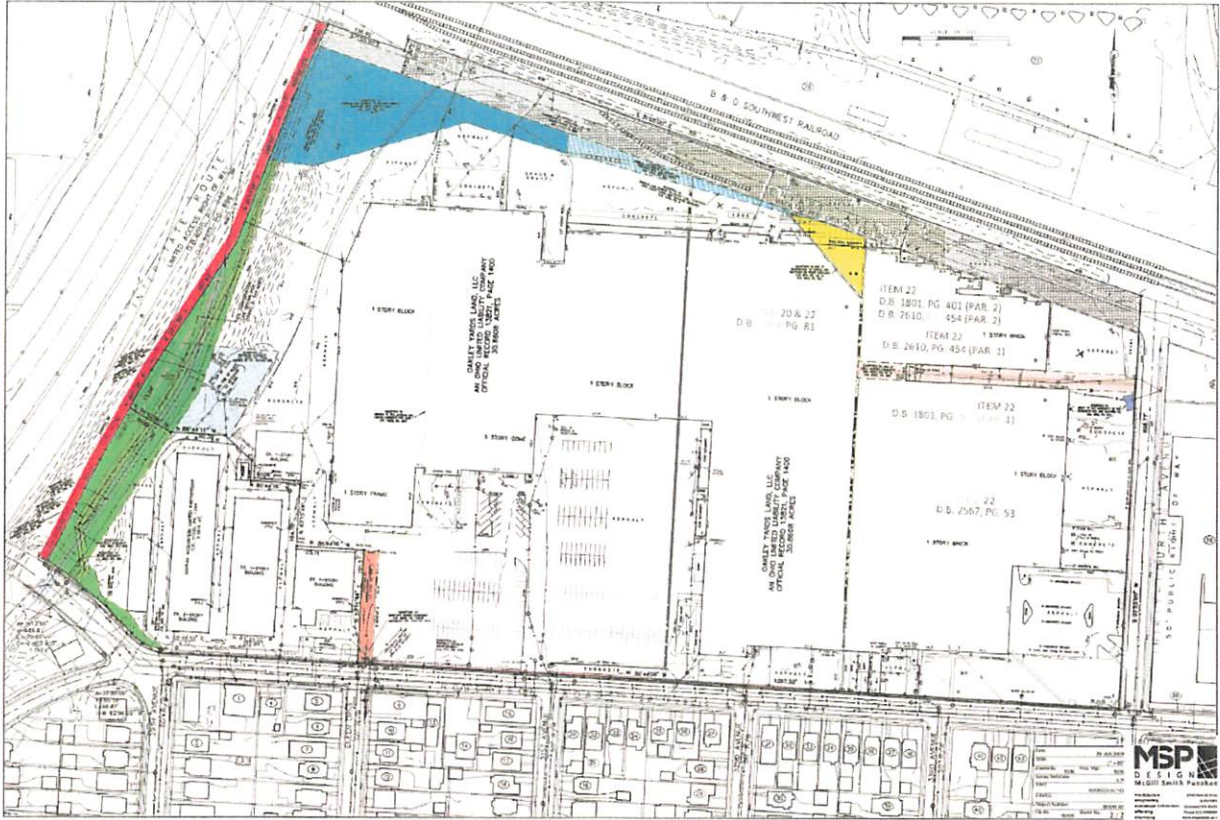


EXHIBIT B

COPY OF DEED
(4 pages)

SEE ATTACHED

Exhibit B, cont'd

SNS/1w . MS

En. [unclear] 2-8

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KNOW ALL MEN BY THESE PRESENTS: That,

WHEREAS, on the 17th day of May 1978, the council of the City of Cincinnati passed Ordinance No. 192-1978, and on April 4, 1979, amended said Ordinance by Ordinance No. 120-1979 (said Ordinances are on file for public inspection in the office of the Clerk of Council) and determined that said real estate is not needed for any municipal purpose; now, therefore:

PURSUANT TO THE PROVISIONS, the City of Cincinnati, a municipal corporation organized and existing under the laws of the State of Ohio, by Ann V. Donnell its City manager, grantor in consideration of Five Thousand and 00/100 Dollars (\$5,000.00), to it paid by CPA Products Corp., formerly known as the General Mill Fun Group, Inc., the receipt whereof is hereby acknowledged, does hereby grant, with limited warranty covenants, to CPA Products Corp., a Delaware Corporation, hereinafter referred to as Grantee, whose address is 9200 Maykata Boulevard, Minneapolis, Minnesota, its successors and assigns forever, the following described real estate, Parcel "A" being property extending from the Northeast Expressway eastwardly and south to Emyart Avenue, Parcel "B" being Emyart Avenue from the Northeast Expressway to 34th Street, all being more fully described as follows:

PARCEL "A"

Situate in Section 28, Town 4, Fractional Range 2, Columbia Township, Hamilton County, Ohio being part of Emyart Avenue and part of the City of Cincinnati Rapid Transit property and being more particularly described as follows:

BEGINNING at the intersection of the westerly line of 34th Street (a 50-foot Street) and the southerly line of Emyart Avenue (a 60-foot Street): thence along said southerly line of Emyart Avenue North 71° 05' West, 352.87 feet to the intersection of the southerly line of the City of Cincinnati Rapid Transit property, said southerly line being also the northerly line of the property conveyed to Pullman, Incorporated, by deed recorded in Deed Book 3265, pages 443 and 444, Hamilton County Records; thence along said southerly line of said Rapid Transit property North 75° 12' West, 406.12 feet to the westerly line of said Pullman, Incorporated Property; thence along a northwardly prolongation of said westerly line North 5° 05' East, 91.81 feet to the northerly line of Emyart Avenue; thence along said northerly line of Emyart Avenue South 71° 05' East, 962.56 feet to the northwardly prolongation of the westerly line of 34th Street; thence along said prolongation of 34th Street South 2° 55' East, 62.42 feet to the southerly line of Emyart Avenue and the Place of Beginning and containing 63,844 square feet, more or less.

Being part of the same premises conveyed to the City of Cincinnati by deed recorded in Deed Book 1341, page 172, Hamilton County Records and part of Emyart Avenue as dedicated in 1869 and recorded in Plat Book 3, Pages 108 and 109, Hamilton County Records.

Examined & Corrected with Dec. 11, 1979

JOS. L. DE COURCY, JR., AUDITOR HAMILTON COUNTY, OHIO

4162 686 TAX 5.00

127 320 P 2:39

CU-49-2-18

Exhibit B, cont'd

Reserving to the City of Cincinnati, its successors and assigns, an easement for the construction, operation, use and maintenance of a sewer in Enyart Avenue; more particularly described as follows:

BEGINNING at the intersection of the westerly line of 34th Street (a 50-foot Street) and the southerly line of Enyart Avenue (a 60-foot Street): thence along said southerly line of Enyart Avenue North 71° 05' West, 965.11 feet to a point in said southerly line of Enyart Avenue where intersected by a northwardly prolongation of the westerly property line of the property conveyed to Pullman, Incorporated by Deed recorded in Deed Book 3265, pages 443 and 444, Hamilton County Records; thence along said prolongation of said westerly property line North 5° 06' East, 61.79 feet to the northerly line of Enyart Avenue; thence along said northerly line of Enyart Avenue South 71° 05' East, 962.66 feet to the intersection of the northwardly prolongation of the westerly line of 34th Street; thence along said prolongation of 34th Street South 2° 55' East, 62.42 feet to the Southerly line of Enyart Avenue and the Place of Beginning and containing 57,833 square feet, more or less.

The description for this parcel is based on a centerline survey made by the City of Cincinnati under the direction of Marvin W. Duermit.

PARCEL "B"

Situate in Section 28, Town 4, Fractional Range 2, Columbus Township, Hamilton County, Ohio being part of Enyart Avenue and part of the City of Cincinnati Rapid Transit property and being more particularly described as follows:

From the intersection of the westerly line of 34th Street (a 50-foot Street) and the southerly line of Enyart Avenue (a 60-foot Street) measure along said southerly line of Enyart Avenue North 71° 05' West, 552.87 feet to the intersection of the southerly line of the City of Cincinnati Rapid Transit property, said southerly line being also the northerly line of the property conveyed to Pullman, Incorporated by deed recorded in Deed Book 3265, pages 443 and 444, Hamilton County Records; thence measure along said southerly line of said City Rapid Transit property north 75° 12' West, 406.12 feet to the westerly line of said Pullman, Incorporated property for the PLACE OF BEGINNING; thence continuing along the southerly line of said City Rapid Transit property North 75° 12' West, 62.99 feet to an angle: thence along said southerly line, North 75° 00' 30" West, 180.00 feet to an angle; thence along said southerly line, South 75° 10' 30" West, 264.65 feet to an angle; thence along said southerly line, North 85° 44' 12" West, 65.26 feet to the easterly right of way line of the Northeast Expressway IAN-71-6.14; thence along said easterly line of the Northeast Expressway North 19° 41' 27" East, 108.10 feet to an angle; thence continuing along said easterly line, north 23° 56' 20" East, 139.74 feet to the northerly line of Enyart Avenue; thence along said northerly line of Enyart Avenue South 71° 05' East, 132.44 feet to an offset; thence along said offset North 18° 55' East, 20.00 feet; thence continuing along said northerly line of Enyart Avenue South 71° 05' East, 358.09 feet to a point in said northerly line of Enyart Avenue where intersected by the northwardly prolongation of the westerly property line of said Pullman, Incorporated property; thence along said prolongation of property of said property line South 5° 06' West, 91.81 feet to the said southerly line of said City Rapid Transit property and the Place of Beginning and containing 74,705 square feet, more or less.

Being part of the premises conveyed to the City of Cincinnati

New Entry 4-1-13
14-1-1907 8. sec. A.S. Pub. 1000. 20. 1. 1074

12-2
322B

Exhibit B, cont'd

by deed recorded in Deed Book 1341, page 172, Hamilton County Records and being part of Enyart Avenue as dedicated in 1869 and recorded in Plat Book 3, pages 108 and 109, Hamilton County Records.

Reserving to the City of Cincinnati, its successors and assigns, an easement for the construction, operation, use and maintenance of a sewer in Enyart Avenue more particularly described as follows:

2
From the intersection of the westerly line of 34th Street (a 50-foot Street) and the southerly line of Enyart Avenue (a 60-foot Street) measure along said southerly line of Enyart Avenue North $71^{\circ} 05'$ West, 945.11 feet to a point on said southerly line of Enyart Avenue where intersected by the northwardly prolongation of the westerly property line of the property conveyed to Pullman, Incorporated by deed recorded in Deed Book 3265, pages 443 and 444, Hamilton County Records, for the PLACE OF BEGINNING: thence continuing along said southerly line of Enyart Avenue South $71^{\circ} 05'$ East, 508.90 feet to the easterly right of way line of the Northeast Expressway, HAM-71-6.14; thence along said easterly line of the Northeast Expressway North $23^{\circ} 56' 20''$ East, 40.15 feet to the northerly line of Enyart Avenue; thence along said northerly line of Enyart Avenue, South $71^{\circ} 05'$ East, 132.44 feet to an offset; thence along said offset, North $18^{\circ} 55'$ East, 20.00 feet; thence continuing along said northerly line of Enyart Avenue South $71^{\circ} 05'$ East, 354.09 feet to a point in said northerly line of Enyart Avenue where intersected by the said northwardly prolongation of the westerly property line of said Pullman, Incorporated property; thence along said prolongation of said property line South $5^{\circ} 06'$ West, 61.79 feet to the said southerly line of Enyart Avenue and the Place of Beginning and containing 27,294 square feet, more or less.

Also reserving to the City of Cincinnati, its successors and assigns, an easement for the operation, use, maintenance and replacement of a 33-inch sewer and its appurtenances, said easement lying in, over and upon the land more particularly described as follows:

3
From the intersection of the westerly line of 34th Street (a 50-foot Street) and the southerly line of Enyart Avenue (a 60-foot Street) measure along said southerly line of Enyart Avenue, North $71^{\circ} 05'$ West, 553.87 feet to the intersection of the southerly line of the City of Cincinnati Rapid Transit property, said southerly line being also the northerly line of the property conveyed to Pullman, Incorporated, by deed recorded in Deed Book 3265, page 443 and 444, Hamilton County Records; thence measure along said southerly line North $75^{\circ} 12'$ West, 469.11 feet to an angle; thence measure along said southerly line North $75^{\circ} 00' 30''$ West, 130.00 feet to an angle; thence measure along said southerly line South, $75^{\circ} 10' 30''$ West, 264.65 feet to an angle; thence measure along said southerly line North $83^{\circ} 44' 12''$ West, 39.56 feet for the PLACE OF BEGINNING; thence continuing along the southerly line, North $83^{\circ} 44' 12''$ West, 25.70 feet to the easterly right of way line of the Northeast Expressway, HAM-71-6.14; thence along said easterly right of way line of the Northeast Expressway, North $19^{\circ} 41' 27''$ East, 108.20 feet to an angle; thence North $23^{\circ} 56' 20''$ East, 20.00 feet; thence South $66^{\circ} 03' 40''$ East, 25.00 feet; thence South $23^{\circ} 56' 20''$ West, 19.07 feet; thence South $19^{\circ} 41' 27''$ West, 191.20 feet to the southerly line of said City Rapid Transit property and the Place of Beginning and containing 3,105 square feet, more or less.

SUBJECT to a permanent utility easement not less than 15 feet in width in favor of the Cincinnati Gas and Electric

Exhibit B, cont'd

Company for the maintenance, repair and replacement of an existing 20 inch gas main and an overhead electric line over the property herein described; this easement shall restrict the construction of any building or obstructions that could possibly interfere with the maintenance or repair of such gas main or electric lines.

The description of this parcel is based on a centerline survey made by the City of Cincinnati under the direction of Marvin W. Ruermit.

and all the estate, title and interest of the said City of Cincinnati, either in law or in equity in and to the said premises; together with all the privileges and appurtenances to the same belonging.

TO HAVE AND TO HOLD the same to the only proper use of the said Grantee, and its successors and assigns, forever.

SUBJECT to any and all taxes and assessments which are liens against said real estate at the time of this conveyance, although, the amounts thereof may not have been determined at such time, all of which the Grantee hereby assumes and agrees to pay; subject also to the above mentioned easements and restrictions; and further subject to the following terms and conditions which shall be as covenants running with the land and be binding upon the purchaser and its successors in title:

- a. The purchaser and its successors in title hereby relinquish all rights of ingress and egress to and from the property herein designated as Parcel "B" and the limited highway known as "Northeast Expressway, HAM-71-6.14" along the following courses, to-wit:

North 19° 41' 27" East, 198.10 feet;

North 23° 56' 20" East, 139.74 feet.

- b. No advertising signs shall be erected on either parcel of said real property.
- c. The City of Cincinnati reserves the right to approve any filling operation and to set conditions under which the fill may be made, including, but not limited to amount of fill on the sewer, type of fill material, compaction, stabilizing and/or planting of the fill slopes and drainage of the fill site.

IN WITNESS WHEREOF, the City of Cincinnati, by and through _____

4
Sam N. Donaldson, City Manager, (duly authorized by said Ordinance No. 192-1976 and amended by Ordinance No. 120-1979) Grantor, has

Exhibit B, cont'd

hereunto affixed its name and corporate seal, and said Wm. V. Donaldson,
has hereunto subscribed his name on the 19th day of April, 1979.

WITNESSES:

CITY OF CINCINNATI

Ann Pike

By Wm. V. Donaldson

Charles M. Volk

STATE OF OHIO, COUNTY OF HAMILTON, SS:

BE IT REMEMBERED that on this 19 day of April, 1979, before
me, the subscriber, a notary public in and for said County and State, person-
ally appeared Wm. V. Donaldson, City Manager of the City of
Cincinnati, the municipal corporation whose name is subscribed to and which
executed the foregoing instrument, Grantor, and acknowledged the signing and
sealing thereof to be the corporate act and seal of said City, and his
voluntary act and deed as such officer on behalf of said City of Cincinnati.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed
my notarial seal on the day and year last aforesaid.

Ann Pike
Notary Public, State of Ohio.

ANN PIKE
Notary Public, Hamilton County, Ohio
My Commission Expires June 3, 1983

CITY PLANNING COMMISSION
CINCINNATI, OHIO
APPROVED
NO PLAT REQUIRED
Herbert H. Stevens
DIRECTOR OF PLANNING
4-23-79 BY H. H. T. Comb

APPROVED:

Stephen J. Murphy
Assistant City Solicitor

This instrument was prepared for the
City of Cincinnati, by its Department
of Law.

NO
RECORDED
Pg. 8K
19 JUL 9 1979
RECORDS
CITY OF CINCINNATI

Exhibit J
to Development Agreement
(Three Oaks)

Form of Park Covenant

SEE ATTACHED

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

(Auditor's Parcel No.: [____])

RESTRICTIVE COVENANT

THIS RESTRICTIVE COVENANT (this "Covenant") is made this [____] day of [____], 20[____] by [entity name], [entity type], [entity address] ("Grantor"), for the benefit of the CITY OF CINCINNATI, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "City").

Recitals:

A. By virtue of a deed from [____], recorded on [____] in OR __, Page _____, Hamilton County, Ohio Records, Grantor owns the real property located at [____] Cincinnati, Ohio as more particularly described on Exhibit A hereto (the "Property"), which Grantor acquired for the purpose of redevelopment (the "Project") as described in that certain *Development Agreement* dated [____] between the City and Oakley Yards Land, LLC, an Ohio limited liability company (the "Agreement"). Capitalized terms used, but not defined, herein have the meanings ascribed thereto in the Agreement.

B. As consideration for certain of the City's commitments (as described in the Agreement), Grantor is required under the Agreement to execute and record this Covenant.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby declare that the Property is and shall be subject to the provisions of this Covenant as set forth below.

1. **Covenant to Use Property for Public Park.** The Property shall be used solely for the development and maintenance of a park, open for free to the general public, including, for example, the following:

- (1) open green space, walking paths, gardens, and/or woodlands areas;
- (2) the construction of lakes, pools, fountains, walking trails, bike trails, and picnic areas;
- (3) related traffic improvements; and
- (4) other substantially similar park, recreational or public uses.

Grantor is responsible for the construction, maintenance, and management of the park, including any and all costs related thereto, which park shall be maintained in good condition and repair. Except as expressly provided in the Agreement, the City will provide no funding for any costs related to the park. The City has no responsibility for maintaining, constructing, repairing, and/or managing the park.

2. **Enforcement of the Covenants.** The City is the beneficiary of the covenants contained herein. Each and every provision of this Covenant shall apply to and be enforceable by an action at law or

equity instituted by the City against all owners of the Property. Any failure of the City to enforce any provision of this Covenant shall not be deemed a waiver of the City's right to do so thereafter. This Covenant shall not be amended, released, extinguished, or otherwise modified without the prior written consent of the City, which consent may be withheld in its sole and absolute discretion. Notwithstanding the foregoing, Grantor or its successors and assigns may request the release of this Covenant in writing in the event that Grantor or its successors and assigns wish to develop the Property and the City shall release this Covenant in exchange for payment by Grantor or its successors and assigns in the amount of \$200,000. Grantor and its successors and assigns are responsible for all recording costs associated with releasing this Covenant.

3. **Covenants to Run with the Land.** Grantor intends, declares, and covenants on behalf of itself and its successors and assigns that this Covenant and the provisions contained herein (a) shall be covenants running with the land and are binding upon Grantor and its successors-in-title, (b) are not merely personal covenants of Grantor, and (c) shall inure to the benefit of the City. Grantor hereby agrees that any and all requirements of the laws of the State of Ohio to be satisfied in order for the provisions of this Covenant to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate or privity of contract are also deemed to be satisfied in full.

4. **Severability.** Each provision of this Covenant and the application thereof to the Property are hereby declared to be independent of and severable from the remainder of this Covenant. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Covenant.

This Restrictive Covenant is executed on the date first set forth above.

Remainder of this page intentionally left blank. Signatures to follow.

[]

By: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____ of [entity name], [entity type], on behalf of the [entity type]. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

ACKNOWLEDGED AND ACCEPTED BY:

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, City Manager

Date: _____, 2021

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

Office of the City Solicitor
City of Cincinnati
801 Plum Street, Suite 214
Cincinnati, OH 45202

Exhibit A
to Restrictive Covenant

Legal Description

[to be provided]

Exhibit K
to Development Agreement
(Three Oaks)

Additional Requirements

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

This Exhibit serves two functions:

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

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

(A) Construction Workforce.

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

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

(ii) Requirement. In furtherance of the policy enumerated in City Resolutions No. 32-1983 and 21-1998 concerning the inclusion of minorities and women in City construction work, if Developer is performing construction work for the City under a construction contract to which the City is a party, Developer shall use Best Efforts to achieve a standard of no less than 11.8% Minority Persons (as defined below) and 6.9% females (of whom at least one-half shall be Minority Persons) in each craft trade in Developer and its general contractor's aggregate workforce in Hamilton County, to be achieved at least halfway through the construction contract (or in the case of a construction contract of six months or more, within 60 days of beginning the construction contract) (collectively, the "**Construction Workforce Goals**").

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering with Trade Unions.

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

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

(ii) Contracts and Subcontracts; Competitive Bidding.

(a) Applicability. This clause (ii) is applicable to "construction contracts" under Cincinnati Municipal Code Chapter 321. Municipal Code Chapter 321 defines "construction" as "any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than four thousand dollars and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority," and "contract" as "all written agreements of the City of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction."

(b) Requirement. If CMC Chapter 321 applies to the Project, Developer is required to ensure that all contracts and subcontracts for the Project are awarded pursuant to a competitive bidding process that is approved by the City in writing. All bids shall be subject to review by the City. All contracts and subcontracts shall be expressly

required by written agreement to comply with the provisions of this Agreement and the applicable City and State of Ohio laws, ordinances and regulations with respect to such matters as allocation of subcontracts among trade crafts, Small Business Enterprise Program, Equal Employment Opportunity, and Construction Workforce Goals.

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

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

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

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

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

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

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

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

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

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

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

(F) Small Business Enterprise Program.³

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

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

(1) Including qualified SBEs on solicitation lists.

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

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

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

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

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

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

³ Note: DCED is currently evaluating revisions to this SBE section due to recent legislative changes adopted by Council. If DCED implements these policy changes prior to the execution of this Agreement, this section will be revised.

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

(G) Equal Employment Opportunity.

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

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

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

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

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

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

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

(M) Wage Enforcement.

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

{00334590-4}

Cincinnati Municipal Code Section 326-5 requires that the language below be included in contracts subject to the Wage Enforcement Chapter.

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

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

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

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

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

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

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

(N) Americans With Disabilities Act; Accessibility.

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

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

(O) Electric Vehicle Charging Stations in Garages.

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

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

(P) Certification as to Non-Debarment. Developer represents that neither it nor any of its principals is presently 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 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.

Addendum I
to
Additional Requirements Exhibit

City's Prevailing Wage Determination

SEE ATTACHED

REQUEST FOR PROJECT WAGE DETERMINATION

DATE RECEIVED: 03/19/2021

ORIGINAL ASSIGNED NUMBER:

DEI USE ONLY

Fillout and Circle all that Apply Below:

REQUESTING AGENCY OR DEPT:

Community and Economic Development

FUNDING GUIDELINES:

(State or Federal)

CONTACT PERSON AND PHONE

NUMBER:

Giovanni Rocco; 513-352-1960

RATES THAT APPLY:

(Building, Heavy, Highway, Residential)

Prevailing wage does not apply.

DECISION NUMBER: N/A

Requested Date: 03/18/2021

Estimated Advertising Date: 04/18/2021

Estimated Bid Opening Date: 04/19/2021

Estimated Starting Date: 05/01/2021

MODIFICATIONS: N/A

DECISION DATE: N/A

SOURCE AND FUND NUMBER

EXPIRATION DATE: N/A

CITY FUND

STATE FUND

SUPERSEDES DECISION NUMBER: N/A

COUNTY FUND

FEDERAL FUND

DETERMINATION BY:

Name: Trisa Wilkens Hoane

Title: Interim Deputy Director

PROJECT ACCOUNT NUMBER:

Date: 03/19/2021

AMT. OF PUB. FUNDING \$: n/a

APPROVED BY:

TOTAL PROJECT DOLLARS: \$127,000,000


 Jennifer B. Mackenzie, Interim Director

NAME OF PROJECT

DEPARTMENT OF ECONOMIC INCLUSION

Three Oaks/ Oakley Yards

COMMENTS:

As described the project does not involve any direct public funding and, as such, is exempt from prevailing wage (ORC 4115.03(C)). Even if the project received funds that triggered prevailing wage, it would still be exempt under 4115.04(B)(6) due to the involvement of the Port Authority.

Local prevailing wage does not apply as the project does not meet the definition of "Development Agreement" according to CMC 321-1-D2.

Note: Any change in scope or funding of the project will require resubmission of this determination.

TYPE OF WORK

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

PROJECT LOCATION

This project consists of the new construction of several different types of developments (as described below) at 2800 Robertson Ave in the Oakley neighborhood. Multi-Family: Private Improvements will include 15 buildings consisting of the following components: - Block A – Private Improvements will consist of Developer's design and construction of 6 three story townhome style apartment buildings and associated parking. - Block B - Private Improvements will consist of Developer's design and construction of 6 three story garden style apartment buildings and associated parking. - Block C – Private Improvements will consist of Developer's design and construction of: o 2 four story apartment buildings and associated parking areas. o An Approximately 3,000 square foot amenity building and community green space. Single Family: Private Improvements will consist of Developer's design and construction of: - Approximately 106 single family detached homes and attached townhome product. Senior Living: Private Improvements will consist of Developer's design and construction of: - Approximately 150 - 200 senior living units designated for Independent Living, Assisted Living, and / or Memory Care and associated building amenities.

PROJECT FUNDING SOURCE

This project will be primarily funded through private funding; however, the City is implementing a 40(B) TIF that will be paired with Bonds from the Port Authority to fund the public infrastructure portion of the project. Moreover, the City will implement two CRAs-- one on the multifamily apartment building and one on the senior housing apartment building. The multifamily apartment building will be granted a gross 90% CRA abatement, and the senior housing portion of the project will be granted a 45% abatement. The single family homes can elect to apply for residential tax abatements as well.

PROJECT SCOPE OF WORK AND BUDGET

Developer will develop the approximately 30.86-acre site, which at full buildout shall include approximately 106 single family homes, 393 multi-family and townhome units, and 150 – 200 senior living units along with a public park, bike path, and other amenities. The Private Improvements will be developed in a single phase following the completion of public improvements as described below. The Three Oaks Public Infrastructure Improvement scope includes, but is not limited to, all design and construction associated with demolition, environmental remediation, all new public roads and associated right-of-way, street parking and associated curbs, lighting, alleys, public park space, bike trail, hillside improvements, fences and retaining walls, sidewalks, street trees and landscaping, signage, earth work, storm water management and all other utilities.

DEI 217 Form
REV: 6/12/2017