

ATTACHMENT A

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

**DEVELOPMENT AGREEMENT**

*among the*

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

**OH-UC HOLDINGS II LLC,**  
a Delaware limited liability company;

*and*

**OH-UC HOLDINGS III LLC,**  
a Delaware limited liability company,

Project Name: The District at Clifton Heights  
(multi-phased development of property along Straight Street)

Dated: \_\_\_\_\_, 2021

## DEVELOPMENT AGREEMENT

(The District at Clifton Heights)

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 among the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"); **OH-UC HOLDINGS II LLC**, a Delaware limited liability company ("**Holdings II**"); and **OH-UC HOLDINGS III LLC**, a Delaware limited liability company ("**Holdings III**"); and jointly with Holdings II, "**Developer**". Developer is an affiliate of Trinitas Development LLC, an Indiana limited liability company ("**Trinitas**"), and Crawford Hoying Development Partners, LLC, an Ohio limited liability company ("**Crawford**"). The current address of Holdings II and Trinitas is 201 Main Street, Lafayette, Indiana 47091. The Current address of Holdings III and Crawford is 6640 Riverside Drive, Suite 500, Dublin, Ohio 43017.

### Recitals:

A. Developer desires to undertake the redevelopment of approximately 6.15 acres of real property located along Straight Street between Clifton Avenue on the east and University Court on the west in the Clifton Heights 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 in two phases, 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:

(i) The first phase will consist of two sub-phases:

(a) Developer's design and construction of a 351 residential rental unit, 1,029 bed student housing project known as "The Deacon", and renovation of an existing 800-space private parking garage (the "**Phase IA Private Improvements**", or the "**Phase IA Project**", as applicable), identified as Block F on Exhibit A-2 (the "**Phase IA Project Site**"), which Developer has already completed; and

(b) The design and construction of (1) approximately 380 residential rental units of student housing and approximately 2,300 square feet of commercial space, an approximately 160-key hotel with approximately 22,000 square feet of commercial space, and a new 17-bedroom sorority house for the Zeta House Corporation of Delta Delta Delta ("**Tri Delta**") (the "**Phase IB Private Improvements**"; and jointly with the Phase IA Private Improvements, the "**Phase I Private Improvements**"); and (2) an approximately 169-space public parking garage and other eligible public infrastructure improvements, including acquisition of the existing Tri Delta sorority house (the "**Phase IB Public Infrastructure Improvements**"; and jointly with the Phase IB Private Improvements, the "**Phase IB Project**"). The various components of the Phase IB Project are identified as Blocks A-1, A-2, and E on Exhibit A-2 (the "**Phase IB Project Site**"; and jointly with the Phase IA Project Site, the "**Phase I Project Site**"). The Phase IA Project and the Phase IB Project are referred to jointly herein as the "**Phase I Project**".

(ii) The second phase will consist of (a) approximately 45,000 square feet of commercial space, approximately 350 residential rental units, approximately 170 multifamily housing units, and an approximately 170-space private parking garage (the "**Phase II Private Improvements**"; and jointly with the Phase I Private Improvements, the "**Private Improvements**"); and (b) an approximately 400-space public parking garage to service the Private Improvements and other eligible public infrastructure improvements necessary for the completion thereof (the "**Phase II Public Infrastructure Improvements**"; and jointly with the Phase IB Public Infrastructure Improvements, the "**Public Infrastructure Improvements**"). The various components of the Phase II Project are identified as Blocks B/C and D on Exhibit A-2 (the "**Phase II Project Site**"). The Phase II Private Improvements and the Phase II Public Infrastructure Improvements are referred to jointly herein as the "**Phase II Project**"; and the Phase I Project and the Phase II Project are referred to jointly herein as the "**Project**".

C. The total estimated cost (including, without limitation, hard construction costs, soft costs, and acquisition costs) of (i) (a) the Phase IA Private Improvements is approximately \$119,830,000, (b) the Phase IB Private Improvements is projected to be approximately \$147,080,000, and (c) the Phase II Private Improvements is projected to be approximately \$128,400,000, for an aggregate total estimated cost for the Private Improvements of \$395,310,000, as

more particularly described on Exhibit D-1 (Preliminary Budget – Private Improvements) hereto; and (ii) (a) the Phase IB Public Infrastructure Improvements is projected to be approximately \$30,770,000, and (b) the Phase II Public Infrastructure Improvements is projected to be approximately \$31,770,000, for an aggregate total estimated cost for the Public Infrastructure Improvements of \$62,540,000, 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 Phase IB Project (other than the new Tri Delta sorority house, construction of which commenced prior to the Effective Date hereof) on or about the third quarter of 2021, and (b) the Phase II Project on or about the first quarter of 2022; and (ii) complete construction of (a) the Phase IB Project no later than October 1, 2024, and (b) the Phase II Project no later than January 1, 2025, 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. 445-2019, passed by City Council on November 14, 2019, the City created a so-called project-based TIF for the Project Site under Ohio Revised Code (“**ORC**”) Section 5709.40(B), declaring 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 (and with respect to the public parking garages, owned 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 separate construction agreement(s), cooperative agreement(s), 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 (a) \$[39,850,000] with respect to the financing of the Phase IB Public Infrastructure Improvements (the “**Phase I Bonds**”), and (b) \$[41,150,000] with respect to the financing of the Phase II Public Infrastructure Improvements (the “**Phase II Bonds**”; and jointly with the Phase I Bonds, the “**Bonds**”), and make the net proceeds from the Bonds available to Developer to pay for the construction of the applicable phase of the Public Infrastructure Improvements, as will be determined by such separate agreements as may be entered into by the Port Authority, the City, and Developer; and (ii) 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, (a) first, to pay any fees charged by the Hamilton County Auditor or any other governmental entity, (b) 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, (c) third, to pay the City’s fees described in Section 11(B) of this Agreement, and (d) fourth, to make payments to the Port Authority in the amount necessary to pay principal, interest, administrative expenses, 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. For the avoidance of doubt, the parties intend that the Bond Obligations associated with the applicable phase of the Bonds will be supported by the Project TIF Revenue generated from the applicable phase of the Project. 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**”).

G. The parties currently anticipate that the sources of repayment for the Bond Obligations will include the following, in the order of application: (i) first, net operating income from the garages included within the Public Infrastructure Improvements (i.e., those garages for which the Bond proceeds will be made available to pay for the construction thereof); (ii) second, the available Project TIF Revenue after payment (a) of City and Hamilton County Auditor fees and (b) to satisfy obligations to the School Board; and (iii) third, minimum service payments, if collected pursuant to and in accordance with the Service Agreement and the cooperative agreement(s).

H. 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, 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**”.

I. All or a portion of the Project Site is located in the TIF District known as "District 8-Clifton Heights-University Heights-Fairview (CUF) District Incentive District" (the "**District**"), established by Ordinance No. 418-2002, passed by City Council on December 18, 2002. The City anticipates that it will keep the Project Site within the District and "layer" the TIF Exemption over the existing exemption provided by the District, stating that the TIF Exemption will have priority over the District exemption.

J. Developer anticipates that the Phase IB Project and the Phase II Project will create approximately (i) 750 full-time equivalent temporary jobs at the Project Site at an annual payroll, during the construction period, of approximately \$40,300,000; and (ii) 700 full-time equivalent permanent jobs at the Project Site at an annual payroll of approximately \$15,700,000 following completion of construction.

K. Pursuant to Ordinance No. 255-2017, passed by City Council on September 13, 2017, the City and OH-UC Holdings I, LLC, an affiliate of Developer, entered into a certain *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* dated October 11, 2017, pursuant to which, among other things, the City provided a 15-year real property tax abatement for 100% of the amount by which a portion of the Phase IA Project more particularly described therein increased the assessed value of the real property described therein. The parties thereto further amended such agreement by means of a certain *First Amendment to Community Reinvestment Area Tax Exemption Agreement* dated March 19, 2018, pursuant to which the Port Authority joined as a party thereto as the actual fee title owner of the property to be abated from real property taxation (as amended, the "**Deacon CRA**").

L. Pursuant to Ordinance No. 331-2020, passed by City Council on September 30, 2020, City Council authorized a 14-year real property tax abatement for 100% of the amount by which a portion of the Phase IB Project, identified as Block E on Exhibit A-2 hereto, increased the assessed value of the real property described therein. The parties hereto currently anticipate that the City will enter into a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* with Tri Delta, which will be the actual fee title owner of the property to be abated from real property taxation, pursuant to which, among other things, the City will provide such real property tax abatement authorized by Ordinance No. 331-2020 (the "**Tri Delta CRA**").

M. The parties currently anticipate that the City will receive an application for a commercial real property tax abatement for the multifamily housing portion of the Phase II Project, identified as Block D on Exhibit A-2 hereto (the "**Multifamily Housing CRA**"). Developer acknowledges that the City will need to underwrite such application, and the City makes no representations or other assurances that it will recommend the Multifamily Housing CRA or that City Council will authorize the same.

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(s) described herein.

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. As it relates to (i) the Phase IB Project, following the parties' execution of this Agreement and at such time as such documents become available, and (ii) the Phase II Project, prior to commencement of construction of any portion of the Phase II Project, 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 Phase I Project Site or the Phase II Project Site, as applicable;
- (ii) *Survey:* One or more ALTA boundary survey(s) of the Phase I Project Site or the Phase II Project Site, as applicable, showing all easements and other matters of record that can be shown on a survey;
- (iii) *Appraisal:* A projected "as-built" appraisal of the applicable phase of 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 applicable phase of Private Improvements and Public Infrastructure Improvements, as applicable;
- (v) *Environmental:* A copy of whatever environmental reports Developer may obtain or has obtained in connection with the applicable phase of 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 applicable phase of Public Infrastructure Improvements will be constructed;
- (vii) *Construction Schedules:* A detailed construction timeline showing anticipated commencement and completion dates for the applicable phase of the Project, including significant milestones;
- (viii) *Budget:* A detailed and updated budget for the applicable phase of the Project;
- (ix) *Financing:* Evidence satisfactory to the City that Developer has obtained all financing necessary to complete the applicable phase of the Project;
- (x) *New Legal Descriptions and Surveys:* Updated legal descriptions and ALTA property surveys for the Phase IB Project Site or the Phase II Project Site, as and 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 applicable phase of 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 applicable phase of 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 applicable phase of 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 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) 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 applicable phase of Bonds, any party hereto determines that the applicable phase of the Project is not feasible or

desirable for any reason, then, notwithstanding anything in this Agreement to the contrary, such party may terminate this Agreement by giving the other 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 applicable 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 applicable phase of Bonds.

## 2. PLANS AND CONSTRUCTION.

(A) Preparation of Plans and Specifications. Developer shall prepare plans and specifications for the applicable phase of the Project and shall submit the same to DCED for review and approval prior to commencement of construction of the applicable phase of the Project; *provided that* DCED may only withhold approval if such plans and specifications associated with the applicable phase of the Project (i) reduce or diminish the size, scope, quality, or site plan of the applicable phase of the Project, (ii) could reasonably be expected to reduce the hard construction costs of the applicable phase of the Project by 15% or more, 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 sole and absolute discretion. The approved plans and specifications for each phase of 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**" with respect to the applicable phase of the Project. Developer shall submit any and all proposed changes to the Final Plans to DCED and 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 Phase IB Project. Prior to commencement of construction of the Phase II Project, Developer shall obtain construction bids for the Phase II Project. Upon Developer's selection of the bids for applicable phase of the Project, Developer shall submit to the City an updated construction budget and construction schedule for the applicable phase of the Project.

(C) Commencement and Completion of Construction. Developer shall complete each phase of the Project, and all components thereof, substantially in accordance with Exhibits C-1 and C-2, and substantially as reflected in the Final Plans for the applicable phase of the Project, and in compliance with all applicable laws.

(i) Phase IA Project. The parties hereby agree and acknowledge that construction of the Phase IA Project was completed on or about February 15, 2020.

(ii) Phase IB Project. Developer shall commence construction of (a) the Phase IB Private Improvements not later than October 1, 2021, and (b) the Phase IB Public Infrastructure Improvements not later than October 1, 2021. Developer shall complete construction, in accordance with the Final Plans with respect to the Phase IB Project, of (a) the Phase IB Private Improvements not later than October 1, 2024, and (b) the Phase IB Public Infrastructure Improvements not later than October 1, 2024.

(iii) Phase II Project. Developer shall commence construction of (a) the Phase II Private Improvements not later than April 1, 2022, and (b) the Phase II Public Infrastructure Improvements not later than April 1, 2022. Developer shall complete construction, in accordance with the Final Plans with respect to the Phase II Project, of (a) the Phase II Private Improvements not later than January 1, 2025, and (b) the Phase II Public Infrastructure Improvements not later than January 1, 2025.

(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 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. 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, the City's Department of Transportation & Engineering ("DOT"), 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 commencing construction of the applicable phase of the Project, Developer shall cause Trinitas, Crawford, and/or another guarantor approved by the City, in the City's sole and absolute discretion (such entity, whether it be Trinitas, Crawford, and/or another guarantor, being hereinafter referred to as "**Guarantor**"), to execute a guaranty of completion with respect to Developer's obligation to complete the applicable phase of the Project, which shall be in substantially the form of Exhibit H (Form of Completion Guaranty) hereto (the "**Completion Guaranty**"). Notwithstanding the foregoing, the parties hereby acknowledge and agree that no Completion Guaranty shall be required for the Phase IA Project or the Tri Delta sorority house.

### 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, 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.

(C) 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 Deacon CRA and the Tri Delta CRA, which obtained City Council approval prior to the execution of this Agreement, and the Multifamily Housing CRA, *provided* the City agrees to provide the same), or other financial assistance from the City in connection with the Project in the future, either for itself, for the benefit of 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.



#### 4. 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 then being 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. Each party constituting 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 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.

5. CASUALTY; EMINENT DOMAIN. If the Project is damaged or destroyed by fire or other casualty during construction, or if any portion of the Project Site 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 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.

6. **DEFAULT; REMEDIES.**

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

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

(a) the dissolution of either entity constituting 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 either entity constituting 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 Completion Guaranty shall be deemed a failure of Developer to perform under this Agreement), 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**"), other than a Payment Default (as described below), 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) **Payment Default.** Any statutory service payment or minimum service payment, as applicable (together, the statutory service payments and minimum service payments are referred to herein as the "**Service Payments**"), is not made when due under the Service Agreement (a "**Payment Default**"). Developer acknowledges that time is of the essence with respect to the making of each Service Payment and that delays in the making of a Service Payment may result in a delay in the City's ability to transfer amounts to the Port Authority for payment of the Bond Obligations.

(b) **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.

(c) **Misrepresentation.** Any representation, warranty, or certification of either entity constituting 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.

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

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

To Holdings II, LLC:  
OH-UC Holdings II LLC  
201 Main Street  
Lafayette, Indiana 47091  
Attention: Loren King

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

To Holdings III, LLC:  
OH-UC Holdings III LLC  
6640 Riverside Drive, Suite 500  
Dublin, Ohio 43017  
Attention: Brent Crawford

If either entity constituting Developer sends a notice to the City alleging that the City is in default under this Agreement or any other Project Document, such entity 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.

**8. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF DEVELOPER.** Holdings II and Holdings III each hereby makes the following representations, warranties, and covenants to induce the City to enter into this Agreement, in each case solely with respect to itself:

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

(ii) Such entity 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 such entity and all actions necessary have been taken to constitute this Agreement and the other Project Documents to which such entity is a party, when executed and delivered, valid and binding obligations of such entity.

(iii) The execution, delivery, and performance by such entity of this Agreement and each other Project Document to which it 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 such entity, or any mortgage, indenture, contract, agreement, or other undertaking to which such entity is a party or which purports to be binding upon such entity or upon any of its assets, nor is such entity 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 such entity, threatened against or affecting such entity at law or in equity or before or by any governmental authority.

(v) Such entity 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 such entity that could reasonably be expected to interfere substantially with their respective normal operations or materially and adversely affect such entity's financial condition or its completion of the Project.

(vi) The statements made in the documentation provided by such entity to the City that are descriptive of such entity or the Project have been reviewed by such entity 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, neither such entity nor its affiliates is in breach of any of its obligations to the City under any existing agreements with the City nor does such entity or any of its affiliates owe any fines, penalties, judgment awards, or any other amounts to the City.

## 9. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Developer shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements, and information as may be reasonably requested by the City pertaining to Developer, the Project, or this Agreement, including, without limitation, reviewed 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.

(C) Confidential Information. Developer may specify that certain of the Records and Reports (and certain information within the quarterly reports described above) are or may be confidential to the business of Developer or its affiliates by conspicuously marking such Records and Reports as "confidential," "trade secret," "do not disclose," or the like, in which event the City shall use reasonable efforts to ensure that such Records and Reports remain confidential; *provided, however*, that the City's obligations under this clause (C) shall be subject and subordinate to the City's obligations under public records laws in all respects, and the City will in no way be liable for disclosures made in order to comply with public records requests.

## 10. 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, such consent not to be unreasonably withheld; and *provided*, that the City may require the execution of an amendment hereto or other clerical documentation to effect such assignment or substitution of parties. The City hereby consents to Developer's collateral assignment of its rights under this Agreement or the Project Documents to any construction lender(s) for the Project and the Port Authority. The City acknowledges that Developer desires to sell off portions of the Project Site for the construction of portions of the Private Improvements, and, therefore, Developer may request to assign certain rights and obligations under this Agreement to such third parties, subject to the terms and conditions of this Agreement, and particularly this Section 10(A)(i).

(ii) Change of Control. Neither entity constituting Developer shall 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 either OH-UC Holdings II LLC or OH-UC Holdings III LLC such that Crawford and/or Trinitas has less than a 51% direct or indirect voting interest in such entity and lacks the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of ownership interests in such entity, by contract, or otherwise.

(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 each entity constituting Developer agrees that venue in such court is proper. Each entity constituting 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. Each entity constituting 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 logo or other form of acknowledgement that has been approved in advance in writing by the City.

(N) Applicable Laws. Developer shall obtain and maintain all necessary City and other governmental permits, licenses, and other approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances, and other governmental requirements, including, without limitation, those set forth on Exhibit I (Additional Requirements) that are applicable to the Project.

(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 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 10(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.

## 11. 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 Service Payments an annual monitoring and servicing fee equal to the greater of (i) 1.0% of the Service Payments paid (or due, if unpaid) with respect to the Property the 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 11(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 11(B) of this Agreement to cease or be modified in any way (either permanently or during the period of any such suspension). The fees described in this Section 11(B) are not refundable once withheld by the City or otherwise paid.

(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.

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

Exhibit A-1 - Site Plan

{00327125-5}

- Exhibit A-2 - *Concept Plan*
  - Exhibit B - *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 - *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 latest of such dates (the "Effective Date").

**CITY OF CINCINNATI**

By: \_\_\_\_\_  
Paula Bogs Muething, City Manager

Date: \_\_\_\_\_, 2021

**OH-UC HOLDINGS II LLC**

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

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

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

Date: \_\_\_\_\_, 2021

**OH-UC HOLDINGS III LLC**

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

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

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

Date: \_\_\_\_\_, 2021

Approved as to Form:

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

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

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

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

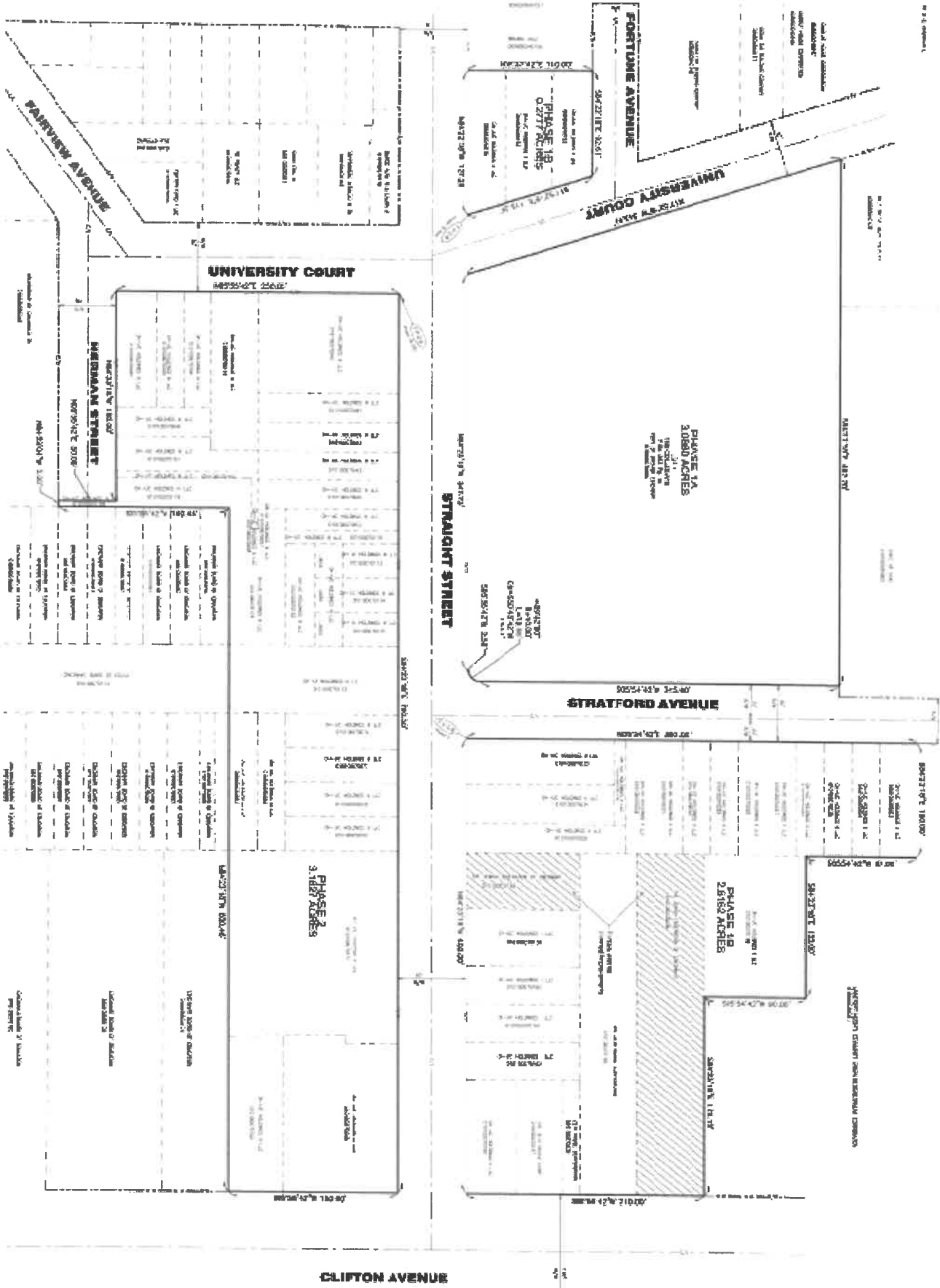
By: \_\_\_\_\_  
Karen Alder, City Finance Director



Exhibit A-1  
to Development Agreement  
(The District at Clifton Heights)

*Site Plan*

SEE ATTACHED



{00327125-5}

Exhibit A-2  
to Development Agreement  
(The District at Clifton Heights)

*Concept Plan*

TO BE ATTACHED

Exhibit B  
to Development Agreement  
(The District at Clifton Heights)

*Legal Description*

Date: October 29, 2020  
Description: The District at Clifton Heights  
Phase 1A  
Location: City of Cincinnati  
Hamilton County, Ohio



Situated in Section 20, Town 3, Fractional Range 2, Mill Creek Township, The City of Cincinnati, Hamilton County, Ohio and being Phase 1A containing 3.0880 acres and being all of Lot 1 of The Collegiate as recorded in Plat Book 463, Page 10 of the Hamilton County Recorder's Office.

The above description was prepared from said The Collegiate Plat and shown on an exhibit made on September 24, 2019 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.

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Date: October 29, 2020  
Description: The District at Clifton Heights  
Phase 1B (NW)  
Location: City of Cincinnati  
Hamilton County, Ohio



Situated in Section 20, Town 3, Fractional Range 2, Mill Creek Township, The City of Cincinnati, Hamilton County, Ohio and being Phase 1B (NW) containing 0.2777 acres and further described as follows:

Begin at the north west intersection of the west right of way of University Court and the north right of way of Straight Street, said intersection being the True Point of Beginning:

thence, from the True Point of Beginning, departing the west right of way of said University Court, and with the north right of way of said Straight Street, North 84° 22' 18" West, 127.29 feet;

thence, departing the north right of way of said Straight Street, North 05° 37' 42" East, 110.00 feet to the south right of way of Fortune Avenue;

thence, with the south right of way of said Fortune Avenue, South 84° 22' 18" East, 92.61 feet to the west right of way of said University Court;

thence, departing the south right of way of said Fortune Avenue and with the west right of way of said University Court South 11° 52' 18" East, 115.34 feet to the Point of Beginning containing 0.2777 acres of land.

Basis of Bearings: NAD83(2011) Ohio State Plane Coordinates, South Zone (3402).

The above description was prepared from an exhibit made on September 24, 2019 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.

Date: October 29, 2020  
Description: The District at Clifton Heights  
Phase 1B  
Location: City of Cincinnati  
Hamilton County, Ohio



Situated in Section 20, Town 3, Fractional Range 2, Mill Creek Township, The City of Cincinnati, Hamilton County, Ohio and being Phase 2 containing 2.6162 acres and further described as follows:

Begin at the northeast intersection of the east right of way of Stratford Avenue and the north right of way of Straight Street, said intersection being the True Point of Beginning:

thence, from the True Point of Beginning, departing the north right of way of said Straight Street and with the east right of way of said Stratford Avenue, North 05° 54' 42" East, 397.00 feet;

thence, departing the east right of way of said Stratford Avenue, South 84° 23' 18" East, 100.00 feet;

thence, South 05° 54' 42" West, 97.00 feet;

thence, South 84° 23' 18" East, 125.00 feet;

thence, South 05° 54' 42" West, 90.00 feet;

thence, South 84° 23' 18" East, 175.12 feet to the west right of way of Clifton Avenue;

thence, with the west right of way of said Clifton Avenue, South 05° 56' 42" West, 210.00 feet to the north right of way of said Straight Street;

thence, departing the west right of way of said Clifton Avenue and with the north right of way of said Straight Street, North 84° 23' 18" West, 400.00 feet to the Point of Beginning containing 2.6162 acres of land.

Basis of Bearings: NAD83(2011) Ohio State Plane Coordinates, South Zone (3402).

The above description was prepared from an exhibit made on September 24, 2019 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.

Date: October 29, 2020  
Description: The District at Clifton Heights  
Phase 2  
Location: City of Cincinnati  
Hamilton County, Ohio



Situated in Section 20, Town 3, Fractional Range 2, Mill Creek Township, The City of Cincinnati, Hamilton County, Ohio and being Phase 1B (SE) containing 3.1627 acres and further described as follows:

Begin at the south east intersection of the east right of way of University Court and the south right of way of Straight Street, said intersection being the True Point of Beginning:

thence, from the True Point of Beginning, departing the east right of way of said University Court, and with the south right of way of said Straight Street, South 84° 23' 18" East, 790.50 feet to the west right of way of Clifton Avenue;

thence, with the west right of way of said Clifton Avenue, South 05° 56' 42" West, 150.00 feet;

thence, departing the west right of way of said Clifton Avenue, North 84° 23' 18" West, 600.46 feet;

thence, South 05° 55' 42" West, 149.44 feet;

thence, North 84° 29' 04" West, 5.00 feet to the east terminus of Herman Street;

thence, with said terminus, North 05° 55' 42" East, 50.00 feet to the north right of way of said Herman Street;

thence, departing said terminus, and with the north right of way of said Herman Street, North 84° 33' 18" West, 185.00 feet to the east right of way of said University Court;

thence, departing the north right of way of said Herman Street and with the east right of way of said University Court, North 05° 55' 42" East, 250.00 feet to the Point of Beginning containing 3.1627 acres of land.

Basis of Bearings: NAD83(2011) Ohio State Plane Coordinates, South Zone (3402).

The above description was prepared from an exhibit made on September 24, 2019 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.

Exhibit C-1  
to Development Agreement  
(The District at Clifton Heights)

*Description of Private Improvements*

Developer will develop the approximately 6.15-acre site located at 330 Straight Street in the Clifton Heights neighborhood into The District at Clifton Heights, which at full buildout shall include approximately 1,251 residential units, approximately 65,300 square feet of commercial space, 970 private parking garage spaces, and a hotel with approximately 160 keys. The Private Improvements will be developed in two phases as depicted on Exhibit A-2.

Phase I: The Phase I Private Improvements will include two sub-phases consisting of the following components:

- Phase IA Private Improvements, which Developer has already completed, included Developer's design and construction of 351 residential units of student housing and renovation of an existing 800-space private parking garage (labeled Block F in Exhibit A-2).
- Phase IB Private Improvements will consist of Developer's design and construction of:
  - o Block A-1:
    - Approximately 380 student housing units,
    - Approximately 2,300 square feet of commercial space;
  - o Block A-2:
    - Approximately 160 key hotel,
    - Approximately 22,000 square feet of commercial space; and
  - o Block E:
    - 17-unit sorority house for the Tri-Delta sorority.

Phase II: The Phase II Private Improvements will consist of Developer's design and construction of:

- Block B/C:
  - o Approximately 45,000 square feet of commercial space,
  - o Approximately 350 residential apartments; and
- Block D:
  - o Approximately 170 multifamily housing units,
  - o Approximately 170 space parking structure.



Exhibit C-2  
to Development Agreement  
(The District at Clifton Heights)

*Description of Public Infrastructure Improvements*

The scope of work for the Public Infrastructure Improvements consists of land acquisition, demolition, site work, building pad preparation, utility relocation, roadwork, infrastructure, streetscape, public parking garages, and other related work.

Phase IB: The Phase IB Public Infrastructure Improvements will consist of Developer's design and construction of:

- Block A-1:
  - o Demolition of the former Deaconess Medical Office Building at 330 Straight Street, which demolition has been completed.
  - o Site preparation of Block A-1 for future vertical development.
  - o Construction of an approximately 169-space public parking garage that will be partially below grade and will be the podium structure to support the planned portion of the Private Improvements on Block A-1.
  
- Block A-2:
  - o Acquisition and demolition of the former Tri-Delta House located at 2609 Clifton Avenue.
  - o Demolition of building at 2601 Clifton Avenue.
  - o Site preparation for vertical development on Block A-2.
  - o Design and construction of the service drive on the north side of Block A-2.
  
- Streetscape and Infrastructure:
  - o All design and construction work related to improvements on Straight Street, Clifton Avenue, Stratford Avenue, Herman Street, and University Court located approximately within the boundaries shown on Exhibit A-1.
  - o Improvements to the intersections at Clifton Avenue and Straight Street, Straight Street and Stratford Avenue, University Court and Straight Street, Herman Street and University Court, and Clifton Avenue and Calhoun Street including a signalized intersection at Straight Street and Stratford Avenue.
  - o Design and construction of a new alleyway connecting Straight Street and Herman Street.
  - o Streetscape and sidewalk improvements along the front façade of the buildings within the Phase IB Private Improvements including, without limitation, sidewalks, curbs, trees and vegetation, signage, fixtures, lighting, exhibits, and installations.
  - o Utility relocations, stubs throughout the Project Site, including, without limitation, moving utilities underground along Clifton Avenue, Straight Street, and Stratford Avenue.

Phase II: The Phase II Public Infrastructure Improvements will consist of Developer's design and construction of:

- Block B/C:
  - o Partial acquisition and demolition of the former Deaconess Hospital building previously located at 311 Straight Street and associated buildings, structures, and improvements, which demolition has been completed.
  - o Site preparation for vertical development of the portions of the Project located on Block B/C.

- Construction of an approximately 400-space public parking garage that will be the podium structure to support the planned improvements on Block B/C.
  
- Streetscape and Infrastructure:
  - All design and construction work related to the additional improvements on Straight Street, Clifton Avenue, Stratford Avenue, Herman Street, and University Court located approximately within the boundaries shown on Exhibit A-1.
  - Additional improvements to the intersections at Clifton Avenue and Straight Street, Straight Street and Stratford Avenue, University Court and Straight Street, Herman Street and University Court, and Clifton Avenue and Calhoun Street.
  - Additional utility relocations and stubs.
  - Design and modification of the service drive on the south side of Block B/C.
  - Streetscape and sidewalk improvements along the front façade of the buildings within the Phase II Private Improvements, including, without limitation, sidewalks, curbs, trees and vegetation, signage, fixtures, lighting, exhibits, and installations.

Exhibit D-1  
to Development Agreement  
(The District at Clifton Heights)

*Preliminary Budget – Private Improvements*

<b>Phase IA</b>	
<b>Block F Student Housing</b>	
Acquisition	27,900,000.00
Hard Costs	77,870,000.00
Soft Costs	9,040,000.00
Project Contingency	5,020,000.00
<b>Subtotal Phase IA</b>	<b>119,830,000.00</b>
<b>Phase IB</b>	
<b>Block A-1 Student Housing</b>	
Acquisition	16,600,000.00
Hard Costs	77,010,000.00
Soft Costs	13,080,000.00
Project Contingency	1,500,000.00
Subtotal Block A-1 Student Housing	108,190,000.00
<b>Block A-2 Hotel</b>	
Acquisition	3,000,000.00
Hard Costs	25,200,000.00
Soft Costs	6,200,000.00
Project Contingency	1,800,000.00
Subtotal Block A-2 Hotel	36,200,000.00
<b>Block E Tri-Delta House</b>	
Acquisition	-
Hard Costs	2,250,000.00
Soft Costs	330,000.00
Project Contingency	110,000.00
Subtotal Block E Tri-Delta House	2,690,000.00
<b>Subtotal Phase IB</b>	<b>147,080,000.00</b>
<b>Phase II</b>	
<b>Block B/C Mixed Use</b>	
Acquisition	14,680,000.00
Hard Costs	52,810,000.00
Soft Costs	10,780,000.00
Project Contingency	5,710,000.00
Subtotal Block B/C Mixed Use	83,980,000.00
<b>Block D Multifamily Housing</b>	

Acquisition	4,000,000.00
Hard Costs	30,790,000.00
Soft Costs	7,920,000.00
Project Contingency	1,710,000.00
Subtotal Block D Multifamily Housing	44,420,000.00
<b>Subtotal Phase II</b>	<b>128,400,000.00</b>
<b>Total Private Improvements</b>	<b>395,310,000.00</b>

Exhibit D-2  
to Development Agreement  
(The District at Clifton Heights)

*Preliminary Budget – Public Infrastructure Improvements*

<b>Phase IB</b>	
<b>Block A-1</b>	
Acquisition	-
Hard Costs	11,390,000.00
Soft Costs	5,980,000.00
Developer Fee	1,080,000.00
Project Contingency	1,380,000.00
<b>Subtotal Block A-1</b>	<b>19,830,000.00</b>
<b>Block A-2</b>	
Acquisition	2,200,000.00
Hard Costs	710,000.00
Soft Costs	30,000.00
Developer Fee	40,000.00
Project Contingency	90,000.00
<b>Subtotal Block A-2</b>	<b>3,070,000.00</b>
<b>Streetscape &amp; Infrastructure</b>	
Acquisition	1,400,000.00
Hard Costs	3,580,000.00
Soft Costs	1,870,000.00
Developer Fee	390,000.00
Project Contingency	630,000.00
<b>Subtotal Streetscape &amp; Infrastructure</b>	<b>7,870,000.00</b>
<b>Subtotal Phase IB</b>	<b>30,770,000.00</b>
<b>Phase II</b>	
<b>Block B/C</b>	
Acquisition	4,000,000.00
Hard Costs	18,430,000.00
Soft Costs	570,000.00
Developer Fee	1,240,000.00
Project Contingency	2,220,000.00
<b>Subtotal Block B/C</b>	<b>26,460,000.00</b>
<b>Streetscape &amp; Infrastructure</b>	
Acquisition	680,000.00
Hard Costs	3,920,000.00
Soft Costs	10,000.00
Developer Fee	240,000.00
Project Contingency	460,000.00
<b>Subtotal Streetscape &amp; Infrastructure</b>	<b>5,310,000.00</b>
<b>Subtotal Phase II</b>	<b>31,770,000.00</b>
<b>Total Public Infrastructure Improvements</b>	<b>62,540,000.00</b>

Exhibit E-1  
to Development Agreement  
(The District at Clifton Heights)

*Sources of Funds – Private Improvements*

<b>Phase IA</b>	
<b>Block F Student Housing</b>	
Owner Equity	35,950,000.00
Private Financing	83,880,000.00
<b>Subtotal Phase IA</b>	<b>119,830,000.00</b>
<b>Phase IB</b>	
<b>Block A-1 Student Housing</b>	
Owner Equity	37,870,000.00
Private Financing	70,320,000.00
Subtotal Block A-1 Student Housing	108,190,000.00
<b>Block A-2 Hotel</b>	
Owner Equity	10,860,000.00
Private Financing	25,340,000.00
Subtotal Block A-2 Hotel	36,200,000.00
<b>Block E Tri-Delta House</b>	
Owner Equity	940,000.00
Private Financing	1,750,000.00
Subtotal Block E Tri-Delta House	2,690,000.00
<b>Subtotal Phase IB</b>	<b>147,080,000.00</b>
<b>Phase II</b>	
<b>Block B/C Mixed Use</b>	
Owner Equity	20,990,000.00
Private Financing	62,990,000.00
Subtotal Block B/C Mixed use	83,980,000.00
<b>Block D Multifamily Housing</b>	
Owner Equity	11,100,000.00
Private Financing	33,320,000.00
Subtotal Block D Multifamily Housing	44,420,000.00
<b>Subtotal Phase II</b>	<b>128,400,000.00</b>
<b>Total Private Improvements</b>	<b>395,310,000.00</b>

Exhibit E-2  
to Development Agreement  
(The District at Clifton Heights)

*Sources of Funds – Public Infrastructure Improvements*

<b>Phase IB</b>	
Senior Bond Proceeds	24,370,000.00
Subordinate Bond Proceeds	6,400,000.00
<b>Subtotal Phase I</b>	<b>30,770,000.00</b>
<b>Phase II</b>	
Senior Bond Proceeds	25,000,000.00
Subordinate Bond Proceeds	6,770,000.00
<b>Subtotal Phase II</b>	<b>31,770,000.00</b>
<b>Total Public Infrastructure Improvements</b>	<b>62,540,000.00</b>

**Exhibit F**  
**to Development Agreement**  
**(The District at Clifton Heights)**

*Construction Schedule*

THE DISTRICT AT CLIFTON HEIGHTS   MASTER PROJECT TIMELINE						
	2020	2021	2022	2023	2024	
<b>Master Development - Pre-Development</b>						
Development Partner Selection	■					
Closing on Tri Delta Sorority	■					
Internal Underwriting	■					
Draft Development Agreement (TIF)	■					
Design & Engineering	■	■				
Final Development Plan (FDP) Approval	■	■				
Final Development Agreement (TIF)	■	■				
Application and Award of TMUTC	■	■				
Financing Commitments		■				
Building Permits		■				
Closing on Bond Financing		■				
<b>Master Development - Construction</b>						
Streetscape & Infrastructure			■	■	■	■
Parking Podium - Block A1			■	■	■	■
Parking Podium - Block B/C			■	■	■	■
Block F - perimeter improvements			■	■	■	■
Pad Prep - Block A2			■	■	■	■
Pad Prep - Block D				■	■	■
Block E - perimeter improvements			■	■	■	■
Completion of Master Development Phase 1					■	■
<b>BLOCK A-1 - STUDENT HOUSING</b>						
Design	■	■	■			
Final Development Plan Approval	■	■	■			
Permits		■	■			
Closing / Deliver Possession to Vertical Developer		■	■			
Construction			■	■	■	■
Completion				■	■	■
<b>BLOCK A-2 - HOTEL / RETAIL</b>						
Design		■	■			
Final Development Plan Approval		■	■			
Permits		■	■			
Closing / Deliver Possession to Vertical Developer		■	■			
Construction			■	■	■	■
Completion				■	■	■
<b>BLOCK B / C - MULTIFAMILY   RETAIL</b>						
Design		■	■			
Final Development Plan Approval		■	■			
Permits		■	■			
Closing / Deliver Possession to Vertical Developer		■	■			
Construction			■	■	■	■
Completion				■	■	■
<b>BLOCK D - MULTIFAMILY</b>						
Design			■			
Final Development Plan Approval			■			
Permits			■			
Closing / Deliver Possession to Vertical Developer			■			
Construction			■	■	■	■
Completion				■	■	■
<b>BLOCK E - TRI DELTA SORORITY</b>						
Design	■					
Final Development Plan Approval	■					
Permits	■	■				
Closing / Deliver Possession to Vertical Developer	■	■				
Construction		■	■			
Completion			■	■		



Exhibit G  
to Development Agreement  
(The District at Clifton Heights)

*Form of Service Agreement*

SEE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE]

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

### SERVICE AGREEMENT

(The District at Clifton Heights – [APPLICABLE PHASE/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 City and OH-UC Holdings LLC, and OH-UC Holdings III LLC, [being affiliates of Owner], 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 Straight Street in the Clifton Heights 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 PHASE/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 or lease and leaseback arrangement with respect to the Property in which fee title to the Property is to be held by or leased to 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. 445-2019 passed by City Council on November 14, 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) related to the [APPLICABLE PHASE OF BONDS] issued by the Port Authority and approved by the City, 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 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 redevelopment activities 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 redevelopment activities on the Property first appear on the Hamilton County Auditor's tax duplicate. (For example, if Exempt Improvements associated with the redevelopment activities 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 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 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. 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.]<sup>1</sup>

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.

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. Notwithstanding the foregoing, if Owner shall sell, convey, or otherwise transfer the fee simple interest in the Property or any part thereof in accordance with the terms of this Agreement, the Development Agreement, and any other Project Document, Owner shall be automatically released and relieved of and from any further obligation and liability under this Agreement that arise, mature, or relate to any period from and after the date of such transfer, but not prior thereto, it being intended hereby that the covenants and obligations on the part of Owner and each such owner shall be binding upon and

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<sup>1</sup> Note to Draft: The actual form of MSP will likely be further negotiated prior to the issuance of the Phase I Bonds and/or the Phase II Bonds, as applicable.

enforceable against each such owner and their respective successors and assigns only in respect to their respective periods of ownership in the fee simple estate in and to the Property (or portion thereof). The provisions of this paragraph are not intended to, and shall not be construed to, release or modify any covenant created hereunder that is intended to run with the land.

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 Project; 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 Period. 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 Bonds and approved by the City are no longer outstanding, as certified by the Trustee, in consult with the City Finance Department.

## 7. INSURANCE COVERAGE AND PROCEEDS.

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 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: Samantha Brandenburg, Esq.  
City of Cincinnati, Office of the City Solicitor  
801 Plum Street, Room 214  
Cincinnati, Ohio 45202

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

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

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

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, the \_\_\_\_\_ of *[PROPERTY OWNER]*, a [\_\_\_\_] limited liability company, on behalf of the company. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

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

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  
(The District at Clifton Heights)

*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 [**CITY APPROVED GUARANTOR**], an [ ] limited liability company, the address of which is [ ] ("**Guarantor**") in favor of the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**").

### Recitals:

A. The City, OH-UC Holdings II LLC, an Ohio limited liability company, and OH-UC Holdings III LLC (jointly, "**Obligor**"), [*being affiliates 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 obligated to complete the [APPLICABLE PHASE/BLOCK] (the "**Project**"), which includes [DESCRIPTION OF APPLICABLE PROJECT].

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

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

### 1. Guaranty.

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

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

(C) The City may from time to time, in the exercise of its sole and absolute discretion and without providing notice to, or obtaining the consent of, Guarantor, and without in any way releasing, altering, or impairing any of Guarantor's obligations and liabilities to the City under this Guaranty: (i) waive compliance with, or any default occurring under, or grant any other indulgence with respect to, the Agreement; (ii) modify or supplement any of the provisions of the Agreement upon written agreement with Obligor; (iii) grant any extension or renewal of or with respect to the Agreement upon written agreement with Obligor and/or effect any release, compromise or settlement in connection therewith; and (iv) deal in all respects with Obligor as if this Guaranty were not in effect.

2. Liability of Guarantor.

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

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

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

(D) 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 Obligor's 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 all of its obligations under the Agreement, Guarantor hereby waives all rights of contribution, indemnity or subrogation with respect to Obligor that might otherwise arise from Guarantor's performance under this Guaranty.

4. Effect of this Guaranty. Guarantor hereby warrants to the City that: (a) Guarantor (i) has a financial interest in the Project; (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.

(l) 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 \_\_\_\_\_, 2021 (the "Effective Date").

GUARANTOR:

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

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  
(The District at Clifton Heights)

*Additional Requirements*

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

This Exhibit serves two functions:

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

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

(A) Construction Workforce.

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

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

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

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Conferring with Trade Unions.

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

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

(ii) Contracts and Subcontracts; Competitive Bidding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) Small Business Enterprise Program.<sup>2</sup>

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

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

(1) Including qualified SBEs on solicitation lists.

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

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

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

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

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

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

(vi) Subject to clause (i) above, failure of Developer or its general contractor to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be

<sup>2</sup> Note: DCED is currently evaluating revisions to this SBE section due to recent legislative changes adopted by Council. If DCED implements these policy changes prior to the execution of this Agreement, this section will be revised.

necessary to reach the minimum percentage goals for SBE participation as set forth in Cincinnati Municipal Code Chapter 323, may be construed by the City as failure of Developer to use best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this section.

(G) Equal Employment Opportunity.

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

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

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

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

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

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

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

(M) Wage Enforcement.

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

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

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

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

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

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

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

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

(N) Americans With Disabilities Act; Accessibility.

(i) Applicability. Cincinnati City Council adopted Motion No. 201600188 on February 3, 2016 (the "**Accessibility Motion**"). This motion directs City administration, including 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:** 10/20/2020**ORIGINAL ASSIGNED NUMBER:****DEI USE ONLY**

Fillout and Circle all that Apply Below:

**REQUESTING AGENCY OR DEPT:**

Economic Development

**FUNDING GUIDELINES:**

(State or Federal)

**CONTACT PERSON AND PHONE NUMBER:**

John Reiser ext. 6261

**RATES THAT APPLY:**

(Building, Heavy, Highway, Residential)

Prevailing Wage does not apply.

**Requested Date:** 10/19/2020**Estimated Advertising Date:** 02/01/2021**Estimated Bid Opening Date:** 03/01/2021**Estimated Starting Date:** 04/01/2021**DECISION NUMBER:** N/A**MODIFICATIONS:** N/A**DECISION DATE:** N/A**SOURCE AND FUND NUMBER****EXPIRATION DATE:** N/A**CITY** FUND n/a**STATE** FUND n/a**SUPERSEDES DECISION NUMBER:** N/A**COUNTY** FUND n/a**FEDERAL** FUND n/a**DETERMINATION BY:**

Name: Trisa Wilkens Hoane

Title: Interim Deputy Director

**PROJECT ACCOUNT NUMBER:** n/a

Date: 10/26/2020

**AMT. OF PUB. FUNDING \$:** n/a**APPROVED BY:****TOTAL PROJECT DOLLARS:** 430,000,000
  
 Jennifer B. Mackenzie, Interim Director
**NAME OF PROJECT**

DEPARTMENT OF ECONOMIC INCLUSION

Trinitas Development - CUF

**COMMENTS:**

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

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

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

**TYPE OF WORK**

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

**PROJECT LOCATION**

Developer seeks to redevelop the former Deaconess Hospital site in Clifton Heights. The project will consist of multiple phases and new structures. The developer will develop the approximately 6.15-acre site located at 330 Straight Street in the Clifton Heights neighborhood into 1,410 residential rental units, 60,000 square feet of commercial space, a 161-key hotel, 30,000 square feet of office space, and four parking structures providing an aggregate of approximately 1,800 parking spaces, together with related public infrastructure improvements.

**PROJECT FUNDING SOURCE**

No direct funding is being awarded. City incentive is a 5709.41 TIF for a term of 30 years. The developer will be required to pay a 25% PILOT to the Cincinnati Public Schools for all 30 years of the TIF term.

**PROJECT SCOPE OF WORK AND BUDGET**

The developer will develop the approximately 6.15-acre site located at 330 Straight Street in the Clifton Heights neighborhood into 1,410 residential rental units, 60,000 square feet of commercial space, a 161-key hotel, 30,000 square feet of office space, and four parking structures providing an aggregate of approximately 1,800 parking spaces, together with related public infrastructure improvements. Total project cost is estimated to be \$430 million.

**DEI 217 Form  
REV: 6/12/2017**