



# City of Cincinnati

801 Plum Street  
Cincinnati, OH 45202

## Agenda - Final

### Budget and Finance Committee

*Chairperson, Greg Landsman*  
*Vice Chairperson, Reggie Harris*  
*Councilmember Jeff Cramerding*  
*Councilmember Mark Jeffreys*  
*Councilmember Scotty Johnson*  
*Vice Mayor Jan-Michele Kearney*  
*Councilmember Liz Keating*  
*Councilmember Meeka Owens*  
*President Pro Tem Victoria Parks*

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Monday, March 7, 2022

1:00 PM

Council Chambers, Room 300

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ROLL CALL

### DEPARTMENTAL PRESENTATIONS

**Cincinnati Health Department**  
**Dr. Mark Menkhaus, CFO**

**Law**  
**Andrew Garth, City Solicitor**

**Enterprise Technology Solutions (ETS)**  
**Tarun Malhotra, Director**

**City Planning & Engagement**  
**Katherine Keough-Jurs, Director**

#### AGENDA

- [202200570](#) PRESENTATION submitted by John P. Curp, Interim City Manager, dated 3/7/2022, regarding is the Cincinnati Health Department (CHD)'s FY 2023 Budget Update.  
**Sponsors:** City Manager  
**Attachments:** [Transmittal](#)  
[Presentation](#)
- [202200571](#) PRESENTATION submitted by John P. Curp, Interim City Manager, dated 3/7/2022, regarding is the Department of City Planning and Engagement's FY 2023 Budget Update.  
**Sponsors:** City Manager

**Attachments:**     [Transmittal](#)  
[Presentation](#)

3.     [202200572](#)     PRESENTATION submitted by John P. Curp, Interim City Manager, dated 3/7/2022, regarding the Enterprise Technology Solutions (ETS)' FY 2023 Budget Update.

**Sponsors:**     City Manager

**Attachments:**     [Transmittal](#)  
[Presentation](#)

#### Items Being Held for 3/14 Agenda

4.     [202200491](#)     ORDINANCE submitted by John P. Curp, Interim City Manager, on 2/24/2022, APPROVING AND AUTHORIZING the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement with Oakley Crossings Holdings, LLC, thereby authorizing an 8-year tax exemption for 100% of the value of improvements made to real property located at 3628-3646 Madison Road and other project immediately adjacent thereto, all in the Oakley neighborhood of Cincinnati, in connection with the construction of approximately 16,200 square feet of commercial space, at a total construction cost of approximately \$5,125,000.

**Sponsors:**     City Manager

**Attachments:**     [Transmittal](#)  
[Ordinance](#)  
[Exhibit A](#)

5.     [202200492](#)     ORDINANCE submitted by John P. Curp, Interim City Manager, on 2/24/2022, AUTHORIZING the City Manager to execute a Property Sale and Development Agreement with Oakley Crossings Holdings, LLC, an affiliate of Morelia Group, LLC, for the sale of City-owned real property located at the northeast corner of the intersection of Kennedy Avenue and Madison Road in the Oakley neighborhood of Cincinnati, for a commercial development project consisting of approximately 16,200 square feet of commercial retail space.

**Sponsors:**     City Manager

**Attachments:**     [Transmittal](#)  
[Ordinance](#)  
[Exhibit A](#)

#### Item Held in Committee

6.     [202200493](#)     ORDINANCE (EMERGENCY), submitted by Mayor Aftab Pureval, from Andrew W. Garth, City Solicitor, AMENDING the policy of managing the Stabilization Funds for the City of Cincinnati.

**Sponsors:**     Mayor

**Attachments:** [Transmittal](#)  
[Ordinance](#)

### New Items from Council Calendar 3/2

7. [202200532](#) ORDINANCE submitted by John P. Curp, Interim City Manager, on 3/2/2022, AUTHORIZING the City Manager to apply for, accept, and appropriate a grant in an amount not to exceed \$34,560 from the Murray & Agnes Seasongood Good Government Foundation for the purpose of administering an internship program; and AUTHORIZING the Director of Finance to deposit the grant funds into Citizens Summer Jobs Fund 308.

**Sponsors:** City Manager

**Attachments:** [Transmittal](#)  
[Ordinance](#)

8. [202200533](#) ORDINANCE submitted by John P. Curp, Interim City Manager, on 3/2/2022, AUTHORIZING the City Manager to apply for a grant of up to \$10,000 from the Federal FY 2022 Certified Local Government Grant Program, which funds shall be used to reimburse certain costs associated with hosting the National Alliance for Preservation Commission's Biennial Conference Forum in Cincinnati, Ohio during July 2022.

**Sponsors:** City Manager

**Attachments:** [Transmittal](#)  
[Ordinance](#)

9. [202200537](#) ORDINANCE submitted by John P. Curp, Interim City Manager, on 3/2/2022, AUTHORIZING the City Manager to accept a grant in an amount of \$25,000 from the Cincinnati Recreation Foundation for the purpose of providing funding for various programming activities for Avondale youth and families; AUTHORIZING the Director of Finance to deposit the grant funds into Fund No. 323, "Recreation Special Activities"; and further AUTHORIZING the transfer and appropriation of \$14,500 from the unappropriated surplus of Fund No. 323, "Recreation Special Activities," to Recreation's non-personnel operating budget account no. 323x193x7300 and the transfer and appropriation of \$10,500 from the unappropriated surplus of Fund No. 323, "Recreation Special Activities," to Recreation's non-personnel operating budget accounts no. 323x197x7300.

**Sponsors:** City Manager

**Attachments:** [Transmittal](#)  
[Ordinance](#)

### SUPPLEMENTAL AGENDA

**10. 202200592** PRESENTATION submitted by John P. Curp, Interim City Manager, dated 3/7/2022, regarding the Law Department's FY 2023 Budget Update.

**Sponsors:** City Manager

**Attachments:** Transmittal  
Presentation

ADJOURNMENT



March 7, 2022

To: Budget and Finance Committee 202200570

From: John P. Curp, Interim City Manager

Subject: Presentation – Cincinnati Health Department (CHD): FY 2023 Budget Update

Attached is the Cincinnati Health Department (CHD)'s FY 2023 Budget Update presentation for the Budget and Finance Committee meeting on March 7, 2022.

cc: William "Billy" Weber, Assistant City Manager  
Andrew Dudas, Budget Director



# Cincinnati Health Department Budget Presentation

Budget & Finance Committee

March 7, 2022

# Health Department's Mission

- To assure access to quality services and to improve community health and wellness.

# Health Department's Core Values

- Collaboration, Commitment, Accountability, Quality, Health Equity & Access

# Health Department Operations

- Division 261 – Health - Office of The Commissioner
  - Commissioner's Office
  - Clerk of the Board of Health
  - Medical Director
  - Communicable Disease
  - Emergency Preparedness
  - Minority Health
  - Human Resources
- Division 262 – Health - Technical Resources
  - Financial Management
  - Information Systems
  - Maintenance

# Health Department Operations

- Division 263 – Division of Community Health
  - Community Health Administration
  - Health Promotion
  - Lead Programs
  - Environmental
  - Vital Records
- Division 264 – Primary Health Care – Special Projects
  - Immunization Action Program
  - Home Health Nursing Service
  - School Nursing
  - WIC
  - Dental Administration/Sealant Program
  - Central Lab
  - CityLink Dental and Vision Clinics

# Health Department Operations

- Division 265 – Primary Health Care - Health Centers
  - Primary Health Care Administration and Call Center
  - Health Centers – Braxton Cann, Elm Street, Millvale, Northside, Price Hill, and Clement
  - Contract Health Centers – Homeless Program, Homeless Dental, Neighborhood Healthcare, Crossroad Health Center
  - Crest Smile Shoppe
- Division 266 – School and Adolescent Health
  - School Health Administration
  - School Health Nursing
  - School-Based Health Centers – Oyler, Withrow, AWL, Western Hills, Roberts, Aiken, Ethel Taylor, Roll Hill, Mt. Airy, JP Parker, Pleasant Ridge Academy, Riverview, Taft, and Children’s Home

# Health Department

## FY 2022 Key Performance Indicators

### Clinical Operations

- Provide healthcare services to 43,000 unique patients
- Complete 155,000 patient visits/encounters

### Environmental Health

- The Food Safety program conducts over 5,300 food safety inspections, re-inspections and complaint investigations at Cincinnati restaurants, schools, and food stores.
- The Technical Environmental Services program will conduct mosquito trapping and collection on a weekly basis starting in June to monitor disease prevalence in our neighborhoods.

# Health Department

## FY 2022 Key Performance Indicators

- The Waste Unit will conduct over 240 Body Art inspections and investigate 140 open dumping complaints.
- The Healthy Homes program will reach 2,800 nuisance inspections and re-inspections at our residential owner occupied and rental properties throughout the City.

### Healthy Communities

- The Tobacco 21 (T21) program, which aims to reduce youth access to tobacco, is accomplished primarily through Tobacco Compliance Checks. During license year 2, the CHD conducted inspections at 289 locations, resulting in 129 violations (44% violation rate). In year 3, the T21 program will continue to improve on efforts to educate store clerks to decrease the violation rate by 10%.



# Health Department

## FY 2022 Key Performance Indicators

### Emergency Preparedness

- For 2022, Emergency Preparedness continues to support vaccination and testing efforts for the COVID-19 Pandemic response. Additional functions include indoor air monitoring and outdoor monitoring for large City events.

### Communicable Disease

- The Communicable Disease Prevention and Control Unit (CDU) investigates all reportable disease and outbreaks in the City of Cincinnati jurisdiction to meet the mandated expectations of the Ohio Department of Health (ODH) as directed by the ODH Infectious Disease Control Manual and CDU maintains those records as required in the Ohio Data Reporting System. An estimated 11,000 disease reports and 115 outbreaks are projected to be investigated in 2022.

# Health Department

## FY 2022 Key Performance Indicators

### Vital Records

- Cincinnati Vital Records program will continue to serve over 35,000 customers issuing birth certificates, death certificates, affidavits of correction and permits.

### Epidemiology

- The Epidemiology program will provide disease surveillance, data analysis and data visualization for key Department reports, such as clinical data reports and dashboards, Infant Mortality, Reproductive Health, Environmental Health, Lead Prevention, COVID-19 data dashboards, COVID-19 vaccination reports, and other requests for information and reports as needed.

# Health Department

## FY 2022 Key Performance Indicators

### Lead Prevention

- Cincinnati's Lead Prevention program will focus on conducting 75 case management and risk assessments for elevated blood lead level ( $\geq 10 \mu\text{g}/\text{dL}$ ) pediatric cases and 75 cases managed for children with blood lead levels of 5-9  $\mu\text{g}/\text{dL}$ ; 60 lead remediation projects for homes with evidence of lead exposure and availability of interim controls (HEPA vacuums) & grant funding for lead hazard clean up - all geared towards improving the quality of life for the City of Cincinnati residents through health and improvements in housing.

### Get Vaccinated

- A total of 260 licensed schools received education from the Get Vaccinated team regarding immunization school requirements.

# Health Department Budget History

## General Fund and Cincinnati Health District Fund Operating Budget\* FY 2018 – FY 2022

Cincinnati Health District Fund 416	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Personnel Compensation	11,586,194	11,618,190	11,594,410	12,370,420	11,971,330
Fringe Benefits	4,170,772	4,327,670	4,701,640	4,456,640	4,671,500
Non-Personnel Expenses	1,192,326	1,108,570	1,026,990	988,810	1,302,220
<b>Total</b>	<b>\$ 16,949,292</b>	<b>\$ 17,054,430</b>	<b>\$ 17,323,040</b>	<b>\$ 17,815,870</b>	<b>\$ 17,945,050</b>

\*Since FY 2020, General Fund support for the Health Department is reflected as a transfer out to Cincinnati Health District Fund 416.

# Health Department Budget History

## Community Health Center Activities Fund Operating Budget FY 2018 – FY 2022

<b>Community Health Center Activities Fund 395</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
Personnel Compensation	4,561,465	11,652,930	12,600,050	10,657,110	12,293,650
Fringe Benefits	1,625,789	4,452,450	5,073,920	3,942,990	4,779,270
Non-Personnel Expenses	3,712,220	7,286,220	5,707,950	6,675,170	7,447,200
<b>Total</b>	<b>\$ 9,899,474</b>	<b>\$ 23,391,600</b>	<b>\$ 23,381,920</b>	<b>\$ 21,275,270</b>	<b>\$ 24,520,120</b>

The Cincinnati Health District Fund and the Community Health Center Activities Fund are the two primary Principal Restricted Funds utilized by the Cincinnati Health Department. However, CHD also receives funding from a multitude of Restricted Funds sources.

# Health Department Budget History

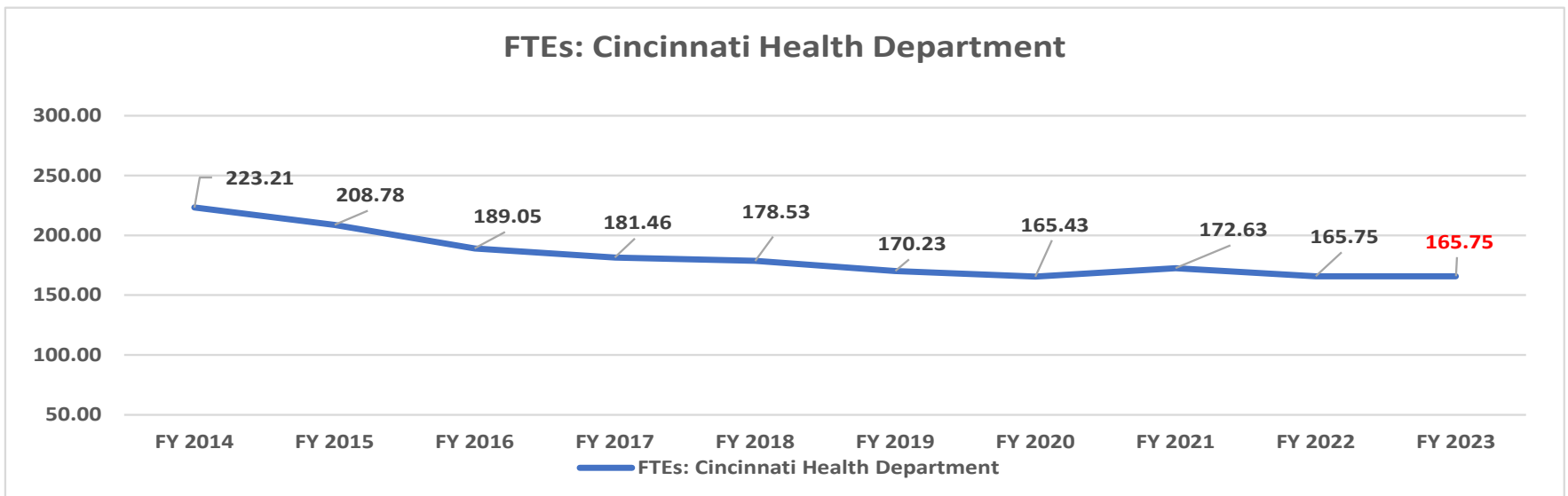
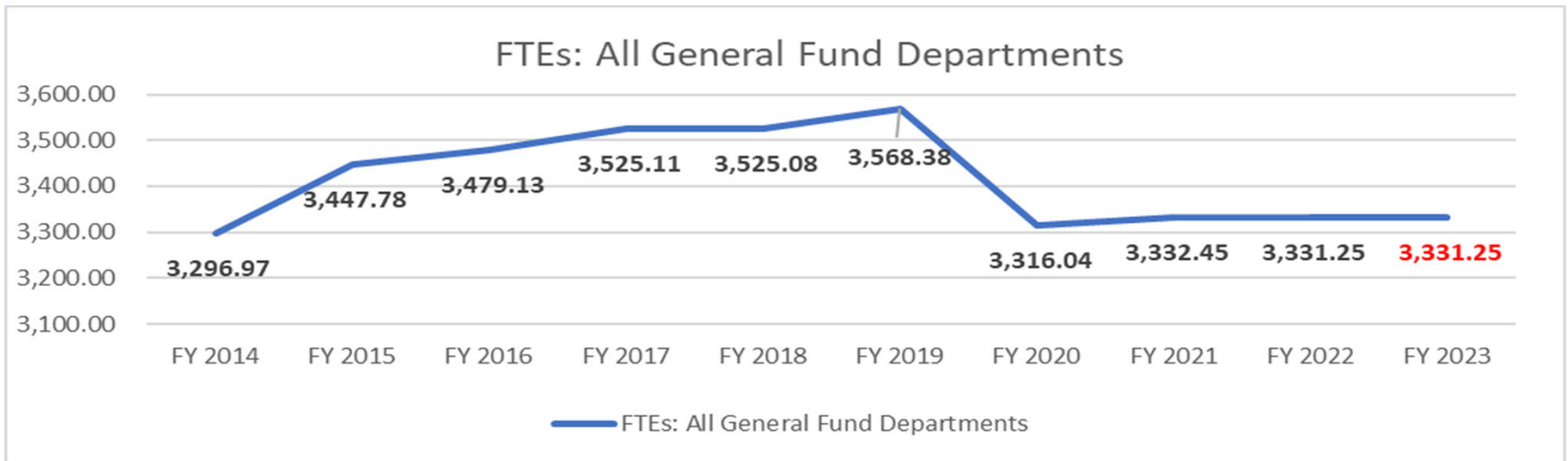
- The General Fund Operating expenses increased significantly in FY 2019 as the Health Department began operating the School-Based Health Centers.
- The General Fund Operating expenses were slightly lower in FY 2021 because CHD received funding from the CARES Act, which was recorded as a credit to expense.

# Health Department FTE History

## All Funds Operating Budget FY 2018 – FY 2022

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
General Fund 050	178.53	170.23	0.00	0.00	0.00
Cincinnati Health District Fund 416	0.00	0.00	165.43	172.63	165.75
Community Health Center Activities Fund 395	68.05	182.55	203.55	216.98	215.46
Public Health Research Fund 350	12.00	16.00	17.80	16.80	16.80
Home Health Services Fund 353	99.45	33.90	35.30	36.60	80.60
Solid Waste Disposal Control Fund 363	1.00	1.00	1.00	1.00	1.00
Cincinnati Abatement Project Fund 381	3.00	2.00	1.00	1.00	1.00
Women & Infants Food Grant Program Fund 391	47.50	44.69	42.50	42.10	42.10
State Health Program Income Fund 394	1.00	0.00	0.00	0.00	0.00
Food Service License Fees Fund 412	13.00	13.00	14.00	14.00	15.00
Swimming Pool License Fees Fund 413	1.00	1.00	1.00	1.00	1.00
Immunization Action Plan Fund 415	3.75	3.75	3.75	3.75	3.75
Federal Health Program Income Fund 418	29.55	0.00	0.00	0.00	0.00
Public Employee Assistance Program Fund 420	5.65	5.65	0.00	0.00	0.00
Heart Health In Hamilton County Fund 425	3.00	3.00	3.00	3.00	3.00
Health Network Fund 446	23.00	24.00	25.00	28.00	29.00
Health Care For The Homeless Fund 448	1.00	1.00	1.00	1.00	1.00
<b>Total FTE</b>	<b>490.48</b>	<b>501.77</b>	<b>514.33</b>	<b>537.86</b>	<b>575.46</b>

# General Fund and Health Department FTE History: FY 2014 – FY 2023





# Health Department Personnel Budget Issues – Operating

Area of City's Strategic Plan/Performance Management		Meets the Sustain and Live initiative Areas. This will allow us to become a healthier Cincinnati and create a more livable community.		
Number	Position	Quantity	Objective	Notes
1	Public Health Educator	1	Provide education related to Mental and Behavioral Health, Substance and Drug addiction.	New
2	Public Health Educator	1	Provide education to parents about safe sleep environments for infants.	Reclassify an existing Admin Tech position.
3	Public Health Educator	1	Provide education related to COVID Health literacy, education and community outreach.	New
4	Registered Nurse	1	Provide patient care, education, & provider support at Bobbie Sterne Health Center.	New
5	HVAC Maintenance Specialist	1	Provide in-house maintenance and repairs at CHD facilities.	New

# Health Department Personnel Budget Issues – Operating

Area of City's Strategic Plan/Performance Management		Meets the Sustain and Live initiative Areas. This will allow us to become a healthier Cincinnati and create a more livable community.		
Number	Position	Quantity	Objective	Notes
6	Quality Improvement Epidemiologist	1	Support CHD accreditation, analyze performance measures and other measurable outcomes in health programs; make data backed recommendations.	New
7	Health Equity Epidemiologist	1	Support Chronic Disease Program, Lead Program, Vital Records, continue the CHD Life Expectancy studies and propose additional Health Equity studies.	New
8	COVID-19/Pandemic Epidemiologist	1	Support ongoing COVID-19 data and reporting needs.	New
9	Environmental Safety Specialist	1	Support Emergency Preparedness initiatives by providing safety training, investigations, plans, drills, exercises, and audits.	New
10	Administrative Tech - Indigent/Unclaimed Coordinator	1	Ensure proper implementation and adherence to federal, state, and local laws regulations, governing the Indigent/Unclaimed.	New

# Health Department Personnel Budget Issues – Operating

Area of City's Strategic Plan/Performance Management			Meets the Sustain and Live initiative Areas. This will allow us to become a healthier Cincinnati and create a more livable community.	
Number	Position	Quantity	Objective	Notes
11	Dentist	1	Full staff compliment for operation of a new school-based dental clinic.	New
12	Hygienist	1		New
13	Enhanced Function Dental Assistant	1		New
14	Dental Assistants	4		New

# Health Department

## Non-Personnel Budget Issues – Operating

Area of City's Strategic Plan/Performance Management		Meets the Sustain and Live initiative Areas. This will allow us to become a healthier Cincinnati and create a more livable community.		
Number	Item	Cost	Annual/One-time	Objective
1	Maintenance for ACCELA software.	\$200,000	Annual	Maintain software licenses that are used to support health-inspection operations.
2	Environmental monitoring equipment and program support supplies for all-hazard emergency response.	\$14,350	One-time	Re-establish current out-of-calibration equipment to functional state. (Biological, HazMat, Radiological, Natural Disasters)
3	Replace all water regulators at Health Centers	\$20,000	One-time	Maintain water pressure with equipment that is within lifecycle.
4	Microfilm conversion to electronic format	\$19,328	One-time	Protect records from physical decay associated with vinegar syndrome.
5	Remote Printer	\$18,450	One-time	Enable customers to receive printed birth and death certificates from a secure printer at locations other than the Vital Records office.

# Health Department

## Significant Budget Issues – Capital

### Security Cameras/Video Surveillance System, \$450,000

- Installation of various camera solutions throughout the CHD's 10 stand alone clinics, 12 school-based clinics, and various other health facilities that service the public.

### Price Hill Health Center Parking Lot Expansion, \$300,000

- Acquisition of property adjacent to, or nearby, the Price Hill Health Center, to convert to additional patient parking. Costs would include demolition of existing building(s) and paving/surfacing of the new lot.

# Health Department Significant Budget Issues – Capital

Cincinnati Health Department Property Structural Integrity,  
\$3,000,000

- Ongoing availability of funds to help maintain the various CHD structures, including both the clinical and support facilities.

Crest Smile Shoppe Relocation, \$700,000

- Relocating the Crest Smile Shoppe from its current location to a nearby location next door to the Ambrose H. Clement Health Center.

# QUESTIONS?

March 7, 2022

To: Budget and Finance Committee 202200571

From: John P. Curp, Interim City Manager

Subject: Presentation – Department of City Planning and Engagement: FY 2023  
Budget Update

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Attached is the Department of City Planning and Engagement’s FY 2023 Budget Update presentation for the Budget and Finance Committee meeting on March 7, 2022.

cc: William “Billy” Weber, Assistant City Manager  
Andrew Dudas, Budget Director





# Department of City Planning and Engagement Budget Presentation

Budget & Finance Committee

March 7, 2022

# Department of City Planning & Engagement Purpose

Our mission is to guide land use and zoning, fostering safe and sustainable building development. Through sound planning practices, we ensure our great city is enriched with vitality, thrives as an urban center, and is a model to other cities nationwide.

# Department of City Planning & Engagement Operations

- Staff to **City Planning Commission**
- Writes and amends **Zoning Code, Subdivision Regulations**, and other regulatory land use guidelines
- Administers the **Zoning Code** (including Historic guidelines) and **Subdivision Regulations**
- Provides **pre-development services** to developers, community members, and other departments
- Develops **long-range and special plans** for neighborhoods, focus areas, or the City as a whole
- Provides **demographic and other analysis** and **mapping services** for City administration
- Manages **federally funded program reviews** (environmental reviews)
- **Engagement** on Certain Development Projects and Other **Special Projects**

# Department of City Planning & Engagement Key Performance Indicators

	<b><u>CY 20</u></b>	<b><u>CY 21</u></b>
City Planning Commission - Total Items	128	140
City Planning Commission - Total Neighborhoods	30	35
<i>Community Engagement Meetings (*CEM)</i>	-	23
Coordinated Site Reviews (CSR)	118	96
Environmental Reviews (ER)	1,054	1,063
Historic Conservation Permit Reviews	999	1,076
Subdivision Regulations	45	42
Zoning Permit Reviews	6,460	6,712

*\*CEM process for development projects rolled out in March 2021*

# Department of City Planning & Engagement Budget History

General Fund Operating Budget  
FY 2018 – FY 2022

	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>*FY 2022 w/ Zoning Adjustment</b>
<b>Personnel Compensation</b>	531,038	468,360	344,890	320,560	362,690	731,450
<b>Fringe Benefits</b>	163,300	134,700	130,340	29,040	138,550	368,550
<b>Non-Personnel Expenses</b>	48,799	45,400	46,450	48,440	40,580	50,680
<b>Total</b>	743,137	648,460	521,680	398,040	541,820	1,150,680

*\*In October 2021, the Zoning Administration function transferred from the Department of Buildings & Inspections to the Department of City Planning & Engagement.*

# Department of City Planning & Engagement Budget History

## Sources of Operating Budget Reimbursements FY 2018 – FY 2022

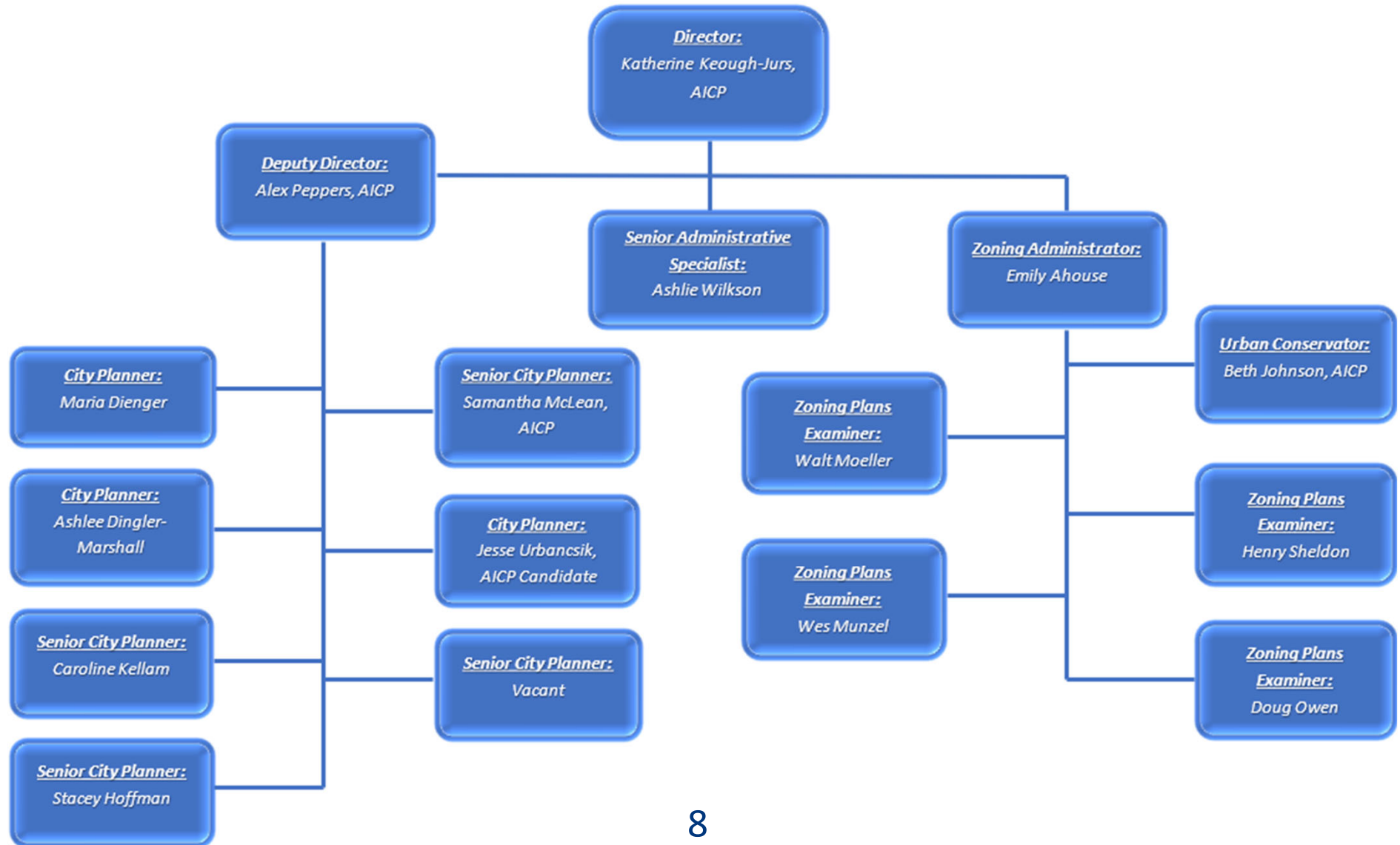
Year	Fund	Project Account	Description/Title	Amount
FY 18	980	181700	Neighborhood Studies	65,100
FY 19	980	191700	Neighborhood Studies	88,000
FY 20	980	201700	Neighborhood Studies	46,000
FY 21	980	211700	Neighborhood Studies	45,000
CY 18	304	30418171	Administration - Planning Dept '18	560,000
CY 19	304	30419171	Administration - Planning Dept '19	445,000
CY 20	304	30420171	Administration - Planning Dept '20	560,000
CY 21	304	30421171	Administration - Planning Dept '21	560,000

*Starting in FY 2022, Neighborhood Studies resources are provided through the General Fund Operating Budget rather than the General Capital Budget.*

# Department of City Planning & Engagement Budget History

- Continue to function with a reduced operating budget each year
- 5% reduction in non-personnel operating budget in FY 2021, which was restored in FY 2022
- In May 2021, department name changed to “Department of City Planning **and Engagement**”
  - Community engagement process led by current staff capacity
  - Facilitate engagement meetings for departments citywide
- In October 2021, the Zoning Administration transferred from Buildings and Inspections and joined the Department of City Planning and Engagement

# Department of City Planning & Engagement Table of Organization





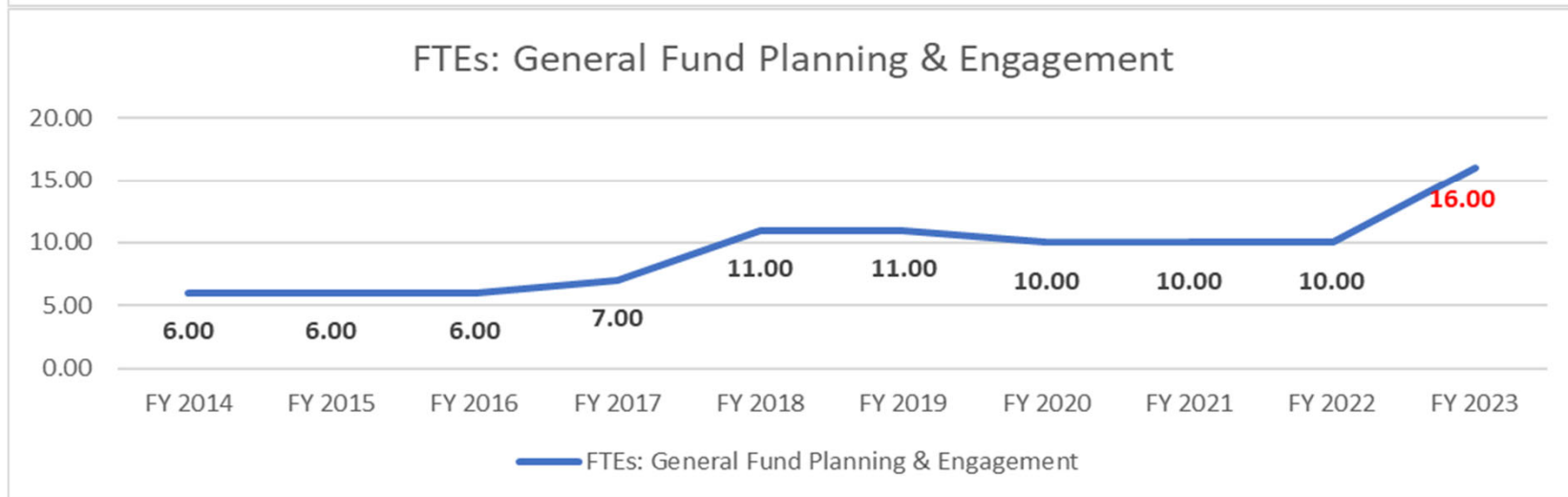
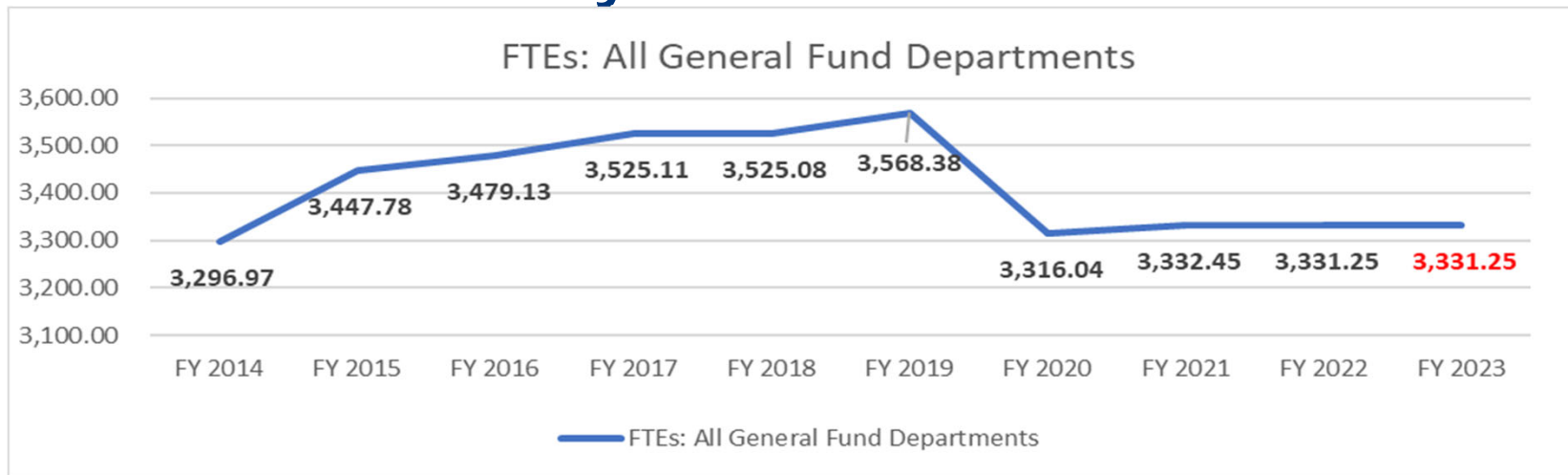
# Department of City Planning & Engagement FTE History

All Funds Operating Budget  
FY 2018 – FY 2022

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	<b>*FY 2022 w/ Zoning Adjustment</b>
<b>FTE</b>	11.0	11.0	10.0	10.0	10.0	16.0
<b>Total</b>	11.0	11.0	10.0	10.0	10.0	16.0

*\*In October 2021, the Zoning Administration function transferred from the Department of Buildings & Inspections to the Department of City Planning & Engagement.*

# General Fund and Planning & Engagement FTE History: FY 2014 – FY 2023



# Department of City Planning & Engagement

## Significant Budget Issues

- As a result of citywide General Fund budget reductions, staff allowance was reduced by 1.0 FTE in the FY 2020 Approved Budget and the FY 2021 Approved Budget.
  - Two (2) additional City Planner positions requested to increase capacity for additional engagement expectations.
  - One (1) additional position requested within the Zoning Administration to increase capacity for work.
- City Planning & Engagement is requesting additional funding for office supplies and postage - \$5,000
- Additional funding for necessary credentials for Zoning Plans Examiners and City Planners - \$10,000
- Funding for software program for Neighborhood Plans - \$1,000

# Plans In Progress & Upcoming

## In Progress

- Mt. Auburn
- Hyde Park
- West Price Hill
- West End
- Columbia Tusculum
- Kennedy Heights
- Mt. Airy
- Clifton
- Spring Grove Village
- South Cumminsville

## Upcoming

- North Avondale
- Downtown
- Roselawn
- Mt. Washington
- Northside
- Westwood
- Mt. Lookout
- Over-the-Rhine
- Mt. Adams

Thank you!

ANY QUESTIONS?

March 7, 2022

To: Budget and Finance Committee 202200572

From: John P. Curp, Interim City Manager

Subject: Presentation – Enterprise Technology Solutions (ETS): FY 2023 Budget Update

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Attached is the Enterprise Technology Solutions (ETS) FY 2023 Budget Update presentation for the Budget and Finance Committee meeting on March 7, 2022.

cc: William “Billy” Weber, Assistant City Manager  
Andrew Dudas, Budget Director



# Enterprise Technology Solutions (ETS)

## Budget Presentation

Budget & Finance Committee

March 7, 2022

# Enterprise Technology Solutions

## Purpose

### Our Mission

- Ensure IT availability, integrity, and security
- Implement innovative, secure, and cost-effective technology solutions
- Deliver excellent customer service through collaborative partnerships with all City Departments



Central IT department for the City of Cincinnati



Manage and maintain the City's core information technology systems in support of 26+ departments



Team Size – Actual Staff

- 46 General Fund Staff
- 27 Restricted Funds staff (Lead Regional Consortiums)



# ETS Organization

## RESTRICTED FUND DIVISIONS

### CAGIS – Geographic Info. Systems

- ✓ GIS – Mapping
- ✓ Customer Service Request System
- ✓ Permitting
- ✓ Code Enforcement
- ✓ Inspections
- ✓ Construction Coordination

### CLEAR – Law Enforcement Data Systems

- ✓ Databases & Applications
- ✓ Law Enforcement Data Sharing
- ✓ Training, Auditing & CJIS Compliance
- ✓ Access to LEADS/NCIC/NLETS/BMV/BCI
- ✓ Automated Fingerprint Identification System
- ✓ Jail Management System

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## GENERAL FUND DIVISIONS

### Enterprise Infrastructure

- ✓ Networks
- ✓ Datacenter
- ✓ O365 / Email
- ✓ Security

### Enterprise Applications

- ✓ Digital Services
- ✓ CFS
- ✓ CHRIS

### Administrative Support

- ✓ Budget
- ✓ Finance
- ✓ HR
- ✓ Process
- ✓ Project Management

### Enterprise Service Desk

- ✓ Tier 1 / 2 Support
- ✓ Telecom Support

### Public Safety

- ✓ ECC IT
- ✓ Radio

# Enterprise Technology Solutions

## Why It Matters

- Every organization today is a technology company.
- Technology is at the heart of the City's Operations, without which we can't fulfill our mission.
- Drives efficiency and value
- Doing more with less is only possible through automation and the reduction of paper and manual steps.
- Cybersecurity investments become more important each year.
- Technology funding should sustain and even increase in today's environment where we need to do more with less across the City.

# Enterprise Technology Solutions FY 2022 Key Performance Indicators

- IT Service Availability KPI
  - Payroll, Finance and Budget Enterprise Systems availability > 99%
  - Websites and Intranet availability > 99%
  - Network availability > 99%
  - Infrastructure Servers availability > 99%
  - Enterprise Application Servers availability > 99%
  - Department Servers availability > 99%
- IT Service Desk KPI – FY22 to-date (7/1/22 through 3/3/22)
  - 3,427 Total tasks reported; 3,190 Closed ( > 93% )
  - 3,589 Total incidents reported; 3,584 Closed ( 99.86% )

# Enterprise Technology Solutions Budget History

General Fund Operating Budget  
FY 2018 – FY 2022

	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
Personnel Compensation	\$ 3,786,059	\$ 4,183,190	\$ 4,241,100	\$ 3,667,800	\$ 4,153,060
Fringe Benefits	\$ 1,173,846	\$ 1,221,100	\$ 1,384,000	\$ 849,400	\$ 1,344,600
Non-Personnel Expense	\$ 584,078	\$ 1,022,270	\$ 586,940	\$ 580,290	\$ 651,700
<b>Total</b>	<b>\$ 5,543,983</b>	<b>\$ 6,426,560</b>	<b>\$ 6,212,040</b>	<b>\$ 5,097,490</b>	<b>\$ 6,149,360</b>

# Enterprise Technology Solutions Budget History

Principal Restricted Funds Operating Budget  
FY 2018 – FY 2022

	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
CAGIS Fund 449	\$ 4,885,601	\$ 4,487,820	\$ 4,489,410	\$ 4,299,721	\$ 4,467,290
CLEAR Fund 457	\$ 5,644,611	\$ 5,085,070	\$ 5,187,050	\$ 5,172,560	\$ 5,262,240
<b>Total</b>	<b>\$ 10,530,212</b>	<b>\$ 9,572,890</b>	<b>\$ 9,676,460</b>	<b>\$ 9,472,281</b>	<b>\$ 9,729,530</b>

# Enterprise Technology Solutions Budget and Department History

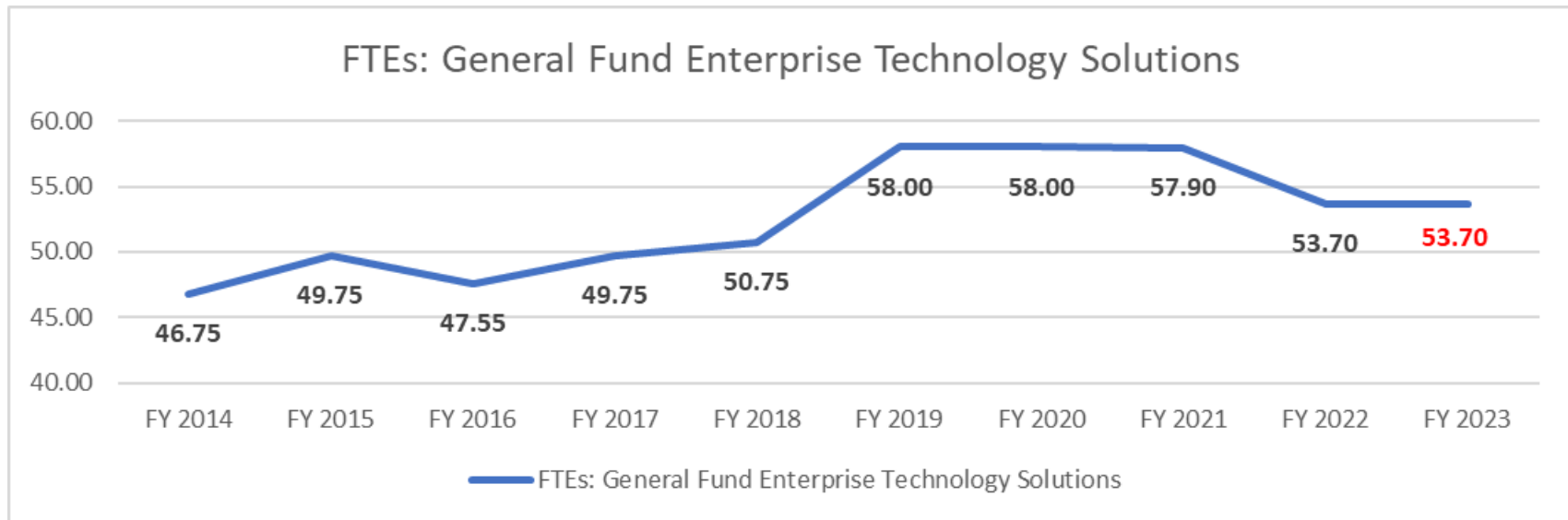
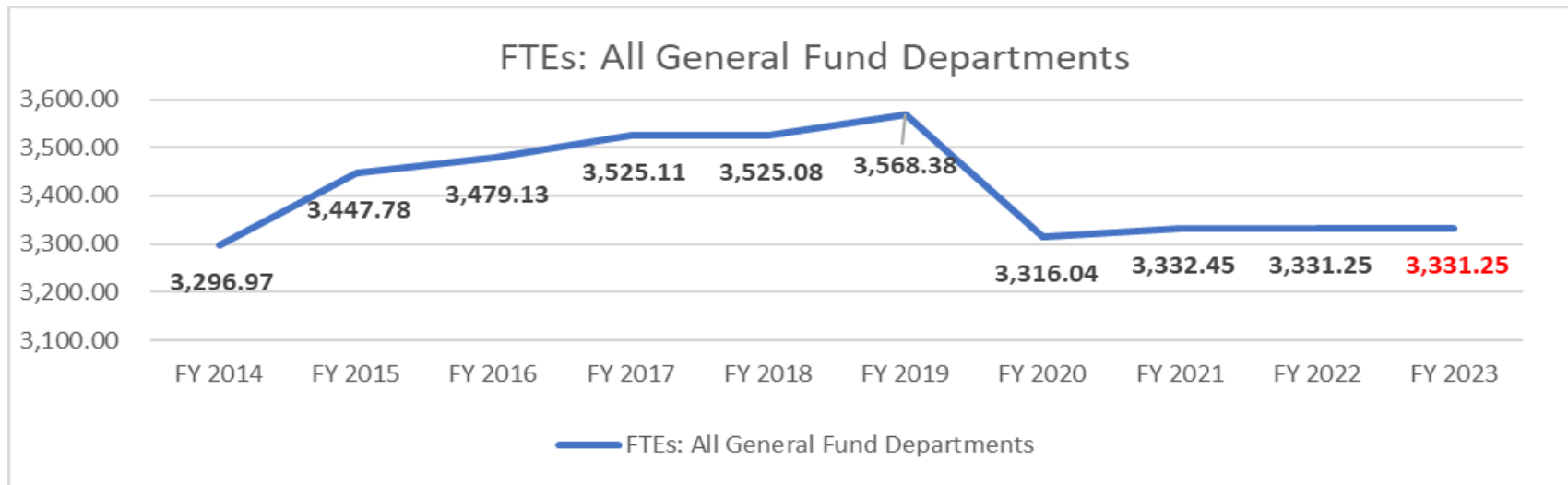
- The last two years have been a time of significant change
  - New Department Director
  - New senior leadership in a majority of key roles
  - New team members learning old duties and taking on new functions
- COVID related challenges include
  - Significant funding reduction from over \$6.4 million in FY 2019 to \$5.1 million in FY 2021
  - Retirements led to significant knowledge and perspective leaving the City

# Enterprise Technology Solutions FTE History

All Funds Operating Budget  
FY 2018 – FY 2022

	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
General Fund	50.75	58.00	58.00	57.90	53.70
CAGIS Fund 449	18.00	18.00	18.00	18.00	18.00
CLEAR Fund 457	14.00	14.00	14.00	14.00	14.00
ETS Fund 702	5.80	5.80	5.80	5.80	3.80
<b>Total</b>	<b>88.55</b>	<b>95.80</b>	<b>95.80</b>	<b>95.70</b>	<b>89.50</b>

# General Fund and Enterprise Technology Solutions FTE History: FY 2014 – FY 2023





# Enterprise Technology Solutions

## Significant Budget Issues – Staffing

Positions authorized are not necessarily funded due to budgeted position vacancy allowance (PVA), natural turnover, ERIP, and fluctuations in reimbursements.

<b>Fund</b>	<b>2020</b>	<b>2021</b>	<b>2022*</b>
General Fund Filled	51	46	46
General Fund Authorized	58	58	54
<b>FTE GAP</b>	<b>7</b>	<b>12</b>	<b>8</b>
CAGIS Fund Filled	15	12	17
CLEAR Fund Filled	9	7	10
<b>Total Filled</b>	<b>75</b>	<b>65</b>	<b>73</b>

\*FY 2022 filled positions as of March 2022.

# Enterprise Technology Solutions

## Significant Budget Issues – Operating

- Increased reliance on Position Vacancy Allowance (PVA) and unbudgeted reimbursements to balance the budget.
- Difficulties attracting and retaining critical positions (Applications, Database, Network, Cybersecurity, Datacenter, GIS, etc.).
- Lack of funding for IT training, career development, succession planning in a field that is changing faster than ever.
- Citywide technology demands and complexities have increased while staffing levels have decreased.
- Some license and support contract renewals have cost significantly more in FY 2022 compared to prior years. Increases are expected in FY 2023.

# Enterprise Technology Solutions

## Significant Budget Issues – Capital

- Increased cyber attack risks, particularly given the deteriorating international situation. We must fund investments to monitor, reduce risk, and remediate issues.
- Continuing high inflation environment, given chip shortages and global supply chain issues, leading to increased costs on aging IT infrastructure.
- Data center, networking equipment, and HR/Financial system updates are essential to deliver reliable IT services across the City. Without these, we may see increased downtime, decreased vendor support, and additional complexity for ETS to support these services.
- Over 100 IT projects in progress or queued due to lack of funding.
- ETS staff is mainly focused on incidents, support, and break fix resolutions.

# QUESTIONS?

February 24, 2022

**To:** Mayor and Members of City Council

**From:** John P. Curp, Interim City Manager **202200491**

**Subject: ORDINANCE – CRA AGREEMENT WITH OAKLEY CROSSINGS HOLDINGS, LLC**

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Attached is an Ordinance captioned:

**APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with Oakley Crossings Holdings, LLC, thereby authorizing an 8-year tax exemption for 100% of the value of improvements made to real property located at 3628-3646 Madison Road and other project immediately adjacent thereto, all in the Oakley neighborhood of Cincinnati, in connection with the construction of approximately 16,200 square feet of commercial space, at a total construction cost of approximately \$5,125,000.

### **BACKGROUND/CURRENT CONDITIONS**

Oakley Crossings Holdings, LLC (the “Developer”) recently acquired approximately 2.6588 acres of property located at 3628-3646 Madison Road in the Oakley neighborhood of Cincinnati (the “Developer Property”). The City owns approximately 0.0617 acres of property directly adjacent to the Developer’s property (the “City Property”). The Developer desires to purchase the City Property for consolidation with the Developer Property to facilitate a redevelopment project.

City Council previously approved the amendment of the Energy Special Improvement District (“ESID”) boundaries to add this property to the ESID and to levy special assessments on the property.

### **DEVELOPER INFORMATION**

The Developer is affiliated with Morelia Group, LLC (“Morelia”). Morelia has experience producing high-quality developments in the Greater Cincinnati area, including within the neighborhood of Oakley.

In 2017, Morelia, through its affiliate entities, acquired from Crossroads Church an approximately five-acre site located on Madison Road in Oakley and constructed thereon the Oakley Connection and Encore of Oakley mixed-use developments that now count as occupants Starbucks, Condado Tacos, Crumbl Cookie, Great Clips, Top Nail Salon, Chicken Salad Chick, General Electric Credit Union, McAlister’s Deli, Tropical Smoothie Café, Holtman’s Donuts, Tide Dry Cleaners and All About Kids Child Care & Learning

Center. Together, these developments were an approximately \$25,000,000 investment that created approximately 300 new jobs in the City.

### **PROJECT DESCRIPTION**

The Developer plans to demolish the existing structures on the Developer Property and relocate existing sewer lines to facilitate the project. The Developer plans to consolidate the City Property with the Developer Property to create the Project Site.

The Developer plans to construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants, as well as another building intended to house three to five restaurant, coffee shop, and/or other retail tenants.

In connection with the construction of the project, the Developer intends to dedicate approximately 0.0847 acres along Madison Road as right-of-way (the “Dedication Property”).

The project is expected to have an estimated total cost of \$9,100,000. The project will result in the creation of 255 full-time equivalent employees (“FTEs”) with a total annual payroll of approximately \$6,240,000. The project will also result in the creation of 80 full-time temporary construction jobs with an associated annual payroll of \$2,500,000.

The proposed sale of property was approved by the City Planning Commission on December 17, 2021.

City Planning and the Developer conducted a public engagement meeting with Oakley stakeholders on December 6, 2021. A written summary of the engagement session can be found on City Planning’s website.

### **PROPOSED INCENTIVE**

DCED is recommending an 8-year, net 52% CRA tax exemption.

DCED is also recommending the sale of the City-owned property (0.0617 acres) for \$1.00. This proposed incentive is outlined in a separate ordinance.

Pursuant to the Commercial CRA policy established by City Council, this project scored 8 points as indicated below which would merit an 8-year net 52% CRA Tax Abatement:

“But For” Analysis (0-3 points)	0
LEED (0-6 points)	0
Neighborhood VTICA (1 point for contributions over 1% but less than 15% and 8 points for contributions of 15% or more)	8
<b>TOTAL</b>	<b>8</b>

<b>SUMMARY</b>	
<b>Forgone Public Benefit if Project Does not Proceed</b>	
CPS PILOT (Forgone New Revenue)	(\$232,038)
VTICA (Forgone New Revenue)	(\$105,472)
Income Tax (Forgone New Revenue)	(\$966,060)
<b>Total Public Benefit Lost</b>	<b>(\$1,303,570)</b>
<b>Incentive Value</b>	
Annual Net Incentive to Developer	\$45,704
<b>Total Term Incentive to Developer</b>	<b>\$365,636</b>
<b>City's Portion of Property Taxes Forgone</b>	<b>\$98,814</b>
<b>Public Benefit</b>	
CPS PILOT	
Annual CPS Pilot	\$29,005
Total Term CPS PILOT	<b>\$232,038</b>
VTICA	
Annual VTICA	\$13,184
Total Term VTICA	<b>\$105,472</b>
Income Tax (Max)	<b>\$966,060</b>
<b>Total Public Benefit (CPS PILOT/VTICA /Income Tax)</b>	<b>\$1,303,570</b>
Total Public Benefit ROI*	\$3.57
City's ROI*	\$13.19

\*If the project were going to happen regardless of incentive, this is the return of real dollars for public benefits as potential future dollars are forgone

**PROJECT TEAM & TIMELINE**

The project team (listed below) will make themselves available at the request of the councilmember(s).

- Assistant City Manager: Billy Weber (Ext. 3318)
- DCED Director: Markiea Carter (Ext. 1953)
- Project Attorney: Samantha Brandenburg (Ext. 4704)

The anticipated council timeline is as follows:

- February 24, 2022: Introduction to City Council
- February 28, 2022: Budget and Finance (1)
- March 7, 2022: Budget and Finance (2)
- March 14, 2022: Budget and Finance (3)
- March 16, 2022: City Council for Final Approval

**RECOMMENDATION**

The Administration recommends approval of this Ordinance.

CRA Agreement  
*Oakley Crossings Holdings, LLC*  
Page 4 of 4

Attachment: A. Property location and site plan

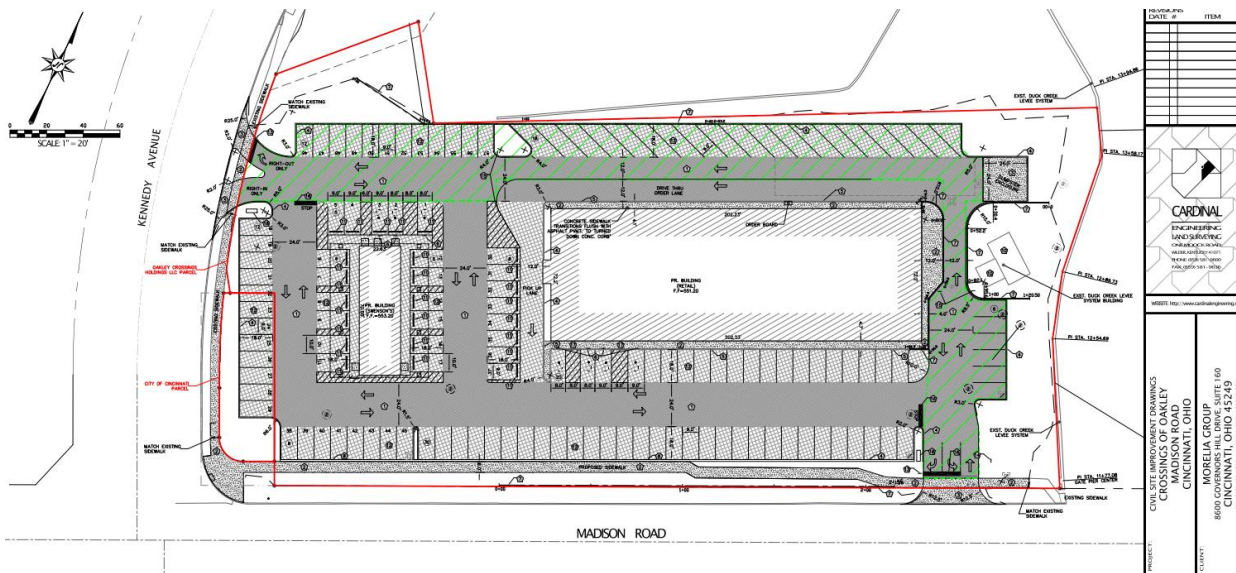
Copy: Markiea L. Carter, Director, Department of Community & Economic Development



## Attachment A: Location and Site Plan



*Property Location*



*Site Plan*

# City of Cincinnati

ZDS

AWB

## An Ordinance No. \_\_\_\_\_ - 2022

**APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with Oakley Crossings Holdings, LLC, thereby authorizing an 8-year tax exemption for 100% of the value of improvements made to real property located at 3628-3646 Madison Road and other property immediately adjacent thereto, all in the Oakley neighborhood of Cincinnati, in connection with the construction of approximately 16,200 square feet of commercial space, at a total construction cost of approximately \$5,125,000.

WHEREAS, to encourage the development of real property and the acquisition of personal property, the Council of the City of Cincinnati by Ordinance No. 274-2017 passed on September 27, 2017, designated the area within the corporate boundaries of the City of Cincinnati as a "Community Reinvestment Area" pursuant to Ohio Revised Code ("ORC") Sections 3735.65 through 3735.70 (the "Statute"); and

WHEREAS, Ordinance No. 275-2017 passed by this Council on September 27, 2017, as amended by Ordinance No. 339-2018, passed by this Council on October 31, 2018, sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area; and

WHEREAS, effective October 23, 2017, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute; and

WHEREAS, Oakley Crossings Holdings, LLC (the "Company") desires to construct approximately 16,200 square feet of commercial space on real property at 3628-3646 Madison Road and other property immediately adjacent thereto located within the corporate boundaries of the City of Cincinnati (the "Improvements"), provided that the appropriate development incentives are available to support the economic viability of the Improvements; and

WHEREAS, to provide an appropriate development incentive for the Improvements, the City Manager has recommended a *Community Reinvestment Area Tax Exemption Agreement*, in substantially the form of Attachment A to this ordinance, to authorize a real property tax exemption for the Improvements in accordance with the Statute; and

WHEREAS, the property is located within the Cincinnati City School District; and

WHEREAS, the Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020 (as may be amended, the "Board of Education Agreement"), has approved exemptions of up to 100% of Community Reinvestment Area projects, waived advance notice and the right to review

such projects, and waived sharing or allocation of municipal income taxes in connection with such projects; and

WHEREAS, pursuant to the Board of Education Agreement, the Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to 33% of the exempt real property taxes; and

WHEREAS, the Company has represented that it has entered into (or will enter into) a voluntary tax incentive contribution agreement with a third-party organization for amounts equal to 15% of the exempt real property taxes, which funds shall be committed by the third-party organization to facilitate permanent improvements and neighborhood services furthering urban redevelopment in the neighborhood of the Improvements and to support affordable housing on a City-wide basis; and

WHEREAS, the Improvements do not involve relocation of part or all of the Company's operations from another county or municipal corporation in Ohio or, if there is relocation, notice has been given per ORC Section 3735.673; now, therefore,

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

Section 1. That Council approves a *Community Reinvestment Area Tax Exemption Agreement* with Oakley Crossings Holdings, LLC (the "Agreement"), thereby authorizing an 8-year tax exemption for 100% of the assessed value of improvements to be made to real property located at 3628-3646 Madison Road, and other property immediately adjacent thereto, in Cincinnati, as calculated by the Hamilton County Auditor, in connection with the construction of approximately 16,200 square feet of commercial space, to be completed at a total construction cost of approximately \$5,125,000.

Section 2. That Council authorizes the City Manager:

- (i) to execute the Agreement on behalf of the City in substantially the form of Attachment A to this ordinance; and
- (ii) to forward on behalf of Council a copy of the Agreement, within fifteen (15) days after execution, to the Director of the Ohio Development Services Agency in accordance with Ohio Revised Code Section 3735.671(F); and

- (iii) to submit on behalf of Council annual reports on the Agreement to the Director of the Ohio Development Services Agency and to the Board of Education of the Cincinnati City School District, in accordance with Ohio Revised Code Section 3735.672; and
- (iv) to take all necessary and proper actions to fulfill the City's obligations under the Agreement.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

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

\_\_\_\_\_  
Aftab Pureval, Mayor

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

**Attachment A to Ordinance**

**CRA Tax Exemption Agreement**

**SEE ATTACHED**



Community Reinvestment Area Tax Exemption Agreement

This Community Reinvestment Area Tax Exemption Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and OAKLEY CROSSINGS HOLDINGS, LLC, a Delaware limited liability company (the "Company").

Recitals:

- A. The City and the Company are parties to a certain *Property Sale and Development Agreement* dated \_\_\_\_\_, 2022 (the "Development Agreement"). Pursuant to the Development Agreement, the City agreed to convey a portion of the Property (as defined below) to the Company.
- B. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- C. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- D. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018 passed on October 31, 2018 (the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- E. The Company is the sole owner of certain real property within the City, located at 3628-3646 Madison Road, Cincinnati, Ohio 45209, and real property immediately adjacent thereto that the City conveyed to the Company pursuant to the Development Agreement (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- F. The Company has proposed the construction of two buildings located on the Property, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"); provided that the appropriate development incentives are available to support the economic viability of the Project.
- G. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing five or more dwelling units, in order to be eligible for tax

exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.

- H. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.
- I. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars (\$750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.
- J. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- K. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- L. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").
- M. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").
- N. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- O. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- P. The Company acknowledges that the Oakley neighborhood is a rising neighborhood in need of resources for development, neighborhood improvements, amenities, and organizations oriented towards neighborhood services. The Company anticipates that future development, improvements, amenities and organizations will contribute to the quality and vitality of the neighborhood, therefore increasing the value of the Property and directly and indirectly contributing to the Project's success. The Project's success, in turn, will benefit the neighborhood. Although this feedback effect will promote the revitalization and redevelopment of the City, it could also impact the affordability of property in the area. Therefore, in support of the Oakley neighborhood and with the intention of preserving and improving the availability of quality, reliable affordable housing on a City-wide basis, as a material inducement to the City to enter into this Agreement, the Company hereby represents to the City that it will enter into a voluntary tax incentive contribution agreement ("VTICA") with a City-designated third-party non-profit

administrative organization (the "Third-Party Administrator") to contribute to the Third-Party Administrator an amount equal to fifteen percent (15%) of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the "VTICA Contribution"). Half of such VTICA Contribution is to be committed by the Third-Party Administrator to facilitate permanent improvements and neighborhood services furthering urban redevelopment in the Oakley neighborhood and the other half of such VTICA Contribution is to be committed by the Third-Party Administrator in supporting quality affordable housing on a City-wide basis. The Company hereby represents and warrants that it will pay the VTICA Contribution for the full term of the abatement.

Q. This Agreement has been authorized by Ordinance No. \_\_\_\_\_-2022, passed by Cincinnati City Council on \_\_\_\_\_, 2022.

R. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company's representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, the VTICA Contribution, and the Project's effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to construct two buildings on the Property into approximately 16,200 square feet of commercial space (the "Improvements") at an estimated aggregate cost of \$5,125,000 to commence after the execution of this Agreement and to be completed no later than August 1, 2024; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his or her discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The construction shall be in compliance with applicable building code requirements and zoning regulations. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, 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 the Company 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.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of 100% of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of eight (8) years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The



Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of construction, (B) the cost of construction, (C) the facts asserted in the application for exemption and (D) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the construction has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2025 nor extend beyond the earlier of (i) tax year 2032 or (ii) the end of the eighth (8<sup>th</sup>) year of exemption.

Section 3. Use; Maintenance; Inspections. The Company shall use the Property solely for the purposes described in Section 1 hereof and shall properly maintain and repair the Property throughout the period of tax exemption authorized herein. The Company authorizes the Housing Officer, or the Housing Officer's designees, to enter upon the Property as reasonably required to perform property inspections in accordance with Ohio Revised Code Section 3735.68.

Section 4. Compliance with Board of Education Agreement. As a condition of the tax exemption authorized under this Agreement, the Company agrees to enter into and comply with its obligation under the Board of Education Agreement.

Section 5. Duty of Company to Pay Taxes. As required by Ohio Revised Code Section 3735.671(C)(2), the Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions from taxation granted or authorized under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and continuing thereafter.

Section 6. Company Certifications Regarding Non-Delinquency of Tax Obligations. As required by Ohio Revised Code Section 3735.671(C)(3), the Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which the Company is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747 or 5753, or if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, has filed a petition in bankruptcy under 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

Section 7. Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Revised Code Section 9.66, (A) the Company affirmatively covenants that it does not owe: (i) any delinquent taxes to the State or to a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due, regardless of whether the amounts owed are being contested in a court of law or not; (B) the Company authorizes the City and/or the State to inspect the personal financial statements of the Company, including tax records and other similar information not ordinarily open to public inspection; and (C) the Company authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements. As provided by statute, a knowingly false statement under this section may be prosecuted as a first-degree misdemeanor under Ohio Revised Code Section 2921.13, may render the Company ineligible for any future economic development assistance from the State or any political subdivision of the State, and

will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(C)(4), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 9. Continuation of Exemptions. As provided in Ohio Revised Code Section 3735.671(C)(5), if for any reason the City revokes the designation of the City of Cincinnati as a Community Reinvestment Area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation authorized pursuant to this Agreement.

Section 10. City Not Liable. The Company acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate state and/or county taxing authorities. The Company acknowledges that the City does not give any guarantee or assurance that the exemption approved in this Agreement will be so approved, and the Company agrees that in no event shall the Company seek to hold the City liable in any way in the event such exemption is not granted or implemented.

Section 11. Small Business Enterprise Program.<sup>1</sup>

A. Compliance with Small Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code ("CMC") Section 323-1-S, "SBEs"). Pursuant to CMC Section 323-11, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve the City's goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City's Department of Economic Inclusion. The Company may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. The Company shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

- (i) Including qualified SBEs on solicitation lists.
- (ii) Assuring that SBEs are solicited whenever they are potential sources. The Company must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials, or to bid on construction contracts, as applicable.
- (iii) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.
- (iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.
- (v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.

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<sup>1</sup> Note: this section will be revised prior to execution due to programmatic changes being implemented by the Department of Community and Economic Development as a result of recent legislation passed by City Council.

(vi) The Company shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting such information as may be requested from time to time by the City.

B. Remedies for Noncompliance with Small Business Enterprise Program. Failure of the Company or its contractors and subcontractors to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Company to use its best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this Section. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

Section 12. Jobs. The Company represents that, as of the date of the execution of this Agreement, the Company has no existing employment at the Property or in the State.

Section 13. Job Creation and Retention.

A. Jobs to be Created by Company. The Company agrees to use its best efforts to create (i) 255 full-time permanent jobs, and (ii) 80 full-time temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with construction, and in the case of the other jobs described herein, the job creation period shall begin upon completion of construction and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately (i) \$6,240,000 of additional annual payroll with respect to the full-time permanent jobs, and (ii) \$2,500,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

C. Community Reinvestment Area Employment. The Company shall (i) adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati and (ii) give preference to residents of the City relative to residents of the State who do not reside in the City when hiring new employees under this Agreement.

D. Posting Available Employment Opportunities. To the extent allowable by law, the Company shall use its best efforts to post available employment opportunities within the Company's organization or the organization of any subcontractor working with the Company with the Ohio Means Jobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

Section 14. Equal Employment Opportunity. This Agreement is subject to the City's Equal Employment Opportunity Program contained in CMC Chapter 325. The Equal Employment Opportunity Clause in CMC Section 325-9 is incorporated by reference in this Agreement. The term "Company" is substituted for "Contractor" throughout CMC Section 325-9 in the context of this Agreement.

Section 15. Compliance with Immigration and Nationality Act. In the performance of its obligations under this Agreement, the Company agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2). Any noncompliance with such provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement including, without limitation, its obligation to comply with the Development Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

Section 17. Annual Review and Report. As required by Ohio Revised Code Sections 3735.671(C)(7) and 5709.85, the Company shall provide to the City's Tax Incentive Review Council (or to the City Manager if so requested by the City) any information reasonably required by the Council or the City Manager to evaluate the Company's compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Council or City Manager. The performance of the Company's obligations stated in this Agreement shall be subject to annual review by the City's Tax Incentive Review Council (the "Annual Review and Report"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

Section 18. Revocation.

A. Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under Ohio Revised Code Section 3735.67. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the Company, the housing officer may revoke the exemption at any time after the first year of exemption. If the Company has materially failed to fulfill its obligations under this Agreement, or if the owner is determined to have violated division (E) of that section (see Section 18(B) of this Agreement), City Council, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or City Council shall notify the county auditor and the Company that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (E) of Ohio Revised Code Section 3735.671, and the reason for revoking the exemption.

B. Prior Statutory Violations. The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(E) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(C)(9), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any successor to the Company or any related member (as those terms are defined in division (E) of

Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

A. Generally. As required in connection with Ohio Revised Code Section 9.66(C), the Company affirmatively covenants that it has made no false statements to the State or the City in the process of obtaining approval for this Agreement. If any representative of the Company has knowingly made a false statement to the State or the City to obtain approval for this Agreement, or if the Company fails to provide any information expressly required under the Application, the Company shall be required to immediately return all benefits received under this Agreement (by payment of the amount of taxes exempted hereunder, paid as directed by the City within thirty (30) days of written demand) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or any political subdivision of the State pursuant to Ohio Revised Code Section 9.66(C)(1). Amounts due and not paid under this Section 19 shall bear interest at the rate of twelve percent (12%) per year. Any person who provides a false statement to secure economic development assistance (as defined in Ohio Revised Code Section 9.66) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

B. Material Representations – Board of Education Agreement and VTICA. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement or VTICA Contribution shall constitute an event of default for purposes of Section 16 (*Default*) and the basis for revocation under Section 18 (*Revocation*). Subject to the terms of the VTICA, if the VTICA is unenforceable for reasons of infeasibility or otherwise, the Company shall enter into alternative arrangements providing for the economic equivalent of the VTICA Contribution. Such arrangements may include, but are not limited to, providing for the economic equivalent of the VTICA Contribution through formation of a special improvement district. For purposes of this Section 19.B, alternative arrangements must result in services substantially similar to those that would have been supported through the VTICA and at a value that is the economic equivalent of the VTICA Contribution, which value shall not be required to exceed the VTICA Contribution amount that would have been payable by the Company. Any determination of infeasibility or mechanism for providing alternative arrangements is subject to approval by the City at its sole discretion. Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project, and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

Section 21. Annual Fee. As authorized by Ohio Revised Code Section 3735.671(D), the Company shall pay an annual fee of Five Hundred Dollars (\$500) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred Dollars (\$2,500) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in

Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

Section 23. Notices. Unless otherwise specified herein, each party shall address written notices, demands and communications in connection with this Agreement to the other party as follows (or to such other address as is communicated in accordance with this Section):

To the City:

City of Cincinnati  
Attention: Director of the Department of Community and Economic Development  
Centennial Plaza Two, Suite 700  
805 Central Avenue  
Cincinnati, Ohio 45202

To the Company:

Oakley Crossings Holdings, LLC  
Attention: Christopher Hildebrandt  
8600 Governors Hill Drive, Ste. 160  
Cincinnati, Ohio 45249

With copies to:

Dinsmore & Shohl LLP  
Attn: Charles E. Baverman III  
255 East Fifth Street, Suite 1900  
Cincinnati, Ohio 45202

If the Company sends a notice to the City alleging that the City is in default under this Agreement, the Company shall simultaneously send a copy of such notice to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition signage, and any publicity such as that appearing on the internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a Project partner, the Company shall use either the phrase "Project Assistance by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City.

Section 25. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the City and the Company with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto.

Section 26. Governing Law. This Agreement is entered into and is to be performed in the State. The City and the Company agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or

of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 28. Severability. This Agreement shall be severable; if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 29. Amendment. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. Non-Assignment. As required by Ohio Revised Code Section 3735.671(C)(8), this Agreement is not transferable or assignable by the Company without the express written approval of the City Manager of the City. If the Company has entered into a Board of Education Agreement or VTICA in connection with the Property, the City shall not approve the assignment of this Agreement unless the assignee has assumed the Company's remaining obligations under the Board of Education Agreement and VTICA, as applicable. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement or VTICA upon transfer of the Property during the term of the tax abatement authorized by this Agreement shall be basis for revocation of the tax exemption under Section 18.

Section 31. Recording. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. Legislative Action Required. As provided in Ohio Revised Code Section 3735.671(C)(10), the Company and the City acknowledge that this Agreement must be approved by formal action of the City Council of the City as a condition for this Agreement to take effect. Notwithstanding anything to the contrary herein, this Agreement shall take effect after the later of the date of such approval or the final date of execution of this Agreement by all parties.

Section 33. Additional Representations and Warranties of Company. The Company represents and warrants that (a) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder; (b) no notices to, or consents, authorizations or approvals of, any person are required (other than any already given or obtained) for its due execution, delivery and performance of this Agreement; and (c) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Company.

Section 34. Certification as to Non-Debarment. The Company represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, the Company shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If the Company or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, the company shall be considered in default under this Agreement.

Section 35. Appeals. Pursuant to Ohio Revised Code Section 3735.70, a person aggrieved under the Statute or this Agreement may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Section 36. 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.

**Section 37. Legal Requirements.** In completing and operating the Project, the Company 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.



**Section 38. Counterparts and Electronic Signatures.** This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

[Remainder of this page intentionally left blank. Signature page follows.]

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

CITY OF CINCINNATI,  
an Ohio municipal corporation

OAKLEY CROSSINGS HOLDINGS, LLC,  
a Delaware limited liability company

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

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

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

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

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

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

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

Approved as to Form:

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

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

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

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

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

**Exhibit A to CRA Agreement**

**LEGAL DESCRIPTION OF PROPERTY**

**PARCEL ONE:**

**Property Address:** 3628-3646 Madison Road, Cincinnati, Ohio 45209, cons.  
**Auditor's Parcel No.:** 051-0002-0316-00

**2.6588 ACRES**

Situated in Section 22, Town 4, Fractional Range 2, B.T.M., City of Cincinnati, Hamilton County, Ohio being all of the tracts of land conveyed to Queen City Flats, LLC in O.R. 14538 Pg. 2293, O.R. 14470 Pg. 2448, O.R. 14536 Pg. 1102, O.R. 14536 Pg. 1069, O.R. 14536 Pg. 984, O.R. 14536 Pg. 987, O.R. 14357 Pg. 897, O.R. 14538 Pg. 1422 and O.R. 14538 Pg. 1654, the boundary of which is more particularly described as follows:

**BEGINNING** at the intersection of the North right of way line of Madison Road with the East right of way line of Kennedy Avenue;

Thence along said right of way line of Kennedy Avenue the following **FOUR (4)** courses:

1. North 25°13'33" West a distance of 105.00 feet to a 5/8" iron pin set;
2. North 64°56'58" East a distance of 24.25 feet to a 5/8" iron pin set;
3. Along a curve to the left for an arc distance of 13.06 feet to a 5/8" iron pin (P.L.S. 7181) found, said curve having a radius of 530.01 feet, a central angle of 01°24'44" and a chord which bears, North 34°01'57" West a distance of 13.06 feet;
4. Along curve to the right for an arc distance of 110.14 feet to a 5/8" iron pin set, said curve having a radius of 454.67 feet, and a central angle of 13°52'45" and a chord which bears, North 10°59' 51" West a distance of 109.87 feet;

Thence leaving said right of way through the lands of Queen City Flats for the following **five (5)** courses:

1. North 44°27'49" East a distance of 82.73 feet to a 5/8" iron pin set;
2. South 33°50'53" East a distance of 56.13 feet to a 5/8" iron pin set;
3. North 63°22'51" East a distance of 362.12 feet to a cross notch set;
4. South 30°35'45" East a distance of 12.63 feet to a cross notch set;
5. North 63°42'43" East a distance of 66.40 feet to a 5/8" iron pin (Rosenfeld) found in the western line of Southwest Ohio Regional Transit Authority (O.R. 6507, Pg. 257);

Thence with said common line the following **two (2)** courses:

1. South 41°12'33" East a distance of 118.40 feet to a 5/8" iron pin set;
2. South 41°33'33" East a distance of 117.88 feet to the centerline of Madison Avenue, passing a 5/8" iron pin set a distance of 86.59 feet at the right of way of Madison Avenue;

Thence along said centerline South 64°56'58" West a distance of 13.15 feet;

Thence leaving said centerline North 83°37'33" West a distance of 57.54 feet to a 5/8" iron pin set in the north right of way line of Madison Avenue;

Thence along said right of way South 64°56'58" West a distance of 519.93 feet to the **POINT OF BEGINNING** of this description.

Containing 2.6588 acres of land more or less and being subject to all easements and restrictions of record.

Bearings are based on the Ohio State Plane coordinate system, South Zone (NAD 83) per GPS Observation utilizing the Ohio Department of Transportation's virtual reference stationing.

Based on a field survey in November of 2020 performed by Cardinal Engineering Corporation under the direct supervision of Daniel K. York, P.S. Ohio Professional Surveyor Number S-8729.

**PARCEL TWO:**

**Property Address:** Madison Road, Cincinnati, Ohio 45209  
**Auditor's Parcel No.:** part of 051-0002-0139-00

Situated in Section 22, Township 4, Fractional Range 2, Columbia Township, the City of Cincinnati, Hamilton County, Ohio, being part of a tract of land conveyed to the City of Cincinnati by deed in D.B. 2152 Pg. 87 the boundary of which is more particularly described as follows:

BEGINNING at a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue, being North 25°13'33" West, 13.18 feet from the intersection of the existing east right of way line of Kennedy Avenue and the north right of way line of Madison Road;

Thence along a new division line through the grantors tract the following four (4) courses:

1. South 64°44'34" West a distance of 17.09 feet to a 5/8" iron pin set;
2. Along a curve to the right for an arc distance of 20.47 feet to a 5/8" iron pin set, said curve having a radius of 13.00 feet, a central angle of 90°11'49" and a chord which bears North 70°09'32" West a distance of 18.42 feet;
3. North 25°03'37" West a distance of 27.10 feet to a 5/8" iron pin set;
4. Along a curve to the right for an arc distance of 51.86 feet to a 5/8" iron pin set in the north line of the grantors tract, said curve having a radius of 463.94 feet, a central angle of 6°24'16" and a chord which bears North 22°41'24" West a distance of 51.83 feet;

Thence along the north line of the grantor, North 64°56'58" East a distance of 27.72 feet to a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue;

Thence along said right of way line, South 25°13'33" East a distance of 91.82 feet to the POINT OF BEGINNING;

Containing 0.0617 acres of land more or less and being subject to all easements and restrictions of record.

Bearings are based on the Ohio State Plane coordinate system, South Zone (NAD 83) per GPS Observation utilizing the Ohio Department of Transportations virtual reference stationing.

Based on a field survey in November of 2020 performed by Cardinal Engineering Corporation under the direct supervision of Daniel K. York, P.S. Ohio Professional Surveyor Number S-8729.

**Exhibit B to CRA Agreement**  
**APPLICATION FOR TAX EXEMPTION**

**TO BE ATTACHED**

Community Reinvestment Area Tax Exemption Agreement

This Community Reinvestment Area Tax Exemption Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and OAKLEY CROSSINGS HOLDINGS, LLC, a Delaware limited liability company (the "Company").

Recitals:

- A. The City and the Company are parties to a certain *Property Sale and Development Agreement* dated \_\_\_\_\_, 2022 (the "Development Agreement"). Pursuant to the Development Agreement, the City agreed to convey a portion of the Property (as defined below) to the Company.
- B. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- C. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- D. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018 passed on October 31, 2018 (the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- E. The Company is the sole owner of certain real property within the City, located at 3628-3646 Madison Road, Cincinnati, Ohio 45209, and real property immediately adjacent thereto that the City conveyed to the Company pursuant to the Development Agreement (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- F. The Company has proposed the construction of two buildings located on the Property, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"); provided that the appropriate development incentives are available to support the economic viability of the Project.
- G. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing five or more dwelling units, in order to be eligible for tax

exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.

- H. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.
- I. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars (\$750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.
- J. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- K. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- L. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").
- M. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").
- N. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- O. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- P. The Company acknowledges that the Oakley neighborhood is a rising neighborhood in need of resources for development, neighborhood improvements, amenities, and organizations oriented towards neighborhood services. The Company anticipates that future development, improvements, amenities and organizations will contribute to the quality and vitality of the neighborhood, therefore increasing the value of the Property and directly and indirectly contributing to the Project's success. The Project's success, in turn, will benefit the neighborhood. Although this feedback effect will promote the revitalization and redevelopment of the City, it could also impact the affordability of property in the area. Therefore, in support of the Oakley neighborhood and with the intention of preserving and improving the availability of quality, reliable affordable housing on a City-wide basis, as a material inducement to the City to enter into this Agreement, the Company hereby represents to the City that it will enter into a voluntary tax incentive contribution agreement ("VTICA") with a City-designated third-party non-profit

administrative organization (the “Third-Party Administrator”) to contribute to the Third-Party Administrator an amount equal to fifteen percent (15%) of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the “VTICA Contribution”). Half of such VTICA Contribution is to be committed by the Third-Party Administrator to facilitate permanent improvements and neighborhood services furthering urban redevelopment in the Oakley neighborhood and the other half of such VTICA Contribution is to be committed by the Third-Party Administrator in supporting quality affordable housing on a City-wide basis. The Company hereby represents and warrants that it will pay the VTICA Contribution for the full term of the abatement.

- Q. This Agreement has been authorized by Ordinance No. \_\_\_\_\_-2022, passed by Cincinnati City Council on \_\_\_\_\_, 2022.
- R. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company’s representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, the VTICA Contribution, and the Project’s effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to construct two buildings on the Property into approximately 16,200 square feet of commercial space (the “Improvements”) at an estimated aggregate cost of \$5,125,000 to commence after the execution of this Agreement and to be completed no later than August 1, 2024; *provided*, however, that the Director of the Department of Community and Economic Development (the “Housing Officer”) may, in his or her discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director’s judgment, the Company is proceeding in good faith towards completion. The construction shall be in compliance with applicable building code requirements and zoning regulations. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, 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 the Company 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.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of 100% of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of eight (8) years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion of the Project (unless otherwise extended in writing by the City’s Housing Officer), the Company must file the appropriate application for tax exemption with the City’s Housing Officer. The



Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of construction, (B) the cost of construction, (C) the facts asserted in the application for exemption and (D) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the construction has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2025 nor extend beyond the earlier of (i) tax year 2032 or (ii) the end of the eighth (8<sup>th</sup>) year of exemption.

Section 3. Use; Maintenance; Inspections. The Company shall use the Property solely for the purposes described in Section 1 hereof and shall properly maintain and repair the Property throughout the period of tax exemption authorized herein. The Company authorizes the Housing Officer, or the Housing Officer's designees, to enter upon the Property as reasonably required to perform property inspections in accordance with Ohio Revised Code Section 3735.68.

Section 4. Compliance with Board of Education Agreement. As a condition of the tax exemption authorized under this Agreement, the Company agrees to enter into and comply with its obligation under the Board of Education Agreement.

Section 5. Duty of Company to Pay Taxes. As required by Ohio Revised Code Section 3735.671(C)(2), the Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions from taxation granted or authorized under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and continuing thereafter.

Section 6. Company Certifications Regarding Non-Delinquency of Tax Obligations. As required by Ohio Revised Code Section 3735.671(C)(3), the Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which the Company is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747 or 5753, or if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, has filed a petition in bankruptcy under 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

Section 7. Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Revised Code Section 9.66, (A) the Company affirmatively covenants that it does not owe: (i) any delinquent taxes to the State or to a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due, regardless of whether the amounts owed are being contested in a court of law or not; (B) the Company authorizes the City and/or the State to inspect the personal financial statements of the Company, including tax records and other similar information not ordinarily open to public inspection; and (C) the Company authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements. As provided by statute, a knowingly false statement under this section may be prosecuted as a first-degree misdemeanor under Ohio Revised Code Section 2921.13, may render the Company ineligible for any future economic development assistance from the State or any political subdivision of the State, and

will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(C)(4), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 9. Continuation of Exemptions. As provided in Ohio Revised Code Section 3735.671(C)(5), if for any reason the City revokes the designation of the City of Cincinnati as a Community Reinvestment Area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation authorized pursuant to this Agreement.

Section 10. City Not Liable. The Company acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate state and/or county taxing authorities. The Company acknowledges that the City does not give any guarantee or assurance that the exemption approved in this Agreement will be so approved, and the Company agrees that in no event shall the Company seek to hold the City liable in any way in the event such exemption is not granted or implemented.

Section 11. Small Business Enterprise Program.<sup>1</sup>

A. Compliance with Small Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code ("CMC") Section 323-1-S, "SBEs"). Pursuant to CMC Section 323-11, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve the City's goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City's Department of Economic Inclusion. The Company may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. The Company shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

- (i) Including qualified SBEs on solicitation lists.
- (ii) Assuring that SBEs are solicited whenever they are potential sources.

The Company must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials, or to bid on construction contracts, as applicable.

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

(iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.

(v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.

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<sup>1</sup> Note: this section will be revised prior to execution due to programmatic changes being implemented by the Department of Community and Economic Development as a result of recent legislation passed by City Council.

(vi) The Company shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting such information as may be requested from time to time by the City.

B. Remedies for Noncompliance with Small Business Enterprise Program. Failure of the Company or its contractors and subcontractors to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Company to use its best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this Section. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

Section 12. Jobs. The Company represents that, as of the date of the execution of this Agreement, the Company has no existing employment at the Property or in the State.

Section 13. Job Creation and Retention.

A. Jobs to be Created by Company. The Company agrees to use its best efforts to create (i) 255 full-time permanent jobs, and (ii) 80 full-time temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with construction, and in the case of the other jobs described herein, the job creation period shall begin upon completion of construction and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately (i) \$6,240,000 of additional annual payroll with respect to the full-time permanent jobs, and (ii) \$2,500,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

C. Community Reinvestment Area Employment. The Company shall (i) adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati and (ii) give preference to residents of the City relative to residents of the State who do not reside in the City when hiring new employees under this Agreement.

D. Posting Available Employment Opportunities. To the extent allowable by law, the Company shall use its best efforts to post available employment opportunities within the Company's organization or the organization of any subcontractor working with the Company with the Ohio Means Jobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

Section 14. Equal Employment Opportunity. This Agreement is subject to the City's Equal Employment Opportunity Program contained in CMC Chapter 325. The Equal Employment Opportunity Clause in CMC Section 325-9 is incorporated by reference in this Agreement. The term "Company" is substituted for "Contractor" throughout CMC Section 325-9 in the context of this Agreement.

Section 15. Compliance with Immigration and Nationality Act. In the performance of its obligations under this Agreement, the Company agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2). Any noncompliance with such provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement including, without limitation, its obligation to comply with the Development Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

Section 17. Annual Review and Report. As required by Ohio Revised Code Sections 3735.671(C)(7) and 5709.85, the Company shall provide to the City's Tax Incentive Review Council (or to the City Manager if so requested by the City) any information reasonably required by the Council or the City Manager to evaluate the Company's compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Council or City Manager. The performance of the Company's obligations stated in this Agreement shall be subject to annual review by the City's Tax Incentive Review Council (the "Annual Review and Report"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

Section 18. Revocation.

A. Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under Ohio Revised Code Section 3735.67. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the Company, the housing officer may revoke the exemption at any time after the first year of exemption. If the Company has materially failed to fulfill its obligations under this Agreement, or if the owner is determined to have violated division (E) of that section (see Section 18(B) of this Agreement), City Council, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or City Council shall notify the county auditor and the Company that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (E) of Ohio Revised Code Section 3735.671, and the reason for revoking the exemption.

B. Prior Statutory Violations. The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(E) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(C)(9), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any successor to the Company or any related member (as those terms are defined in division (E) of

Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

A. Generally. As required in connection with Ohio Revised Code Section 9.66(C), the Company affirmatively covenants that it has made no false statements to the State or the City in the process of obtaining approval for this Agreement. If any representative of the Company has knowingly made a false statement to the State or the City to obtain approval for this Agreement, or if the Company fails to provide any information expressly required under the Application, the Company shall be required to immediately return all benefits received under this Agreement (by payment of the amount of taxes exempted hereunder, paid as directed by the City within thirty (30) days of written demand) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or any political subdivision of the State pursuant to Ohio Revised Code Section 9.66(C)(1). Amounts due and not paid under this Section 19 shall bear interest at the rate of twelve percent (12%) per year. Any person who provides a false statement to secure economic development assistance (as defined in Ohio Revised Code Section 9.66) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

B. Material Representations – Board of Education Agreement and VTICA. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement or VTICA Contribution shall constitute an event of default for purposes of Section 16 (*Default*) and the basis for revocation under Section 18 (*Revocation*). Subject to the terms of the VTICA, if the VTICA is unenforceable for reasons of infeasibility or otherwise, the Company shall enter into alternative arrangements providing for the economic equivalent of the VTICA Contribution. Such arrangements may include, but are not limited to, providing for the economic equivalent of the VTICA Contribution through formation of a special improvement district. For purposes of this Section 19.B, alternative arrangements must result in services substantially similar to those that would have been supported through the VTICA and at a value that is the economic equivalent of the VTICA Contribution, which value shall not be required to exceed the VTICA Contribution amount that would have been payable by the Company. Any determination of infeasibility or mechanism for providing alternative arrangements is subject to approval by the City at its sole discretion. Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project, and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

Section 21. Annual Fee. As authorized by Ohio Revised Code Section 3735.671(D), the Company shall pay an annual fee of Five Hundred Dollars (\$500) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred Dollars (\$2,500) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in

Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

Section 23. Notices. Unless otherwise specified herein, each party shall address written notices, demands and communications in connection with this Agreement to the other party as follows (or to such other address as is communicated in accordance with this Section):

To the City:

City of Cincinnati  
Attention: Director of the Department of Community and Economic Development  
Centennial Plaza Two, Suite 700  
805 Central Avenue  
Cincinnati, Ohio 45202

To the Company:

Oakley Crossings Holdings, LLC  
Attention: Christopher Hildebrant  
8600 Governors Hill Drive, Ste. 160  
Cincinnati, Ohio 45249

With copies to:

Dinsmore & Shohl LLP  
Attn: Charles E. Baverman III  
255 East Fifth Street, Suite 1900  
Cincinnati, Ohio 45202

If the Company sends a notice to the City alleging that the City is in default under this Agreement, the Company shall simultaneously send a copy of such notice to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition signage, and any publicity such as that appearing on the internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a Project partner, the Company shall use either the phrase "Project Assistance by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City.

Section 25. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the City and the Company with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto.

Section 26. Governing Law. This Agreement is entered into and is to be performed in the State. The City and the Company agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or

of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 28. Severability. This Agreement shall be severable; if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 29. Amendment. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. Non-Assignment. As required by Ohio Revised Code Section 3735.671(C)(8), this Agreement is not transferable or assignable by the Company without the express written approval of the City Manager of the City. If the Company has entered into a Board of Education Agreement or VTICA in connection with the Property, the City shall not approve the assignment of this Agreement unless the assignee has assumed the Company's remaining obligations under the Board of Education Agreement and VTICA, as applicable. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement or VTICA upon transfer of the Property during the term of the tax abatement authorized by this Agreement shall be basis for revocation of the tax exemption under Section 18.

Section 31. Recording. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. Legislative Action Required. As provided in Ohio Revised Code Section 3735.671(C)(10), the Company and the City acknowledge that this Agreement must be approved by formal action of the City Council of the City as a condition for this Agreement to take effect. Notwithstanding anything to the contrary herein, this Agreement shall take effect after the later of the date of such approval or the final date of execution of this Agreement by all parties.

Section 33. Additional Representations and Warranties of Company. The Company represents and warrants that (a) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder; (b) no notices to, or consents, authorizations or approvals of, any person are required (other than any already given or obtained) for its due execution, delivery and performance of this Agreement; and (c) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Company.

Section 34. Certification as to Non-Debarment. The Company represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, the Company shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If the Company or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, the company shall be considered in default under this Agreement.

Section 35. Appeals. Pursuant to Ohio Revised Code Section 3735.70, a person aggrieved under the Statute or this Agreement may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Section 36. 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.

Section 37. Legal Requirements. In completing and operating the Project, the Company 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.



Section 38. Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

[Remainder of this page intentionally left blank. Signature page follows.]

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

CITY OF CINCINNATI,  
an Ohio municipal corporation

OAKLEY CROSSINGS HOLDINGS, LLC,  
a Delaware limited liability company

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

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

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

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

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

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

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

Approved as to Form:

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

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

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

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

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

**Exhibit A to CRA Agreement**

LEGAL DESCRIPTION OF PROPERTY

**PARCEL ONE:**

**Property Address:** 3628-3646 Madison Road, Cincinnati, Ohio 45209, cons.  
**Auditor's Parcel No.:** 051-0002-0316-00

**2.6588 ACRES**

Situated in Section 22, Town 4, Fractional Range 2, B.T.M., City of Cincinnati, Hamilton County, Ohio being all of the tracts of land conveyed to Queen City Flats, LLC in O.R. 14538 Pg. 2293, O.R. 14470 Pg. 2448, O.R. 14536 Pg. 1102, O.R. 14536 Pg. 1069, O.R. 14536 Pg. 984, O.R. 14536 Pg. 987, O.R. 14357 Pg. 897, O.R. 14538 Pg. 1422 and O.R. 14538 Pg. 1654, the boundary of which is more particularly described as follows:

BEGINNING at the intersection of the North right of way line of Madison Road with the East right of way line of Kennedy Avenue;

Thence along said right of way line of Kennedy Avenue the following FOUR (4) courses:

1. North 25°13'33" West a distance of 105.00 feet to a 5/8" iron pin set;
2. North 64°56'58" East a distance of 24.25 feet to a 5/8" iron pin set;
3. Along a curve to the left for an arc distance of 13.06 feet to a 5/8" iron pin (P.L.S. 7181) found, said curve having a radius of 530.01 feet, a central angle of 01°24'44" and a chord which bears, North 34°01'57" West a distance of 13.06 feet;
4. Along curve to the right for an arc distance of 110.14 feet to a 5/8" iron pin set, said curve having a radius of 454.67 feet, and a central angle of 13°52'45" and a chord which bears, North 10°59' 51" West a distance of 109.87 feet;

Thence leaving said right of way through the lands of Queen City Flats for the following five (5) courses:

1. North 44°27'49" East a distance of 82.73 feet to a 5/8" iron pin set;
2. South 33°50'53" East a distance of 56.13 feet to a 5/8" iron pin set;
3. North 63°22'51" East a distance of 362.12 feet to a cross notch set;
4. South 30°35'45" East a distance of 12.63 feet to a cross notch set;
5. North 63°42'43" East a distance of 66.40 feet to a 5/8" iron pin (Rosenfeld) found in the western line of Southwest Ohio Regional Transit Authority (O.R. 6507, Pg. 257);

Thence with said common line the following two (2) courses:

1. South 41°12'33" East a distance of 118.40 feet to a 5/8" iron pin set;
2. South 41°33'33" East a distance of 117.88 feet to the centerline of Madison Avenue, passing a 5/8" iron pin set a distance of 86.59 feet at the right of way of Madison Avenue;

Thence along said centerline South 64°56'58" West a distance of 13.15 feet;

Thence leaving said centerline North 83°37'33" West a distance of 57.54 feet to a 5/8" iron pin set in the north right of way line of Madison Avenue;

Thence along said right of way South 64°56'58" West a distance of 519.93 feet to the POINT OF BEGINNING of this description.

Containing 2.6588 acres of land more or less and being subject to all easements and restrictions of record.

Bearings are based on the Ohio State Plane coordinate system, South Zone (NAD 83) per GPS Observation utilizing the Ohio Department of Transportation's virtual reference stationing.

Based on a field survey in November of 2020 performed by Cardinal Engineering Corporation under the direct supervision of Daniel K. York, P.S. Ohio Professional Surveyor Number S-8729.

**PARCEL TWO:**

**Property Address:** Madison Road, Cincinnati, Ohio 45209  
**Auditor's Parcel No.:** part of 051-0002-0139-00

Situated in Section 22, Township 4, Fractional Range 2, Columbia Township, the City of Cincinnati, Hamilton County, Ohio, being part of a tract of land conveyed to the City of Cincinnati by deed in D.B. 2152 Pg. 87 the boundary of which is more particularly described as follows:

BEGINNING at a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue, being North 25°13'33" West, 13.18 feet from the intersection of the existing east right of way line of Kennedy Avenue and the north right of way line of Madison Road;

Thence along a new division line through the grantors tract the following four (4) courses:

1. South 64°44'34" West a distance of 17.09 feet to a 5/8" iron pin set;
2. Along a curve to the right for an arc distance of 20.47 feet to a 5/8" iron pin set, said curve having a radius of 13.00 feet, a central angle of 90°11'49" and a chord which bears North 70°09'32" West a distance of 18.42 feet;
3. North 25°03'37" West a distance of 27.10 feet to a 5/8" iron pin set;
4. Along a curve to the right for an arc distance of 51.86 feet to a 5/8" iron pin set in the north line of the grantors tract, said curve having a radius of 463.94 feet, a central angle of 6°24'16" and a chord which bears North 22°41'24" West a distance of 51.83 feet;

Thence along the north line of the grantor, North 64°56'58" East a distance of 27.72 feet to a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue;

Thence along said right of way line, South 25°13'33" East a distance of 91.82 feet to the POINT OF BEGINNING;

Containing 0.0617 acres of land more or less and being subject to all easements and restrictions of record.

Bearings are based on the Ohio State Plane coordinate system, South Zone (NAD 83) per GPS Observation utilizing the Ohio Department of Transportations virtual reference stationing.

Based on a field survey in November of 2020 performed by Cardinal Engineering Corporation under the direct supervision of Daniel K. York, P.S. Ohio Professional Surveyor Number S-8729.

**Exhibit B to CRA Agreement**  
APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

February 24, 2022

**To:** Mayor and Members of City Council

**From:** John P. Curp, Interim City Manager **202200492**

**Subject: ORDINANCE – AUTHORIZING PROPERTY SALE AND DEVELOPMENT AGREEMENT WITH OAKLEY CROSSINGS HOLDINGS, LLC**

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Attached is an Ordinance captioned:

**AUTHORIZING** the City Manager to execute a *Property Sale and Development Agreement* with Oakley Crossings Holdings, LLC, an affiliate of Morelia Group, LLC, for the sale of City-owned real property located at the northeast corner of the intersection of Kennedy Avenue and Madison Road in the Oakley neighborhood of Cincinnati, for a commercial development project consisting of approximately 16,200 square feet of commercial retail space.

### **BACKGROUND/CURRENT CONDITIONS**

Oakley Crossings Holdings, LLC (the “Developer”) recently acquired approximately 2.6588 acres of property located at 3628-3646 Madison Road in the Oakley neighborhood of Cincinnati (the “Developer Property”). The City owns approximately 0.0617 acres of property directly adjacent to the Developer’s property (the “City Property”). The Developer desires to purchase the City Property for consolidation with the Developer Property to facilitate a redevelopment project.

City Council previously approved the amendment of the Energy Special Improvement District (“ESID”) boundaries to add this property to the ESID and to levy special assessments on the property.

### **DEVELOPER INFORMATION**

The Developer is affiliated with Morelia Group, LLC (“Morelia”). Morelia has experience producing high-quality developments in the Greater Cincinnati area, including within the neighborhood of Oakley.

In 2017, Morelia, through its affiliate entities, acquired from Crossroads Church an approximately five-acre site located on Madison Road in Oakley and constructed thereon the Oakley Connection and Encore of Oakley mixed-use developments that now count as occupants Starbucks, Condado Tacos, Crumbl Cookie, Great Clips, Top Nail Salon, Chicken Salad Chick, General Electric Credit Union, McAlister’s Deli, Tropical Smoothie Café, Holtman’s Donuts, Tide Dry Cleaners and All About Kids Child Care & Learning

Center. Together, these developments were an approximately \$25,000,000 investment that created approximately 300 new jobs in the City.

### **PROJECT DESCRIPTION**

The Developer plans to demolish the existing structures on the Developer Property and relocate existing sewer lines to facilitate the project. The Developer plans to consolidate the City Property with the Developer Property to create the Project Site.

The Developer plans to construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants, as well as another building intended to house three to five restaurant, coffee shop, and/or other retail tenants.

In connection with the construction of the project, the Developer intends to dedicate approximately 0.0847 acres along Madison Road as right-of-way (the "Dedication Property").

The project is expected to have an estimated total cost of \$9,100,000. The project will result in the creation of 255 full-time equivalent employees ("FTEs") with a total annual payroll of approximately \$6,240,000. The project will also result in the creation of 80 full-time temporary construction jobs with an associated annual payroll of \$2,500,000.

The proposed sale of property was approved by the City Planning Commission on December 17, 2021.

City Planning and the Developer conducted a public engagement meeting with Oakley stakeholders on December 6, 2021. A written summary of the engagement session can be found on City Planning's website.

### **PROPOSED INCENTIVE**

DCED is recommending the sale of the City-owned property (0.0617 acres) for \$1.00.

The approximate Fair Market Value ("FMV") of the City-owned property was determined by appraisal to be \$53,750.

DCED is recommending a \$1.00 sale because the City will receive economic and non-economic benefits exceeding the determined FMV in connection with the project, including:

- The benefit of the Dedication Property being dedicated for use by the general public.
- The creation of jobs and urban redevelopment of Oakley.

DCED is also recommending an 8-year, net 52% CRA tax exemption. This proposed incentive is outlined in a separate ordinance.

**PROJECT TEAM & TIMELINE**

The project team (listed below) will make themselves available at the request of the councilmember(s).

- Assistant City Manager: Billy Weber (Ext. 3318)
- DCED Director: Markiea Carter (Ext. 1953)
- Project Attorney: Samantha Brandenburg (Ext. 4704)

The anticipated council timeline is as follows:

- February 24, 2022: Introduction to City Council
- February 28, 2022: Budget and Finance (1)
- March 7, 2022: Budget and Finance (2)
- March 14, 2022: Budget and Finance (3)
- March 16, 2022: City Council for Final Approval

**RECOMMENDATION**

The Administration recommends approval of this Ordinance.

Attachment: A. Property location and site plan

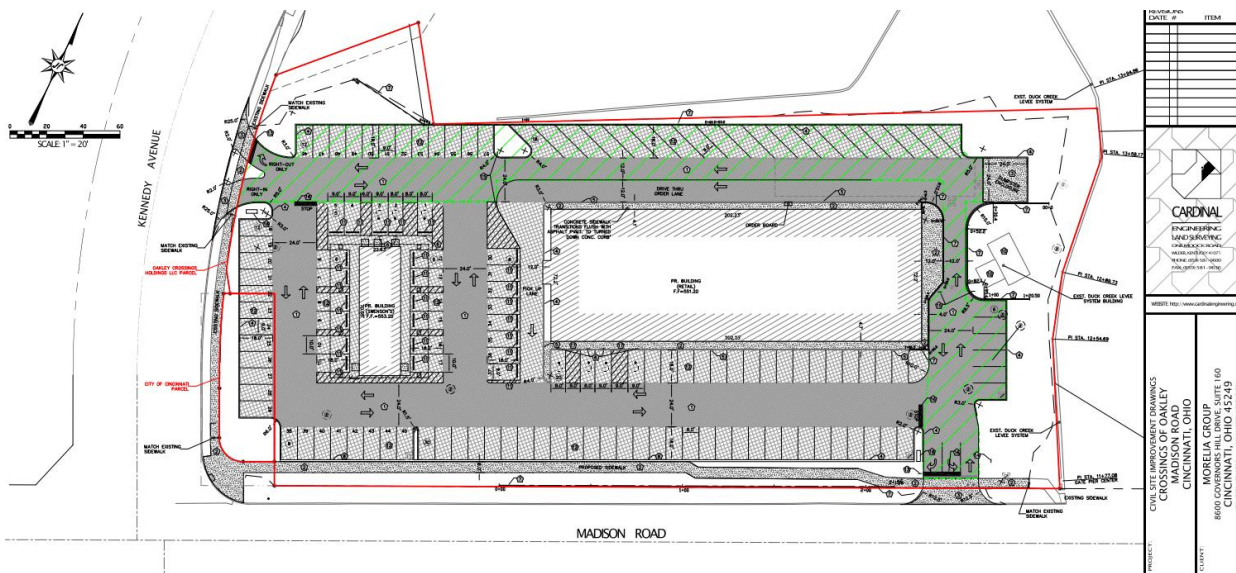
Copy: Markiea L. Carter, Director, Department of Community & Economic Development



## Attachment A: Location and Site Plan



*Property Location*



*Site Plan*

# City of Cincinnati

ZDS

*AWB*

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

- 2022

**AUTHORIZING** the City Manager to execute a *Property Sale and Development Agreement* with Oakley Crossings Holdings, LLC, an affiliate of Morelia Group, LLC, for the sale of City-owned real property located at the northeast corner of the intersection of Kennedy Avenue and Madison Road in the Oakley neighborhood of Cincinnati, for a commercial development project consisting of approximately 16,200 square feet of commercial retail space.

WHEREAS, the City owns certain real property located at the northeast corner of the intersection of Kennedy Avenue and Madison Road in Oakley, which is under the management and control of the City's Department of Transportation and Engineering (the "City Property"); and

WHEREAS, Oakley Crossings Holdings, LLC ("Developer") desires to purchase a portion of the City Property, being approximately 0.0617 acres, as more particularly described and depicted in the *Property Sale and Development Agreement* (the "Agreement") attached to this ordinance as Attachment A (the "Sale Property"), from the City to consolidate with Developer's adjoining real property (together with the Sale Property, the "Project Site"), and thereafter construct on the consolidated Project Site approximately 16,200 square feet of commercial retail space, at an estimated total project cost of approximately \$9,100,000 (the "Project"); and

WHEREAS, in connection with the construction of the Project, Developer has agreed to dedicate as public right-of-way forever property at the intersection of Kennedy Avenue and Madison Road, as more particularly described in the Agreement (the "Dedication Property"), on the terms and conditions of the Agreement; and

WHEREAS, Developer estimates that the Project will create approximately (i) 80 full-time temporary construction jobs during the construction period with an approximate annual payroll of \$2,500,000; and (ii) approximately 255 full-time permanent jobs following completion of construction of the Project with an approximate annual payroll of \$6,240,000; and

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

WHEREAS, the City's Real Estate Services Division has determined, by appraisal, that the fair market value of the Sale Property is approximately \$53,750; however, to facilitate the Project and promote its economic feasibility, the City desires to sell the Sale Property to Developer for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits that equal or exceed the fair market value of the Sale Property in connection with the Project, including (i) the creation of jobs and stimulation of economic growth in the Oakley neighborhood of Cincinnati, and (ii) the benefit of the Dedication Property being dedicated for use by the general public; and

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that to create or preserve jobs and employment opportunities and to improve the economic welfare of the people

of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution and research; and

WHEREAS, the City has determined that: (i) the Sale Property is not needed for municipal purposes; (ii) the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents; (iii) it is in the best interest of the City to eliminate competitive bidding in connection with the City's sale of the Sale Property to Developer because Developer owns the adjoining property and consolidation of the Project Site will put the Sale Property to the highest and best use; and (iv) the City's sale of the Sale Property to Developer to complete the Project will create jobs and stimulate economic growth in the Oakley neighborhood of Cincinnati, thereby contributing to the social and economic viability and stability of the neighborhood; and

WHEREAS, City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's sale of the Sale Property at its meeting on December 17, 2021; now, therefore,

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

Section 1. That the City Manager is hereby authorized to execute a *Property Sale and Development Agreement*, in substantially the form attached to this ordinance as Attachment A (the "Agreement"), pursuant to which the City will sell to Oakley Crossings Holdings, LLC ("Developer") certain real property located at the northeast corner of the intersection of Kennedy Avenue and Madison Road in the Oakley neighborhood of Cincinnati (the "Sale Property"), for Developer to (a) consolidate with adjoining property Developer owns or controls (together with the Sale Property, the "Project Site"); and (b) construct approximately 16,200 square feet of retail space at the consolidated Project Site, at an estimated total project cost of approximately \$9,100,000 (the "Project").

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

Section 3. That the fair market value of the Sale Property, as determined by appraisal by the City's Real Estate Services Division, is approximately \$53,750; however, the City is justified in selling the Sale Property to Developer for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits that equal or exceed the fair market



value of the Sale Property because (a) the Project will create jobs and stimulate economic growth in the Oakley neighborhood; and (b) Developer has agreed to dedicate as public right-of-way forever property at the intersection of Kennedy Avenue and Madison Road, including certain real property currently owned by Developer, for the benefit of the general public.

Section 4. That eliminating competitive bidding in connection with the City’s sale of the Sale Property to Developer is in the best interest of the City because Developer owns the adjoining property and consolidation and redevelopment within the Project Site will put the Sale Property to the highest and best use.

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

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

Section 7. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

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

\_\_\_\_\_  
Aftab Pureval, Mayor

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

**ATTACHMENT A**

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

**PROPERTY SALE AND DEVELOPMENT AGREEMENT**

*between the*

**CITY OF CINCINNATI**

*and*

**OAKLEY CROSSINGS HOLDINGS, LLC**

Project Name: Crossings of Oakley

(sale of City-owned real property for consolidation with real property at  
3628-3646 Madison Road and construction of  
approximately 16,200 square feet of commercial retail space)

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

## PROPERTY SALE AND DEVELOPMENT AGREEMENT

This Property Sale and Development Agreement (this "**Agreement**") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and **OAKLEY CROSSINGS HOLDINGS, LLC**, a Delaware limited liability company, the address of which is 8600 Governors Hill Drive, Suite 160, Cincinnati, Ohio 45249 (the "**Developer**"), an affiliate of Morelia Group, LLC.

### Recitals:

A. Developer owns certain real property located at 3628-3646 Madison Road, consisting of approximately 2.6588 acres of real property in the Oakley neighborhood of Cincinnati, as the same is shown on Exhibit A (*Site Plan*) hereto (the "**Developer Property**").

B. The City owns certain real property directly adjacent to the Developer Property, consisting of approximately 0.0617 acres in the Oakley neighborhood of Cincinnati, which property is more particularly described and depicted on Exhibit B-1 (*Legal Description – Sale Property*) and Exhibit B-2 (*Survey Plat – Sale Property*) hereto (the "**Sale Property**"; and collectively with the Developer Property, the "**Property**" or the "**Project Site**", as applicable), which is under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

C. Developer desires to purchase the Sale Property for consolidation with the Developer Property to facilitate the design and construction of approximately 16,200 square feet of commercial retail space, at an estimated total project cost of approximately \$9,100,000, all as more particularly described on Exhibit C (*Statement of Work, Budget, and Sources of Funds*) hereto (the "**Project**").

D. In connection with the construction of the Project, Developer intends to dedicate as public right-of-way forever property that is approximately 0.0847 acres along Madison Road, as shown on Exhibit D (*Dedication Plat*) hereto (together with the Remainder Property (as defined below), the "**Dedication Property**").

E. Developer currently anticipates that it will (i) commence on-site construction of the Project no later than the date that is 3 months after the Closing Date (as defined below) (the "**Project Commencement Date**"), and (ii) complete construction of the Project no later than the date that is 24 months after commencing on-site construction of the Project (the "**Project Completion Date**").

F. The City's Real Estate Services Division has determined, by professional appraisal, that the approximate fair market value of the Sale Property is \$53,750.

G. To facilitate the Project and promote its economic feasibility, the City is agreeable to (i) selling the Sale Property to Developer for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits exceeding such fair market value in connection with the Project, including (a) the benefit of the Dedication Property being dedicated for use by the general public, and (b) the creation of jobs and the urban redevelopment of Oakley; and (ii) cooperating to facilitate a real property tax abatement for a portion of the Project pursuant to a *Community Reinvestment Area Tax Exemption Agreement* ("**CRA Agreement**"), subject to passage by City Council of a separate ordinance authorizing such abatement.

H. 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 of Ohio, 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.

I. The City has determined that (i) in consultation with the Department of Community and Economic Development (“DCED”) and DOTE, the Sale Property is not needed for municipal purposes; and (ii) it is in the best interest of the City to eliminate competitive bidding in connection with the City’s sale of the Sale Property to Developer because the Sale Property is necessary in order for Developer to undertake the Project.

J. The City, upon the recommendation of 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.

K. The City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Sale Property at its meeting on December 17, 2021.

L. Execution of this Agreement was authorized by Ordinance No. \_\_\_\_-2022, passed by City Council on \_\_\_\_\_, 2022.

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

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

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

(A) **Conditions.** The Closing on the City’s sale of the Sale Property to Developer (the “Closing”) shall not occur unless each of the following conditions has been satisfied, including any and all other conditions as may be identified in the City’s Coordinated Reports #CR27-2021 and #81-2021, including those conditions outlined in Section 11 below (collectively, the “Conditions”); *provided, however*, that if the City, in its sole and absolute discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City’s Deed (as defined below) or handle such Conditions post-Closing. Developer shall perform all work and investigations and shall obtain and prepare all necessary documents pertaining to the satisfaction of the Conditions, at no cost to the City.

- (i) *Due Diligence Investigations:* Developer’s approval of its due diligence inspections with respect to the Sale Property, including, without limitation, title, survey, and environmental assessments of the Sale Property;
- (ii) *Scope and Budget:* Developer shall have provided to the City a detailed and updated scope and budget for the Project;
- (iii) *Sale Plats and Legal Descriptions:* The parties’ approval of all required sale plats, surveys, and new legal descriptions (including residual descriptions, if any) as needed to legally create the Sale Property on the tax maps of the Hamilton County Auditor, including, without limitation, Developer shall have filed with the Hamilton County Auditor and Recorder a City-to-City *Quitclaim Deed* and *Plat of Survey*, in substantially the form attached as Exhibit E (Form of Quitclaim Deed – Cut-Up) hereto, for the purpose of subdividing the existing Auditor’s Parcel No. 051-0002-0139-00 into the Sale Property and a new parcel along Madison Road and Kennedy Avenue (the “Remainder Property”);



- (iv) *Dedication Plat*: Developer shall have filed a Dedication Plat, approved by the City, with the Hamilton County Recorder's Office, thereby dedicating to public right-of-way forever, the Dedication Property;
- (v) *Financing*: The City's receipt of a satisfactory loan commitment or letter from Developer's lender or other documentation evidencing that Developer has secured or will be able to secure all financing or other funds necessary to complete the Project;
- (vi) *Final Budget and Construction Contract*: The City's receipt of final construction bids and a final budget for construction of the Project and an executed copy of Developer's construction contract with Developer's general contractor for the Project;
- (vii) *Permits*: Developer shall have secured all zoning and permitting approvals necessary to construct the Project;
- (viii) *Project Completion*: Based upon all information then available to the City, the City must be reasonably satisfied that the Developer has attained or will attain all approvals and awards necessary to complete the Project; has made no false or misleading claims to the City regarding the Project; and is otherwise prepared, able, and ready to complete the Project in accordance with the requirements of this Agreement;
- (ix) *Continued Compliance*: Developer shall be in compliance with all obligations under this Agreement and all representations made by Developer under this Agreement or any other document executed between Developer and the City related to the Project shall continue to be true and accurate; and
- (x) *Other Information*: Developer shall have provided such other information and documents pertaining to Developer or the Project as the City may reasonably require.

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

(C) Copies of Due Diligence Items to be Provided to City. Without limitation of Developer's other obligations under this Agreement, prior to the Closing, 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 prior to the Closing that pertain to the Project or the Sale Property, or are otherwise related to anything authorized pursuant to the terms and conditions of this Agreement.

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

(E) Closing Date. Subject to the terms and conditions of this Agreement, the Closing shall take place on approximately the date that is **3 months** following the Effective Date, or on such earlier or later date upon which the parties may mutually agree.

(F) Closing Costs and Closing Documents. At the Closing, (i) Developer shall pay the Purchase Price in full, and (ii) the City shall convey all of its right, title, and interest in and to the Sale Property to Developer by Quitclaim Deed substantially in the form of Exhibit F (Form of Quitclaim Deed – Conveyance)

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hereto (the "City's Deed"). Developer shall pay all conveyance fees, recording fees, title exam fees, title insurance premiums, settlement fees, and any and all other closing costs associated with the Closing, such that the City shall not be required to come up with any funds for the Closing. There shall be no proration of real estate taxes and assessments at the Closing, and from and after the Closing, Developer and its successors-in-title shall pay all real estate taxes and assessments thereafter becoming due on the Sale Property. At the Closing, the parties shall execute a closing statement and any and all other customary closing documents that are necessary for the Closing (except that the City shall not be required to execute a title affidavit or the like). Pursuant to Section 301-20 of the Cincinnati Municipal Code, at the Closing, Developer shall pay to the City any and all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed to the City by Developer or any of its affiliated entities. The provisions of this Agreement shall survive the City's execution and delivery of the City's Deed and shall not be deemed to have been merged therein.

(G) Maintenance of Sale Property Between Closing and Prior to Construction. Between the Closing and Developer's commencement of on-site construction on the Sale Property, Developer, at no expense to the City, shall maintain the Sale Property in presentable condition, including keeping the site reasonably free of debris and other unsightly materials.

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

### 3. Construction Commencement and Completion; Reconveyance of Property to City upon Failure to Timely Commence and/or Complete Construction.

(A) Construction Commencement & Completion. Following the Closing, Developer shall (i) (a) apply for and receive the required building permits from the City's Department of Buildings and Inspections ("**B&I**") for construction of the Project, and (b) commence on-site construction of the Project in accordance with the City-approved plans (collectively, "**Construction Commencement**") no later than the Project Commencement Date; and (ii) complete construction of the Project (as evidenced by a certificate of occupancy for the Project) in accordance with the City-approved plans and specifications and all other City approvals ("**Construction Completion**") no later than the Project Completion Date; *provided however*, the Project Completion Date may be extended by the Director of DCED for a period of up to 12 months upon written approval of such extension if, in the Director's judgment, Developer is proceeding in good faith towards completion of the Project.

(B) Repurchase Option for Failure to Timely Commence Construction. As memorialized in the City's Deed, if Construction Commencement has not occurred on or before the Project Commencement Date, then, at any time thereafter, the City shall have the option to repurchase the Sale Property for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the "**First Repurchase Option**"), exercisable by giving written notice thereof to Developer at any time after the Project Commencement Date, but prior to the date of Construction Commencement. At such time as the City no longer has the right of the First Repurchase Option and after written request by Developer, the City shall execute and deliver to Developer a recordable release of the First Repurchase Option.

(C) Repurchase Option for Failure to Timely Complete Construction. As memorialized in the City's Deed, if Construction Completion has not occurred on or before the Project Completion Date, then, at any time thereafter, the City shall have the option to repurchase the Sale Property for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the "**Second Repurchase Option**"), exercisable by giving written notice thereof to Developer at any time after the Project Completion Date, but prior to the date of Construction Completion. At such time as the City no longer has the right of the Second Repurchase Option and after written request by Developer, the City shall execute and deliver to Developer a recordable release of the Second Repurchase Option.

(D) Repurchase Option Closing. If the City elects to exercise either the First or the Second Repurchase Option, the reconveyance of the Sale Property to the City pursuant to such Repurchase Option shall take place on the date specified in the City's notice of election. On the date of such reconveyance: (i) Developer shall reconvey marketable title to the Sale Property (including any and all improvements located thereon) to the City or its designee in the same condition as presently exists, reasonable wear and tear and damage by the elements excepted (and under no circumstances shall the City be required to pay for the value of any improvements made by Developer to the Sale Property); (ii) Developer shall pay all customary closing costs associated with such reconveyance (e.g., conveyance fees, transfer tax, recording fees) such that the City shall not be required to come up with any funds at the closing for such re-conveyance; and (iii) real estate taxes and assessments shall be prorated as of the date of the reconveyance. The provisions of paragraphs (B)-(D) hereof shall be reflected in the City's Deed.

(E) Plans and Specifications. Developer shall submit its final plans and specifications for the Project to DCED and receive approval of the same from DCED. Following the City's approval, Developer shall design and construct the Project in accordance with those City-approved plans and specifications that are consistent with Exhibit C. Once the City has approved Developer's plans and specifications, Developer shall not make any material changes thereto without the City's prior written consent.

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

(G) 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's Performance list.

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

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

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

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

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

#### **4. Insurance; Indemnity.**

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

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

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

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

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

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

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

7. **Notices.** All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by UPS, Federal Express or other recognized courier service, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their

addresses below or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City:

City of Cincinnati  
Dept of Community & Economic Development  
805 Central Avenue, Suite 700  
Cincinnati, Ohio 45202

To Developer:

Oakley Crossings Holdings, LLC  
Attn: Christopher Hildebrandt  
8600 Governors Hill Drive, Suite 160  
Cincinnati, Ohio 45249

With copies to:

Dinsmore & Shohl LLP  
Attn: Charles E. Baverman III  
255 East Fifth Street, Suite 1900  
Cincinnati, Ohio 45202

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

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

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

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

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

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

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

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

(G) With reference to Section 301-20 of the Cincinnati Municipal Code, neither Developer nor its affiliates owe any outstanding fines, penalties, judgments, water, or other utility charges or 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 requested by the City pertaining to Developer, the Project, or this Agreement, including, without limitation, financial statements, bank statements, income tax returns, information pertinent to the determination of finances of the Project, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (collectively, "**Records and Reports**"). All Records and Reports compiled by Developer and furnished to the City shall be in such form as the City may from time to time require. Developer shall retain all Records and Reports for a period of 3 years after the completion of the Project.

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

## **10. General Provisions.**

(A) **Assignment.** Developer shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which may be withheld in the City's sole and absolute discretion, and any attempt to do so without the City's consent shall, at the City's option, render this Agreement null and void.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**11. Coordinated Report Conditions**. Developer shall abide by the additional conditions identified in Coordinated Report #27-2021 and Coordinated Report #81-2021, including, without limitation, the following:

(A) DOTÉ. A street opening permit, obtained by a DOTÉ licensed street contractor, is required for all private improvements in the public right of way. All improvements in the public right of way must be built to City standards, policies, and guidelines. Application for permits may be made at Room 425, City Hall, 801 Plum Street. Two sets of plan drawings must be attached to the permit application for review by DOTÉ.

(B) Greater Cincinnati Water Works. There are active water service lines located in the Dedication Property. Developer shall disconnect any existing water service branches not to be used for the Project, at the Developer's expense. Developer shall fill out the online Discontinuance Form (FOD) at <https://www.cincinnati-oh.gov/water/engineering-construction/forms-specifications/fod/> authorizing removal of any existing water service branches before any new water service can be sold. Developer shall work with Greater Cincinnati Water Works to determine a plan to address a fire hydrant and service branches within the area of the Dedication Property.

(C) Metropolitan Sewer District of Greater Cincinnati ("MSDGC").

(i) The Sale Property shall be subject to a 20-foot-wide minimum permanent sewer easement that provides access, operations, and maintain of the existing combined/sanitary sewers and {00356362-12}



manholes, which easement will be reserved in the City's Deed. Note that an additional 3 feet on either side of said 20-foot-wide minimum permanent sewer easement is required pursuant to the MSDGC Rules and Regulations Sections 207. No structure shall interfere with the access to said public sewer nor shall any structure exert loading upon a public sewer per Section 206 of the MSDGC Rules and Regulations. A change in existing topography or proposed site plan submittal may necessitate a revision to the minimum width requirement.

(ii) An Excavation and Fill permit approval and/or bond from the MSDGC may be necessary for any construction, construction traffic, earthwork, or other construction activity related to the Project. Additional MSDGC requirements may be established by the permit (such as verification and usage of existing or abandoned building services to the combined sewer through dye testing, pre- and post-construction CCTV-ing, etc.) depending on the final Project plan-s and specifications. Information will be needed from the Project to ensure no new loads are exerted on public sewers.

(iii) Developer shall coordinate with MSDGC to relocate the existing public sewers and an existing combined sewer overflow structure located near Duck Creek located within the Project Site, which relocation or other method of addressing such existing infrastructure shall be to the satisfaction of MSDGC.

(D) Cincinnati Bell. Cincinnati Bell has existing underground telephone facilities that must remain in place, in service, and accessible. Any damage done to the facilities, or any work done to relocate the facilities as a result of the Project, shall be handled entirely at Developer's expense.

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

Exhibit A – *Site Plan*

Exhibit B-1 – *Legal Description – Sale Property*

Exhibit B-2 – *Survey Plat – Sale Property*

Exhibit C – *Statement of Work, Budget, and Sources of Funds*

Exhibit D – *Dedication Plat*

Exhibit E – *Form of Quitclaim Deed – Cut-Up*

Exhibit F – *Form of Quitclaim Deed – Conveyance*

Exhibit G – *Additional Requirements*

**[signature pages follow]**

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

**OAKLEY CROSSINGS HOLDINGS, LLC,**

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

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

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

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

**[City signatures on the following page]**

**CITY OF CINCINNATI**

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

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

Approved as to Form:

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

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

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

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

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

Exhibit A  
to Property Sale and Development Agreement

*Site Plan*

TO BE ATTACHED

Exhibit B-1  
to Property Sale and Development Agreement

*Legal Description – Sale Property*

Situated in Section 22, Township 4, Fractional Range 2, Columbia Township, the City of Cincinnati, Hamilton County, Ohio, being part of a tract of land conveyed to the City of Cincinnati by deed in D.B. 2152 Pg. 87 the boundary of which is more particularly described as follows:

BEGINNING at a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue, being North 25°13'33" West, 13.18 feet from the intersection of the existing east right of way line of Kennedy Avenue and the north right of way line of Madison Road;

Thence along a new division line through the grantors tract the following four (4) courses:

1. South 64°44'34" West a distance of 17.09 feet to a 5/8" iron pin set;
2. Along a curve to the right for an arc distance of 20.47 feet to a 5/8" iron pin set, said curve having a radius of 13.00 feet, a central angle of 90°11'49" and a chord which bears North 70°09'32" West a distance of 18.42 feet;
3. North 25°03'37" West a distance of 27.10 feet to a 5/8" iron pin set;
4. Along a curve to the right for an arc distance of 51.86 feet to a 5/8" iron pin set in the north line of the grantors tract, said curve having a radius of 463.94 feet, a central angle of 6°24'16" and a chord which bears North 22°41'24" West a distance of 51.83 feet;

Thence along the north line of the grantor, North 64°56'58" East a distance of 27.72 feet to a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue;

Thence along said right of way line, South 25°13'33" East a distance of 91.82 feet to the POINT OF BEGINNING;

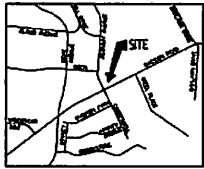
Containing 0.0617 acres of land more or less and being subject to all easements and restrictions of record.

Bearings are based on the Ohio State Plane coordinate system, South Zone (NAD 83) per GPS Observation utilizing the Ohio Department of Transportation's virtual reference stationing.

Based on a field survey in November of 2020 performed by Cardinal Engineering Corporation under the direct supervision of Daniel K. York, P.S. Ohio Professional Surveyor Number S-8729.

Exhibit B-2  
to Property Sale and Development Agreement  
*Survey Plat – Sale Property*

SEE ATTACHED



VICINITY MAP  
NTS

DATE	BY	REVISION
11/13/2020	D.K. YORK	1. IN 84-58-58 E 5/8"

CHORD	BEARING	LENGTH	CHORD BEARING	CHORD LENGTH
C1	N 89°14'31" W	130.47	N 70°28'23" W	124.17
C2	S 84°44'31" W	111.84	N 25°53'32" W	107.85
C3	S 84°44'31" W	111.84	N 25°53'32" W	107.85

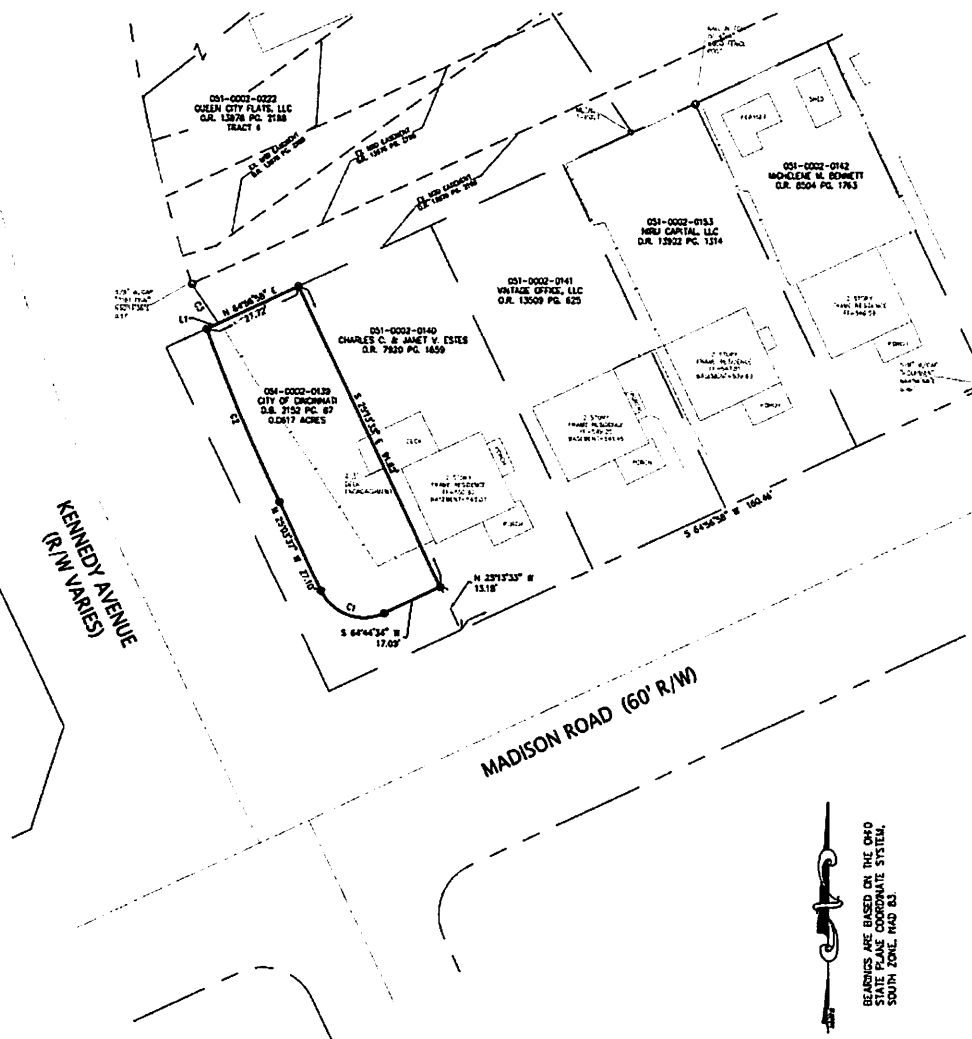
CLOSURE

Pm 1/ Bearing Distance Northings Eastings  
 D1 5 64°44'31" W 17.09 428244.1062 1424062.0833  
 LOTION 428236.8147 1424576.6283  
 Radius: 13.00 Length: 20.47 Chord: 18.43 Date: 9/17/14"  
 Chord Brg: N 70°28'23" W Rad-In: N 25°15'26" W Rad-Out: N 64°58'23" E  
 Radius Pt: LOT107 428248.0718 1424671.0833 Tangent: 13.04 Dk: Right  
 Tangent-In: S 84°44'31" W Tangent-Out: N 25°53'32" W Tangent-In-Tangent-Out  
 LOTION N 25°53'32" W 27.30 428243.0055 1424558.3053  
 20.005  
 Radius: 483.04 Length: 57.86 Chord: 31.83 Date: 4/24/16"  
 Chord Brg: N 22°41'24" W Rad-In: N 84°36'28" E Rad-Out: N 70°28'43" E  
 Radius Pt: LOT109 428270.0371 1424865.1841 Tangent: 23.98 Dk: Right  
 Tangent-In: N 25°53'32" W Tangent-Out: N 19°29'17" W Non-Tangent-In Non-Tangent-Out  
 LOTION N 64°58'58" E 27.72 428270.4335 1424827.8335  
 R211 5 25°53'32" E 81.82 428271.1725 1424852.8494  
 D1 5 25°53'32" E 81.82 428244.1062 1424062.0833  
 Closure Precision: 1 in 24196.9  
 Area: 0.0617 ACRES

I DANIEL K. YORK, A REGISTERED LAND SURVEYOR IN THE STATE OF OHIO, DO HEREBY CERTIFY THAT THE SURVEY SHOWN HEREON WAS PERFORMED BY CARDINAL ENGINEERING CORPORATION UNDER MY DIRECT SUPERVISION IN ACCORD WITH DAC 4733-37, AND THAT THE MONUMENTS SHOWN HEREON WERE FOUND OR SET AS NOTED.

DANIEL K. YORK 5-8729 DATE

- - 5/8" IRON PIV SET WITH ID CAP STAMPED "DKY #8729"
- - MONUMENT FOUND (SIZE AND TYPE AS NOTED)
- x - CROSS NOTCH FOUND



- NOTES:
- ALL MONUMENTS FOUND IN GOOD CONDITION.
  - SOURCE DOCUMENTS ARE AS NOTED.
  - EVIDENCE OF OCCUPATION IS AS SHOWN.
  - TOPOGRAPHIC SURVEY INFORMATION SHOWN IS BASED ON A FIELD SURVEY BY CARDINAL ENGINEERING IN OCTOBER OF 2020.



REVISIONS	DATE	BY	ITEM



**CARDINAL**  
ENGINEERING  
LAND SURVEYING  
ONE SMOOK HOLLOW  
P.O. BOX 100  
P.O. BOX 100  
P.O. BOX 100

NOTICE: See www.cardinalsurveying.com

**SURVEY PLAT**  
0.0617 ACRES  
SECTION 22, TOWN 4 N, RANGE 10 E, S. 1/4, CITY OF CINCINNATI, HAMILTON COUNTY, OHIO  
CLIENT:  
MORELIA GROUP  
8600 GOVERNORE HILL DRIVE  
CINCINNATI, OHIO 45249

PROJECT	SCALE
MR1	1" = 20'
CHECKED	DATE
DATE	11/13/2020
PROJECT NO.	20-153
SCALE	1" = 20'
DATE	11/13/2020
SURVEY PLAT	
SHEET	1 OF 1

100356362-12

Exhibit C  
to Property Sale and Development Agreement  
*Statement of Work, Budget, and Sources of Funds*

I. Statement of Work

Developer will demolish the existing structures on the Property and relocate existing sewer lines to facilitate the Project. Developer will consolidate the Sale Property with the Developer Property to create the Project Site.

Developer will construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants; and another building intended to house three to five restaurant, coffee shop, and/or other retail tenants.

II. Budget

Acquisition	\$4,320,000.00
Site Work	\$1,430,000.00
Retail Shell	\$2,002,000.00
Retail Tenant Improvements	\$291,200.00
Soft Costs	\$295,566.49
Commissions	\$409,200.00
Builder & Development Fee	\$85,000.00
Interest Reserve	\$233,311.64
Contingency	\$26,638.36
<b>TOTAL PROJECT COSTS</b>	<b>\$9,092,916.49</b>

III. Sources of Funds

Debt	\$6,353,282.00
Pace Financing	\$1,771,846.00
Owner Equity	\$967,788.49
<b>TOTAL</b>	<b>\$9,092,916.49</b>



Exhibit D  
to Property Sale and Development Agreement

*Dedication Plat*

TO BE ATTACHED

Exhibit E  
to Property Sale and Development Agreement

*Form of Quitclaim Deed – Cut-Up*

TO BE ATTACHED

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[SPACE ABOVE FOR RECORDER'S USE ONLY]

Property: \_\_\_\_\_ acre parcel along Madison Road  
(cut-up to create \_\_\_\_\_ acre parcel (Parcel "A")  
and 0.0617 acre parcel (Parcel "B"))

**QUITCLAIM DEED**  
(Cut-up)

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "City"), hereby grants and conveys to the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202, all of the City's right, title, and interest in and to the real property depicted on Exhibit A (Plat of Survey) and described on Exhibit B (Legal Description – Parcel "A") and Exhibit C (Legal Description – Parcel "B") hereto.

Property Address: cut-up of \_\_\_\_\_ acre parcel

Auditor's parcel #: 051-0002-0139-00

*This Deed is executed and recorded in connection with the cut-up of a \_\_\_\_\_ acre parcel of land into two parcels containing \_\_\_\_\_ acres (Parcel "A") and 0.0617 acres (Parcel "B").*

This conveyance is permitted under Ohio Revised Code Section 5302.18, which provides that a grantor under a deed may also be a grantee.

The City's execution of this instrument was authorized by Ordinance No. \_\_\_\_-2022, passed by Cincinnati City Council on \_\_\_\_\_, 2022.

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

[Signature Page Follows]

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

**CITY OF CINCINNATI**

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

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

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

STATE OF OHIO            )  
                                  ) SS:  
COUNTY OF HAMILTON )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

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

Approved as to Form:

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

This instrument prepared by:

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

- Exhibits:  
Exhibit A – *Plat of Survey*  
Exhibit B – *Legal Description – Parcel "A"*  
Exhibit C – *Legal Description – Parcel "B"*

Exhibit A  
to Quitclaim Deed – Cut-Up

*Plat of Survey*

cut-up of \_\_\_\_\_ acre parcel to create  
\_\_\_\_\_ acre parcel (Parcel "A") & 0.0617 acre parcel ("Parcel "B")

TO BE ATTACHED TO EXECUTION VERSION

Exhibit B  
to Quitclaim Deed – Cut-Up  
*Legal Description – Parcel "A"*

TO BE ATTACHED TO EXECUTION VERSION

Exhibit C  
to Quitclaim Deed – Cut-Up  
*Legal Description – Parcel “B”*

TO BE ATTACHED TO EXECUTION VERSION

Exhibit F  
to Property Sale and Development Agreement  
*Form of Quitclaim Deed – Conveyance*

SEE ATTACHED



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

**QUITCLAIM DEED**

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), having an address of 801 Plum Street, Cincinnati, Ohio 45202, for valuable consideration paid, hereby grants and conveys to **OAKLEY CROSSINGS HOLDINGS, LLC**, a Delaware limited liability company, the address of which is 8600 Governors Hill Drive, Suite 160, Cincinnati, Ohio 45249 ("**Grantee**"), all of the City's right, title, and interest in and to the real property described on Exhibit A (*Legal Description*) hereto (the "**Property**").

Property Address: 0.0617 acre parcel of land east of Kennedy Avenue

Auditor's Parcel No(s): \_\_\_\_\_

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

(A) Permanent Sewer Easement in Favor of the City of Cincinnati. The City hereby reserves and creates a permanent utility easement over a 20-foot wide area of the Property as more particularly described on Exhibit B (*Legal Description – Sewer Easement*) hereto, and depicted on Exhibit C (*Easement Plat – Sewer Easement*) hereto (the "**Easement Area**"), for the operation, maintenance, repair, reconstruction, removal, or replacement of existing sanitary sewer lines, facilities, equipment, and all appurtenances located within the Easement Area, including the right to enter upon and re-enter upon the Property to access the Easement Area.

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

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

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

**[ subject to possible creation of utility easements in favor of Cincinnati Bell and/or Duke Energy for their existing facilities if no existing easements are in place ]**

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

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

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

*[Signature Page Follows]*

Executed on \_\_\_\_\_, 20\_\_.

**CITY OF CINCINNATI**

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

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

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

STATE OF OHIO            )  
                                  ) SS:  
COUNTY OF HAMILTON )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

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

Approved as to Form:

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

This instrument prepared by:

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

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

Exhibit A  
to Quitclaim Deed – Conveyance

*Legal Description – Property*

TO BE ATTACHED TO EXECUTION VERSION

Exhibit B  
to Quitclaim Deed – Conveyance

*Legal Description – Sewer Easement*

TO BE ATTACHED TO EXECUTION VERSION

Exhibit C  
to Quitclaim Deed – Conveyance  
*Easement Plat – Sewer Easement*

TO BE ATTACHED TO EXECUTION VERSION

Exhibit G  
to Property Sale and Development Agreement

*Additional Requirements*

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

This Exhibit serves two functions:

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

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

(A) Construction Workforce.

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

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

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

{00356362-12}

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" {00356362-12}



as "all written agreements of the City of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>1</sup> Note: this section will be revised prior to execution due to programmatic changes being implemented by the Department of Community and Economic Development as a result of recent legislation passed by City Council. {00356362-12}

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

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

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

(G) Equal Employment Opportunity.

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

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

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

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

(J) Prompt Payment. The provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System", may apply to this Agreement. Municipal Code Chapter 319 also (i) provides certain requirements for invoices from contractors with respect to the Prompt Payment System, {00356362-12}

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.

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(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 {00356362-12}



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

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

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

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

**REQUEST FOR PROJECT WAGE DETERMINATION**

**DATE RECEIVED:** 2/11/22

**ORIGINAL ASSIGNED NUMBER:** 2022-034

**DEI USE ONLY**

Fillout and Circle all that Apply Below:

**FUNDING GUIDELINES:**  
(State or Federal)

**RATES THAT APPLY:**  
(Building, Heavy, Highway, Residential)

[Prevailing Wages Do Not Apply]

**DECISION NUMBER:** n/a

**MODIFICATIONS:** n/a

**DECISION DATE:** n/a

**EXPIRATION DATE:** n/a

**SUPERSEDES DECISION NUMBER:**

**DETERMINATION BY:**

Name: Lydgia Sartor

Title: Development Manager

Date: 2/11/22

**APPROVED BY:**

Edgar De Veyra, Interim Director  
DIRECTOR, DEPARTMENT OF ECONOMIC  
INCLUSION

**COMMENTS:**

As described the project does not involve any direct public funding and, as such, is exempt from prevailing wage.

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

Note: Any change in scope or funding or failure of the project to commence within 90 days of this determination will require resubmission of this determination.

**REQUESTING AGENCY OR DEPT:**  
DCED

**CONTACT PERSON AND PHONE NUMBER:**

Taylor German x4546

**Requested Date:** 02/11/2022  
**Estimated Advertising Date:** 05/01/2022  
**Estimated Bid Opening Date:** 05/01/2022  
**Estimated Starting Date:** 06/01/2022

**SOURCE AND FUND NUMBER**

<b>CITY</b>	<b>FUND</b>
<b>STATE</b>	<b>FUND</b>
<b>COUNTY</b>	<b>FUND</b>
<b>FEDERAL</b>	<b>FUND</b>

**PROJECT ACCOUNT NUMBER:**

**AMT. OF PUB. FUNDING \$:** 0

**TOTAL PROJECT DOLLARS:** 9,092,916.49

**NAME OF PROJECT**

Crossings of Oakley

**TYPE OF WORK**

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

**PROJECT LOCATION**

Project Location: 2628-2646 Madison Road 2, single-story commercial/retail buildings will be newly constructed.

**PROJECT FUNDING SOURCE**

Below Fair Market Value sale of City-owned property. City will sell property with FMV of \$53,750 for \$1, in exchange for Developer dedicating a portion of their property with a FMV of \$73,750 as right-of-way at no cost to the City. Project also involves a Commercial Tax Abatement.

**PROJECT SCOPE OF WORK AND BUDGET**

Developer will demolish the existing structures on the Property and relocate existing sewer lines to facilitate the Project. Developer will consolidate the Sale Property with the Developer Property to create the Project Site. Developer will construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants; and another building intended to house three to five restaurant, coffee shop, and/or other retail tenants. Acquisition: \$4,320,000.00 Site Work: \$1,430,000.00 Retail Shell: \$2,002,000.00 Retail Tenant Improvements: \$291,200.00 Soft Costs: \$295,566.49 Commissions: \$409,200.00 Builder & Development Fee: \$85,000.00 Interest Reserve: \$233,311.64 Contingency: \$26,638.36 TOTAL PROJECT COSTS: \$9,092,916.49

DEI 217 Form  
REV: 6/12/2017



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

**PROPERTY SALE AND DEVELOPMENT AGREEMENT**

*between the*

**CITY OF CINCINNATI**

*and*

**OAKLEY CROSSINGS HOLDINGS, LLC**

Project Name: Crossings of Oakley

(sale of City-owned real property for consolidation with real property at  
3628-3646 Madison Road and construction of  
approximately 16,200 square feet of commercial retail space)

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

## PROPERTY SALE AND DEVELOPMENT AGREEMENT

This Property Sale and Development Agreement (this “**Agreement**”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”), and **OAKLEY CROSSINGS HOLDINGS, LLC**, a Delaware limited liability company, the address of which is 8600 Governors Hill Drive, Suite 160, Cincinnati, Ohio 45249 (the “**Developer**”), an affiliate of Morelia Group, LLC.

### Recitals:

A. Developer owns certain real property located at 3628-3646 Madison Road, consisting of approximately 2.6588 acres of real property in the Oakley neighborhood of Cincinnati, as the same is shown on Exhibit A (Site Plan) hereto (the “**Developer Property**”).

B. The City owns certain real property directly adjacent to the Developer Property, consisting of approximately 0.0617 acres in the Oakley neighborhood of Cincinnati, which property is more particularly described and depicted on Exhibit B-1 (Legal Description – Sale Property) and Exhibit B-2 (Survey Plat – Sale Property) hereto (the “**Sale Property**”; and collectively with the Developer Property, the “**Property**” or the “**Project Site**”, as applicable), which is under the management and control of the City’s Department of Transportation and Engineering (“**DOT**”).

C. Developer desires to purchase the Sale Property for consolidation with the Developer Property to facilitate the design and construction of approximately 16,200 square feet of commercial retail space, at an estimated total project cost of approximately \$9,100,000, all as more particularly described on Exhibit C (Statement of Work, Budget, and Sources of Funds) hereto (the “**Project**”).

D. In connection with the construction of the Project, Developer intends to dedicate as public right-of-way forever property that is approximately 0.0847 acres along Madison Road, as shown on Exhibit D (Dedication Plat) hereto (together with the Remainder Property (as defined below), the “**Dedication Property**”).

E. Developer currently anticipates that it will (i) commence on-site construction of the Project no later than the date that is 3 months after the Closing Date (as defined below) (the “**Project Commencement Date**”), and (ii) complete construction of the Project no later than the date that is 24 months after commencing on-site construction of the Project (the “**Project Completion Date**”).

F. The City’s Real Estate Services Division has determined, by professional appraisal, that the approximate fair market value of the Sale Property is \$53,750.

G. To facilitate the Project and promote its economic feasibility, the City is agreeable to (i) selling the Sale Property to Developer for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits exceeding such fair market value in connection with the Project, including (a) the benefit of the Dedication Property being dedicated for use by the general public, and (b) the creation of jobs and the urban redevelopment of Oakley; and (ii) cooperating to facilitate a real property tax abatement for a portion of the Project pursuant to a *Community Reinvestment Area Tax Exemption Agreement* (“**CRA Agreement**”), subject to passage by City Council of a separate ordinance authorizing such abatement.

H. 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 of Ohio, 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.

I. The City has determined that (i) in consultation with the Department of Community and Economic Development (“**DCED**”) and DOTE, the Sale Property is not needed for municipal purposes; and (ii) it is in the best interest of the City to eliminate competitive bidding in connection with the City’s sale of the Sale Property to Developer because the Sale Property is necessary in order for Developer to undertake the Project.

J. The City, upon the recommendation of 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.

K. The City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Sale Property at its meeting on December 17, 2021.

L. Execution of this Agreement was authorized by Ordinance No. \_\_\_\_-2022, passed by City Council on \_\_\_\_\_, 2022.

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

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

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

(A) **Conditions.** The Closing on the City’s sale of the Sale Property to Developer (the “**Closing**”) shall not occur unless each of the following conditions has been satisfied, including any and all other conditions as may be identified in the City’s Coordinated Reports #CR27-2021 and #81-2021, including those conditions outlined in Section 11 below (collectively, the “**Conditions**”); *provided, however*, that if the City, in its sole and absolute discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City’s Deed (as defined below) or handle such Conditions post-Closing. Developer shall perform all work and investigations and shall obtain and prepare all necessary documents pertaining to the satisfaction of the Conditions, at no cost to the City.

- (i) *Due Diligence Investigations:* Developer’s approval of its due diligence inspections with respect to the Sale Property, including, without limitation, title, survey, and environmental assessments of the Sale Property;
- (ii) *Scope and Budget:* Developer shall have provided to the City a detailed and updated scope and budget for the Project;
- (iii) *Sale Plats and Legal Descriptions:* The parties’ approval of all required sale plats, surveys, and new legal descriptions (including residual descriptions, if any) as needed to legally create the Sale Property on the tax maps of the Hamilton County Auditor, including, without limitation, Developer shall have filed with the Hamilton County Auditor and Recorder a City-to-City *Quitclaim Deed* and *Plat of Survey*, in substantially the form attached as Exhibit E (*Form of Quitclaim Deed – Cut-Up*) hereto, for the purpose of subdividing the existing Auditor’s Parcel No. 051-0002-0139-00 into the Sale Property and a new parcel along Madison Road and Kennedy Avenue (the “**Remainder Property**”);

- (iv) *Dedication Plat*: Developer shall have filed a Dedication Plat, approved by the City, with the Hamilton County Recorder's Office, thereby dedicating to public right-of-way forever, the Dedication Property;
- (v) *Financing*: The City's receipt of a satisfactory loan commitment or letter from Developer's lender or other documentation evidencing that Developer has secured or will be able to secure all financing or other funds necessary to complete the Project;
- (vi) *Final Budget and Construction Contract*: The City's receipt of final construction bids and a final budget for construction of the Project and an executed copy of Developer's construction contract with Developer's general contractor for the Project;
- (vii) *Permits*: Developer shall have secured all zoning and permitting approvals necessary to construct the Project;
- (viii) *Project Completion*: Based upon all information then available to the City, the City must be reasonably satisfied that the Developer has attained or will attain all approvals and awards necessary to complete the Project; has made no false or misleading claims to the City regarding the Project; and is otherwise prepared, able, and ready to complete the Project in accordance with the requirements of this Agreement;
- (ix) *Continued Compliance*: Developer shall be in compliance with all obligations under this Agreement and all representations made by Developer under this Agreement or any other document executed between Developer and the City related to the Project shall continue to be true and accurate; and
- (x) *Other Information*: Developer shall have provided such other information and documents pertaining to Developer or the Project as the City may reasonably require.

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

(C) Copies of Due Diligence Items to be Provided to City. Without limitation of Developer's other obligations under this Agreement, prior to the Closing, 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 prior to the Closing that pertain to the Project or the Sale Property, or are otherwise related to anything authorized pursuant to the terms and conditions of this Agreement.

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

(E) Closing Date. Subject to the terms and conditions of this Agreement, the Closing shall take place on approximately the date that is **3 months** following the Effective Date, or on such earlier or later date upon which the parties may mutually agree.

(F) Closing Costs and Closing Documents. At the Closing, (i) Developer shall pay the Purchase Price in full, and (ii) the City shall convey all of its right, title, and interest in and to the Sale Property to Developer by Quitclaim Deed substantially in the form of Exhibit F (Form of Quitclaim Deed – Conveyance)

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hereto (the “**City’s Deed**”). Developer shall pay all conveyance fees, recording fees, title exam fees, title insurance premiums, settlement fees, and any and all other closing costs associated with the Closing, such that the City shall not be required to come up with any funds for the Closing. There shall be no proration of real estate taxes and assessments at the Closing, and from and after the Closing, Developer and its successors-in-title shall pay all real estate taxes and assessments thereafter becoming due on the Sale Property. At the Closing, the parties shall execute a closing statement and any and all other customary closing documents that are necessary for the Closing (except that the City shall not be required to execute a title affidavit or the like). Pursuant to Section 301-20 of the Cincinnati Municipal Code, at the Closing, Developer shall pay to the City any and all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed to the City by Developer or any of its affiliated entities. The provisions of this Agreement shall survive the City’s execution and delivery of the City’s Deed and shall not be deemed to have been merged therein.

(G) Maintenance of Sale Property Between Closing and Prior to Construction. Between the Closing and Developer’s commencement of on-site construction on the Sale Property, Developer, at no expense to the City, shall maintain the Sale Property in presentable condition, including keeping the site reasonably free of debris and other unsightly materials.

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

### **3. Construction Commencement and Completion; Reconveyance of Property to City upon Failure to Timely Commence and/or Complete Construction.**

(A) Construction Commencement & Completion. Following the Closing, Developer shall (i) (a) apply for and receive the required building permits from the City’s Department of Buildings and Inspections (“**B&I**”) for construction of the Project, and (b) commence on-site construction of the Project in accordance with the City-approved plans (collectively, “**Construction Commencement**”) no later than the Project Commencement Date; and (ii) complete construction of the Project (as evidenced by a certificate of occupancy for the Project) in accordance with the City-approved plans and specifications and all other City approvals (“**Construction Completion**”) no later than the Project Completion Date; *provided however*, the Project Completion Date may be extended by the Director of DCED for a period of up to 12 months upon written approval of such extension if, in the Director’s judgment, Developer is proceeding in good faith towards completion of the Project.

(B) Repurchase Option for Failure to Timely Commence Construction. As memorialized in the City’s Deed, if Construction Commencement has not occurred on or before the Project Commencement Date, then, at any time thereafter, the City shall have the option to repurchase the Sale Property for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the “**First Repurchase Option**”), exercisable by giving written notice thereof to Developer at any time after the Project Commencement Date, but prior to the date of Construction Commencement. At such time as the City no longer has the right of the First Repurchase Option and after written request by Developer, the City shall execute and deliver to Developer a recordable release of the First Repurchase Option.

(C) Repurchase Option for Failure to Timely Complete Construction. As memorialized in the City's Deed, if Construction Completion has not occurred on or before the Project Completion Date, then, at any time thereafter, the City shall have the option to repurchase the Sale Property for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the "**Second Repurchase Option**"), exercisable by giving written notice thereof to Developer at any time after the Project Completion Date, but prior to the date of Construction Completion. At such time as the City no longer has the right of the Second Repurchase Option and after written request by Developer, the City shall execute and deliver to Developer a recordable release of the Second Repurchase Option.

(D) Repurchase Option Closing. If the City elects to exercise either the First or the Second Repurchase Option, the reconveyance of the Sale Property to the City pursuant to such Repurchase Option shall take place on the date specified in the City's notice of election. On the date of such reconveyance: (i) Developer shall reconvey marketable title to the Sale Property (including any and all improvements located thereon) to the City or its designee in the same condition as presently exists, reasonable wear and tear and damage by the elements excepted (and under no circumstances shall the City be required to pay for the value of any improvements made by Developer to the Sale Property); (ii) Developer shall pay all customary closing costs associated with such reconveyance (e.g., conveyance fees, transfer tax, recording fees) such that the City shall not be required to come up with any funds at the closing for such re-conveyance; and (iii) real estate taxes and assessments shall be prorated as of the date of the reconveyance. The provisions of paragraphs (B)-(D) hereof shall be reflected in the City's Deed.

(E) Plans and Specifications. Developer shall submit its final plans and specifications for the Project to DCED and receive approval of the same from DCED. Following the City's approval, Developer shall design and construct the Project in accordance with those City-approved plans and specifications that are consistent with Exhibit C. Once the City has approved Developer's plans and specifications, Developer shall not make any material changes thereto without the City's prior written consent.

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

(G) 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's Performance list.

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

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

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

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

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

#### 4. Insurance; Indemnity.

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

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

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

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

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

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

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

**7. Notices.** All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by UPS, Federal Express or other recognized courier service, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their



addresses below or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City:

City of Cincinnati  
Dept of Community & Economic Development  
805 Central Avenue, Suite 700  
Cincinnati, Ohio 45202

To Developer:

Oakley Crossings Holdings, LLC  
Attn: Christopher Hildebrant  
8600 Governors Hill Drive, Suite 160  
Cincinnati, Ohio 45249

With copies to:

Dinsmore & Shohl LLP  
Attn: Charles E. Baverman III  
255 East Fifth Street, Suite 1900  
Cincinnati, Ohio 45202

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

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

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

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

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

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

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

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

(G) With reference to Section 301-20 of the Cincinnati Municipal Code, neither Developer nor its affiliates owe any outstanding fines, penalties, judgments, water, or other utility charges or 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 requested by the City pertaining to Developer, the Project, or this Agreement, including, without limitation, financial statements, bank statements, income tax returns, information pertinent to the determination of finances of the Project, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (collectively, "**Records and Reports**"). All Records and Reports compiled by Developer and furnished to the City shall be in such form as the City may from time to time require. Developer shall retain all Records and Reports for a period of 3 years after the completion of the Project.

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

## **10. General Provisions.**

(A) Assignment. Developer shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which may be withheld in the City's sole and absolute discretion, and any attempt to do so without the City's consent shall, at the City's option, render this Agreement null and void.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**11. Coordinated Report Conditions**. Developer shall abide by the additional conditions identified in Coordinated Report #27-2021 and Coordinated Report #81-2021, including, without limitation, the following:

(A) DOTÉ. A street opening permit, obtained by a DOTÉ licensed street contractor, is required for all private improvements in the public right of way. All improvements in the public right of way must be built to City standards, policies, and guidelines. Application for permits may be made at Room 425, City Hall, 801 Plum Street. Two sets of plan drawings must be attached to the permit application for review by DOTÉ.

(B) Greater Cincinnati Water Works. There are active water service lines located in the Dedication Property. Developer shall disconnect any existing water service branches not to be used for the Project, at the Developer's expense. Developer shall fill out the online Discontinuance Form (FOD) at <https://www.cincinnati-oh.gov/water/engineering-construction/forms-specifications/fod/> authorizing removal of any existing water service branches before any new water service can be sold. Developer shall work with Greater Cincinnati Water Works to determine a plan to address a fire hydrant and service branches within the area of the Dedication Property.

(C) Metropolitan Sewer District of Greater Cincinnati ("MSDGC").

(i) The Sale Property shall be subject to a 20-foot-wide minimum permanent sewer easement that provides access, operations, and maintain of the existing combined/sanitary sewers and {00356362-12}

manholes, which easement will be reserved in the City's Deed. Note that an additional 3 feet on either side of said 20-foot-wide minimum permanent sewer easement is required pursuant to the MSDGC Rules and Regulations Sections 207. No structure shall interfere with the access to said public sewer nor shall any structure exert loading upon a public sewer per Section 206 of the MSDGC Rules and Regulations. A change in existing topography or proposed site plan submittal may necessitate a revision to the minimum width requirement.

(ii) An Excavation and Fill permit approval and/or bond from the MSDGC may be necessary for any construction, construction traffic, earthwork, or other construction activity related to the Project. Additional MSDGC requirements may be established by the permit (such as verification and usage of existing or abandoned building services to the combined sewer through dye testing, pre- and post-construction CCTV-ing, etc.) depending on the final Project plan-s and specifications. Information will be needed from the Project to ensure no new loads are exerted on public sewers.

(iii) Developer shall coordinate with MSDGC to relocate the existing public sewers and an existing combined sewer overflow structure located near Duck Creek located within the Project Site, which relocation or other method of addressing such existing infrastructure shall be to the satisfaction of MSDGC.

(D) Cincinnati Bell. Cincinnati Bell has existing underground telephone facilities that must remain in place, in service, and accessible. Any damage done to the facilities, or any work done to relocate the facilities as a result of the Project, shall be handled entirely at Developer's expense.

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

Exhibit A – *Site Plan*

Exhibit B-1 – *Legal Description – Sale Property*

Exhibit B-2 – *Survey Plat – Sale Property*

Exhibit C – *Statement of Work, Budget, and Sources of Funds*

Exhibit D – *Dedication Plat*

Exhibit E – *Form of Quitclaim Deed – Cut-Up*

Exhibit F – *Form of Quitclaim Deed – Conveyance*

Exhibit G – *Additional Requirements*

**[signature pages follow]**

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

**OAKLEY CROSSINGS HOLDINGS, LLC,**

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

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

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

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

**[City signatures on the following page]**

**CITY OF CINCINNATI**

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

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

Approved as to Form:

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

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

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

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

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

Exhibit A  
to Property Sale and Development Agreement

*Site Plan*

TO BE ATTACHED

Exhibit B-1  
to Property Sale and Development Agreement

*Legal Description – Sale Property*

Situated in Section 22, Township 4, Fractional Range 2, Columbia Township, the City of Cincinnati, Hamilton County, Ohio, being part of a tract of land conveyed to the City of Cincinnati by deed in D.B. 2152 Pg. 87 the boundary of which is more particularly described as follows:

BEGINNING at a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue, being North 25°13'33" West, 13.18 feet from the intersection of the existing east right of way line of Kennedy Avenue and the north right of way line of Madison Road;

Thence along a new division line through the grantors tract the following four (4) courses:

1. South 64°44'34" West a distance of 17.09 feet to a 5/8" iron pin set;
2. Along a curve to the right for an arc distance of 20.47 feet to a 5/8" iron pin set, said curve having a radius of 13.00 feet, a central angle of 90°11'49" and a chord which bears North 70°09'32" West a distance of 18.42 feet;
3. North 25°03'37" West a distance of 27.10 feet to a 5/8" iron pin set;
4. Along a curve to the right for an arc distance of 51.86 feet to a 5/8" iron pin set in the north line of the grantors tract, said curve having a radius of 463.94 feet, a central angle of 6°24'16" and a chord which bears North 22°41'24" West a distance of 51.83 feet;

Thence along the north line of the grantor, North 64°56'58" East a distance of 27.72 feet to a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue;

Thence along said right of way line, South 25°13'33" East a distance of 91.82 feet to the POINT OF BEGINNING;

Containing 0.0617 acres of land more or less and being subject to all easements and restrictions of record.

Bearings are based on the Ohio State Plane coordinate system, South Zone (NAD 83) per GPS Observation utilizing the Ohio Department of Transportation's virtual reference stationing.

Based on a field survey in November of 2020 performed by Cardinal Engineering Corporation under the direct supervision of Daniel K. York, P.S. Ohio Professional Surveyor Number S-8729.



Exhibit B-2  
to Property Sale and Development Agreement

*Survey Plat – Sale Property*

SEE ATTACHED



Exhibit C  
to Property Sale and Development Agreement

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

I. Statement of Work

Developer will demolish the existing structures on the Property and relocate existing sewer lines to facilitate the Project. Developer will consolidate the Sale Property with the Developer Property to create the Project Site.

Developer will construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants; and another building intended to house three to five restaurant, coffee shop, and/or other retail tenants.

II. Budget

Acquisition	\$4,320,000.00
Site Work	\$1,430,000.00
Retail Shell	\$2,002,000.00
Retail Tenant Improvements	\$291,200.00
Soft Costs	\$295,566.49
Commissions	\$409,200.00
Builder & Development Fee	\$85,000.00
Interest Reserve	\$233,311.64
Contingency	\$26,638.36
<b>TOTAL PROJECT COSTS</b>	<b>\$9,092,916.49</b>

III. Sources of Funds

Debt	\$6,353,282.00
Pace Financing	\$1,771,846.00
Owner Equity	\$967,788.49
<b>TOTAL</b>	<b>\$9,092,916.49</b>

Exhibit D  
to Property Sale and Development Agreement

*Dedication Plat*

TO BE ATTACHED

Exhibit E  
to Property Sale and Development Agreement

*Form of Quitclaim Deed – Cut-Up*

TO BE ATTACHED

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[SPACE ABOVE FOR RECORDER'S USE ONLY]

Property: \_\_\_\_\_ acre parcel along Madison Road

(cut-up to create \_\_\_\_\_ acre parcel (Parcel "A")  
and 0.0617 acre parcel (Parcel "B"))

## QUITCLAIM DEED

(Cut-up)

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), hereby grants and conveys to the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202, all of the City's right, title, and interest in and to the real property depicted on Exhibit A (Plat of Survey) and described on Exhibit B (Legal Description – Parcel "A") and Exhibit C (Legal Description – Parcel "B") hereto.

Property Address: cut-up of \_\_\_\_\_ acre parcel

Auditor's parcel #: 051-0002-0139-00

*This Deed is executed and recorded in connection with the cut-up of a \_\_\_\_\_ acre parcel of land into two parcels containing \_\_\_\_\_ acres (Parcel "A") and 0.0617 acres (Parcel "B").*

This conveyance is permitted under Ohio Revised Code Section 5302.18, which provides that a grantor under a deed may also be a grantee.

The City's execution of this instrument was authorized by Ordinance No. \_\_\_\_-2022, passed by Cincinnati City Council on \_\_\_\_\_, 2022.

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

[Signature Page Follows]

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

**CITY OF CINCINNATI**

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

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

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

STATE OF OHIO            )  
                                  ) SS:  
COUNTY OF HAMILTON )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

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

Approved as to Form:

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

This instrument prepared by:

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

- Exhibits:  
Exhibit A – *Plat of Survey*  
Exhibit B – *Legal Description – Parcel “A”*  
Exhibit C – *Legal Description – Parcel “B”*

Exhibit A  
to Quitclaim Deed – Cut-Up

*Plat of Survey*

cut-up of \_\_\_\_\_ acre parcel to create  
\_\_\_\_\_ acre parcel (Parcel “A”) & 0.0617 acre parcel (“Parcel “B”)

TO BE ATTACHED TO EXECUTION VERSION



Exhibit B  
to Quitclaim Deed – Cut-Up

*Legal Description – Parcel “A”*

TO BE ATTACHED TO EXECUTION VERSION

Exhibit C  
to Quitclaim Deed – Cut-Up

*Legal Description – Parcel “B”*

TO BE ATTACHED TO EXECUTION VERSION

Exhibit F  
to Property Sale and Development Agreement  
*Form of Quitclaim Deed – Conveyance*

SEE ATTACHED

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

**QUITCLAIM DEED**

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the “**City**”), having an address of 801 Plum Street, Cincinnati, Ohio 45202, for valuable consideration paid, hereby grants and conveys to **OAKLEY CROSSINGS HOLDINGS, LLC**, a Delaware limited liability company, the address of which is 8600 Governors Hill Drive, Suite 160, Cincinnati, Ohio 45249 (“**Grantee**”), all of the City’s right, title, and interest in and to the real property described on Exhibit A (Legal Description) hereto (the “**Property**”).

Property Address: 0.0617 acre parcel of land east of Kennedy Avenue

Auditor’s Parcel No(s): \_\_\_\_\_

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

(A) Permanent Sewer Easement in Favor of the City of Cincinnati. The City hereby reserves and creates a permanent utility easement over a 20-foot wide area of the Property as more particularly described on Exhibit B (Legal Description – Sewer Easement) hereto, and depicted on Exhibit C (Easement Plat – Sewer Easement) hereto (the “**Easement Area**”), for the operation, maintenance, repair, reconstruction, removal, or replacement of existing sanitary sewer lines, facilities, equipment, and all appurtenances located within the Easement Area, including the right to enter upon and re-enter upon the Property to access the Easement Area.

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

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

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

**[ subject to possible creation of utility easements in favor of Cincinnati Bell and/or Duke Energy for their existing facilities if no existing easements are in place ]**

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

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

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

[Signature Page Follows]

Executed on \_\_\_\_\_, 20\_\_.

**CITY OF CINCINNATI**

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

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

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

STATE OF OHIO            )  
  ) SS:  
COUNTY OF HAMILTON )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

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

Approved as to Form:

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

This instrument prepared by:

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

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

Exhibit A  
to Quitclaim Deed – Conveyance

*Legal Description – Property*

TO BE ATTACHED TO EXECUTION VERSION

Exhibit B  
to Quitclaim Deed – Conveyance

*Legal Description – Sewer Easement*

TO BE ATTACHED TO EXECUTION VERSION



Exhibit C  
to Quitclaim Deed – Conveyance  
*Easement Plat – Sewer Easement*

TO BE ATTACHED TO EXECUTION VERSION

Exhibit G  
to Property Sale and Development Agreement

*Additional Requirements*

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

This Exhibit serves two functions:

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

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

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

(A) Construction Workforce.

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

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

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

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

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering with Trade Unions.

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

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

(ii) Contracts and Subcontracts; Competitive Bidding.

(a) Applicability. This clause (ii) is applicable to “construction contracts” under Cincinnati Municipal Code Chapter 321. Municipal Code Chapter 321 defines “construction” as “any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than four thousand dollars and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority,” and “contract”

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as “all written agreements of the City of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Including qualified SBEs on solicitation lists.

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

(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.

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<sup>1</sup> Note: this section will be revised prior to execution due to programmatic changes being implemented by the Department of Community and Economic Development as a result of recent legislation passed by City Council. {00356362-12}

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

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

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

(G) Equal Employment Opportunity.

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

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

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

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

(J) Prompt Payment. The provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System", may apply to this Agreement. Municipal Code Chapter 319 also (i) provides certain requirements for invoices from contractors with respect to the Prompt Payment System, {00356362-12}

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.

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(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

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

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

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

ADDENDUM I  
to  
Additional Requirements Exhibit

City's Prevailing Wage Determination

**REQUEST FOR PROJECT WAGE DETERMINATION**

**DATE RECEIVED: 2/11/22**

**ORIGINAL ASSIGNED NUMBER: 2022-034**

**DEI USE ONLY**

Fillout and Circle all that Apply Below:

**FUNDING GUIDELINES:**  
(State or Federal)

**RATES THAT APPLY:**  
(Building, Heavy, Highway, Residential)

**[Prevailing Wages Do Not Apply]**

**DECISION NUMBER: n/a**

**MODIFICATIONS: n/a**

**DECISION DATE: n/a**

**EXPIRATION DATE: n/a**

**SUPERSEDES DECISION NUMBER:**

**DETERMINATION BY:**

Name: Lydgia Sartor

Title: Development Manager

Date: 2/11/22

**APPROVED BY:**

*Edgar De Veyra*, Interim Director  
DIRECTOR, DEPARTMENT OF ECONOMIC  
INCLUSION

**COMMENTS:**

As described the project does not involve any direct public funding and, as such, is exempt from prevailing wage.

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

Note: Any change in scope or funding or failure of the project to commence within 90 days of this determination will require resubmission of this determination.

**REQUESTING AGENCY OR DEPT:**  
DCED

**CONTACT PERSON AND PHONE NUMBER:**  
Taylor German x4546

**Requested Date:** 02/11/2022  
**Estimated Advertising Date:** 05/01/2022  
**Estimated Bid Opening Date:** 05/01/2022  
**Estimated Starting Date:** 06/01/2022

**SOURCE AND FUND NUMBER**

CITY	FUND
STATE	FUND
COUNTY	FUND
FEDERAL	FUND

**PROJECT ACCOUNT NUMBER:**

**AMT. OF PUB. FUNDING \$:** 0

**TOTAL PROJECT DOLLARS:** 9,092,916.49

**NAME OF PROJECT**

Crossings of Oakley

**TYPE OF WORK**

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

**PROJECT LOCATION**

Project Location: 2628-2646 Madison Road 2, single-story commercial/retail buildings will be newly constructed.

**PROJECT FUNDING SOURCE**

Below Fair Market Value sale of City-owned property. City will sell property with FMV of \$53,750 for \$1, in exchange for Developer dedicating a portion of their property with a FMV of \$73,750 as right-of-way at no cost to the City. Project also involves a Commercial Tax Abatement.

**PROJECT SCOPE OF WORK AND BUDGET**

Developer will demolish the existing structures on the Property and relocate existing sewer lines to facilitate the Project. Developer will consolidate the Sale Property with the Developer Property to create the Project Site. Developer will construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants; and another building intended to house three to five restaurant, coffee shop, and/or other retail tenants. Acquisition: \$4,320,000.00 Site Work: \$1,430,000.00 Retail Shell: \$2,002,000.00 Retail Tenant Improvements: \$291,200.00 Soft Costs: \$295,566.49 Commissions: \$409,200.00 Builder & Development Fee: \$85,000.00 Interest Reserve: \$233,311.64 Contingency: \$26,638.36 TOTAL PROJECT COSTS: \$9,092,916.49

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

**Date:** February 18, 2022

**To:** Mayor Aftab Pureval  
**From:** Andrew W. Garth, City Solicitor *AWG*  
**Subject:** **Emergency Ordinance – Amending Stabilization Policy**

---

Transmitted herewith is an emergency ordinance captioned as follows:

**AMENDING** the policy of managing the Stabilization Funds for the City of Cincinnati.

AWG/KKF(lnk)  
Attachment  
358262

City of Cincinnati

KKF  
AWB

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

- 2022

AMENDING the policy of managing the Stabilization Funds for the City of Cincinnati.

WHEREAS, Ordinance No. 253-2015 established a policy to manage the fund balance reserves now referred to as the Stabilization Funds; and

WHEREAS, Ordinance No. 213-2019 amended Ordinance No. 253-2015 to better comply with Government Finance Officers Association recommendations to maintain reserves equaling two months of current estimated revenue, which is equal to 16.7 percent of prior year General Fund operating revenues; and

WHEREAS, the City has made substantial progress in funding its reserve balances and will likely achieve its goal of maintaining reserves totaling 16.7 percent of prior year General Fund operating revenues within the next several fiscal years; and

WHEREAS, it is a priority of the Mayor, Council, and Administration to make transformative investments in housing at all income levels, with an eye towards improved affordable and workforce housing options within the City; and

WHEREAS, this amendment will add an additional priority of setting aside an amount of up to \$5,000,000 per year to the City’s Affordable Housing Trust Fund, of which revenues will be available annually as a percentage of carryover balance; and

WHEREAS, this amendment is intended to better define parameters for allocation of the remaining carryover balance, once the financial reserve balances are materially achieved; and

WHEREAS, this amendment is intended to increase the health of the City’s overall finances by utilizing the remaining carryover balance to address continuing financial challenges of the City and to fund strategic priorities; now, therefore,

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

Section 1. That Section 16 of Ordinance No. 213-2019 is amended as follows:

Section 16. That the “Waterfall Funding Mechanism” shall next allocate any and all remaining year-end General Fund Surplus as follows:

- a. Thirty-four percent (34%) of the remaining General Fund Surplus to the Economic Downturn Reserve Account until its balance achieves the minimum policy level

stated herein. To the extent that the Economic Downturn Reserve Account minimum policy level is met and the Working Capital Reserve Fund minimum policy level is not met, then any portion of the thirty-four percent (34%) not needed to meet the Economic Downturn Reserve Account minimum policy level will be dedicated to the Working Capital Reserve Fund until its minimum policy level is achieved;

- b. Thirty-three percent (33%) of the remaining General Fund Surplus to the Working Capital Reserve Fund until its balance achieves the minimum policy level stated herein. To the extent that the Working Capital Reserve Fund minimum policy level is met and the Economic Downturn Reserve Account minimum policy level is not met, then any portion of the thirty-three percent (33%) not needed to meet the Working Capital Reserve Fund minimum policy level will be dedicated to the Economic Downturn Reserve Account until its minimum policy level is achieved;
- c. Thirty-three percent (33%) of the remaining General Fund Surplus ~~to either,~~ aggregated with any additional funding available pursuant to Section 18 of this ordinance, distributed as follows:
  - i. The lesser of (1) fifty percent (50%) of the available amount or (2) \$5 million as a one-time contribution to the City's Affordable Housing Trust Fund.
  - ii. The lesser of (1) thirty-three percent (33%) of the available amount, (2) \$2 million, or (3) the amount needed to address any remaining unfunded liability of the pension trust and health care trust, with such amount utilized

as a one-time contribution to address the City's pension obligations as follows:

- A. First, all available funds contributed as a one-time employer contribution to the pension trust, until such time as the pension trust has no unfunded liability;
  - B. Second, if the above is achieved and the healthcare trust has an unfunded liability, then all remaining available funds to the healthcare trust until such time as the healthcare trust has no unfunded liability.
- iii. The lesser of (1) 17 percent of the available amount or (2) \$500,000 shall be contributed to the Operating Budget Contingencies Account, to be utilized as a contingency reserve for subsequent appropriation for one-time, unforeseen operating needs that arise during the remainder of the ongoing fiscal year.
  - iv. Any remaining amount shall be contributed to an Infrastructure and Capital Project Reserve for subsequent appropriation by Council for identified one-time infrastructure and capital projects for identified urgent needs or as part of the next annual budget cycle.
    - ~~i. Further enhance the funding level in any of the Stabilization Funds with a priority to any Stabilization Funds that are not funded at their minimum policy level; or~~
    - ~~ii. One-time expenditures.~~

Section 2. That Section 18 of Ordinance No. 213-2019 is amended as follows:

Section 18. That if all of the Stabilization Funds identified herein are fully funded at their respective minimum policy levels and the Recommended Aggregate Reserve Balance is met ~~the City may direct any additional General Fund surplus to either;~~ then any additional General Fund surplus shall be aggregated with and distributed in the same manner as those funds distributed as provided in Section 16(c) of this ordinance.

- ~~a. Further enhance the funding level in any of the Stabilization Funds with a priority to any Stabilization Funds that are not funded at their minimum policy level; or,~~
- ~~b. One-time expenditures including Capital Projects or other one-time General Fund needs.~~

Section 3. That existing Sections 16 and 18 of Ordinance No. 213-2019 are hereby repealed.

Section 4. That existing Section 17 of Ordinance No. 213-2019 is hereby repealed.

Section 5. That all terms of Ordinance No. 213-2019 not amended by this ordinance remain in full force and effect.

Section 6. That the proper City officials are hereby authorized to do all things necessary and proper to implement the provisions of Sections 1 through 5 of this Ordinance.

Section 7. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

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

\_\_\_\_\_  
Aftab Pureval, Mayor

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

\_\_\_\_\_  
New language underscored. Deleted language indicated by strikethrough.



**March 2, 2022**

**To:** Mayor and Members of City Council 202200532  
**From:** John P. Curp, Interim City Manager  
**Subject:** **Ordinance – HR: Seasingood Internship Program Grant**

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Attached is an Ordinance captioned:

**AUTHORIZING** the City Manager to apply for, accept, and appropriate a grant in an amount not to exceed \$34,560 from the Murray & Agnes Seasingood Good Government Foundation for the purpose of administering an internship program; and **AUTHORIZING** the Director of Finance to deposit the grant funds into Citizens Summer Jobs Fund 308.

Approval of this Emergency Ordinance authorizes the City Manager to apply for, accept, and appropriate a grant in an amount not to exceed \$34,560 from the Murray & Agnes Seasingood Good Government Foundation for the purpose of administering an internship program. Approval of this Ordinance further authorizes the Finance Director to deposit the grant funds into Citizens Summer Jobs Fund 308.

There is a grant available from the Murray & Agnes Seasingood Good Government Foundation that will allow for the administration of an internship program, for temporary placement of up to six interns in various departments such as, Human Resources, City Planning and Engagement, Greater Cincinnati Water Works, Office of Budget and Evaluation, and Community and Economic Development.

This grant does not require matching funds. There are no new FTEs associated with this grant.

In order to meet the April 15, 2022 submission deadline for this grant, the application may be submitted prior to the effective date of this Ordinance, although no grant funds will be accepted without City Council approval.

The Administration recommends passage of this Ordinance.

cc: Andrew M. Dudas, Budget Director  
Karen Alder, Finance Director

Attachment

**AUTHORIZING** the City Manager to apply for, accept, and appropriate a grant in an amount not to exceed \$34,560 from the Murray & Agnes Seasongood Good Government Foundation for the purpose of administering an internship program; and **AUTHORIZING** the Director of Finance to deposit the grant funds into Citizens Summer Jobs Fund 308.

WHEREAS, there is a grant available from the Murray & Agnes Seasongood Good Government Foundation that will allow for the administration of an internship program and for temporary placement of up to six interns in various departments, such as Human Resources, City Planning, Greater Cincinnati Water Works, Office of Budget and Evaluation, and Community and Economic Development; and

WHEREAS, this grant does not require matching funds, and there are no new FTEs associated with this grant; and

WHEREAS, in order to meet the April 15, 2022 submission deadline for this grant, the application may be submitted prior to the effective date of this ordinance, although no grant funds will be accepted without Council approval; now, therefore,

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

Section 1. That the City Manager is hereby authorized to apply for, accept, and appropriate a grant in an amount not to exceed \$34,560 from the Murray & Agnes Seasongood Good Government Foundation for the purpose of administering an internship program.

Section 2. That the Director of Finance is hereby authorized to receive and deposit the grant funds into Citizens Summer Jobs Fund 308.

Section 3. That the proper City officials are hereby authorized to do all things necessary and proper to carry out the terms of the grant and Sections 1 and 2 hereof.

Section 4. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

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

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Aftab Pureval, Mayor

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

**March 2, 2022**

**To:** Mayor and Members of City Council 202200533

**From:** John P. Curp, Interim City Manager

**Subject:** **Ordinance – Federal FY 2022 Certified Local Government Grant Program**

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Attached is an Ordinance captioned:

**AUTHORIZING** the City Manager to apply for a grant of up to \$10,000 from the Federal FY 2022 Certified Local Government Grant Program, which funds shall be used to reimburse certain costs associated with hosting the National Alliance for Preservation Commission’s Biennial Conference Forum in Cincinnati, Ohio during July 2022.

Approval of this Ordinance will authorize the City Manager to apply for a grant of up to \$10,000 from the Federal FY 2022 Certified Local Government Grant Program, which will be used to reimburse certain costs associated with hosting the National Alliance for Preservation Commission’s Biennial Conference Forum in July 2022.

The City of Cincinnati was selected to host the National Alliance for Preservation Commission’s Biennial Conference Forum, which will attract 800 to 1,000 participants from 44 states to the City from July 13-17, 2022. The City will co-host the conference with the State Historic Preservation Office, the Ohio History Connection, and the Cincinnati Preservation Association. The grant funds will support the conference by covering costs of facilitating conference sessions and bus tours, print materials for conference sessions, the conference program, and keynote speakers.

The City’s grant application will be enhanced by the City’s demonstrating its commitment to the Conference in the form of a conference sponsorship by the Department of Buildings and Inspections. No new FTEs or local match requirements are associated with this grant. The grant application was due February 18, 2022. Therefore, the Department of City Planning and Engagement will have applied for this grant prior to receiving approval from the City Council, but no grant funds will be accepted without approval of the City Council.

The use of Certified Local Government Program grant resources is in accordance with the “Sustain” goal to “[p]reserve our natural and built environment” as described on page 193 of Plan Cincinnati (2012).

The Administration recommends passage of this Ordinance.

cc: Andrew M. Dudas, Budget Director  
Karen Alder, Finance Director



Attachment



# City of Cincinnati

CFG

AWB

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

- 2022

**AUTHORIZING** the City Manager to apply for a grant of up to \$10,000 from the Federal FY 2022 Certified Local Government Grant Program, which funds shall be used to reimburse certain costs associated with hosting the National Alliance for Preservation Commission's Biennial Conference Forum in Cincinnati, Ohio during July 2022.

WHEREAS, the City is a Certified Local Government, authorized to manage the local historical resources within the City, a function carried out through the Office of the Urban Conservator in the Department of City Planning and Engagement and the work of the Historic Conservation Board; and

WHEREAS, only Certified Local Governments with demonstrated historic preservation programs may apply for and receive funds from the Certified Local Government Program; and

WHEREAS, the City was selected to host the National Alliance for Preservation Commission's Biennial Conference Forum ("the Conference"), which will attract 800 to 1,000 participants from 44 states to the City from July 13-17, 2022; and

WHEREAS, the City will co-host the Conference with the State Historic Preservation Office, the Ohio History Connection, and the Cincinnati Preservation Association; and

WHEREAS, there is a Certified Local Government grant available that the City can use for the reimbursement of costs associated with hosting the Conference; and

WHEREAS, the grant funds will support the conference by covering costs of facilitating conference sessions and bus tours, print materials for conference sessions, the conference program, and keynote speakers; and

WHEREAS, the City's grant application will be enhanced by the City's demonstrating its commitment to the Conference by providing funding for the cost of the Conference in addition to the grant funding, and the Department of Buildings and Inspections will provide funds in an amount of up to \$10,000 in the form of a conference sponsorship to support the Conference; and

WHEREAS, no new FTEs or local match requirements are associated with this grant; and

WHEREAS, the grant application was due February 18, 2022, and therefore the Department of City Planning and Engagement will have applied for the grant prior to receiving approval from Council, but no grant funds will be accepted without approval of Council; and

WHEREAS, the use of Certified Local Government Program grant resources is in accordance with the “Sustain” goal to “[p]reserve our natural and built environment” as described on page 193 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the City Manager is hereby authorized to apply for a grant of up to \$10,000 from the Federal FY 2022 Certified Local Government Grant Program, which funds shall be used to reimburse certain costs associated with hosting the National Alliance for Preservation Commission’s Biennial Conference Forum in Cincinnati, Ohio during July 2022.

Section 2. That the proper City officials are hereby authorized to do all things necessary and proper to apply to carry out the terms of Section 1 hereof.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

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

\_\_\_\_\_  
Aftab Pureval, Mayor

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



March 2, 2022

**To:** Mayor and Members of City Council 202200537  
**From:** John P. Curp, Interim City Manager  
**Subject:** Ordinance – Cincinnati Children’s Hospital Medical Center Grant for North Avondale Recreation Center Programming

---

Attached is an Ordinance captioned:

**AUTHORIZING** the City Manager to accept a grant in an amount of \$25,000 from the Cincinnati Recreation Foundation for the purpose of providing funding for various programming activities for Avondale youth and families; **AUTHORIZING** the Director of Finance to deposit the grant funds into Fund No. 323, “Recreation Special Activities”; and further **AUTHORIZING** the transfer and appropriation of \$14,500 from the unappropriated surplus of Fund No. 323, “Recreation Special Activities,” to Recreation’s non-personnel operating budget account no. 323x193x7300 and the transfer and appropriation of \$10,500 from the unappropriated surplus of Fund No. 323, “Recreation Special Activities,” to Recreation’s non-personnel operating budget accounts no. 323x197x7300.

Approval of this Ordinance would authorize the City Manager to accept a grant in an amount of \$25,000 from the Cincinnati Recreation Foundation, on behalf of the Cincinnati Children’s Hospital Medical Center, to the Cincinnati Recreation Commission for the purpose of providing funding for various programming activities for Avondale youth and families.

The North Avondale Recreation Center will use these resources to provide various programming activities for Avondale youth and families in need, including swim lessons, social, educational, and summer programming, memberships, and trauma sensitive spaces programming. Acceptance of the grant requires no matching funds. There are no FTEs associated with the grant.

Acceptance of the grant funding is in accordance with the “[c]ollaborate” goal to “[u]nite our community” as described on pages 210-212 of Plan Cincinnati (2012).

The Administration recommends passage of this Ordinance.

cc: Andrew M. Dudas, Budget Director  
Karen Alder, Finance Director



Attachment

**AUTHORIZING** the City Manager to accept a grant in an amount of \$25,000 from the Cincinnati Recreation Foundation for the purpose of providing funding for various programming activities for Avondale youth and families; **AUTHORIZING** the Director of Finance to deposit the grant funds into Fund No. 323, “Recreation Special Activities”; and further **AUTHORIZING** the transfer and appropriation of \$14,500 from the unappropriated surplus of Fund No. 323, “Recreation Special Activities,” to Recreation’s non-personnel operating budget account no. 323x193x7300 and the transfer and appropriation of \$10,500 from the unappropriated surplus of Fund No. 323, “Recreation Special Activities,” to Recreation’s non-personnel operating budget account no. 323x197x7300.

WHEREAS, the Cincinnati Recreation Foundation received a grant in the amount of \$25,000 from Cincinnati Children’s Medical Center to fund various programming activities for youth and families in the City; and

WHEREAS, the Cincinnati Recreation Foundation is granting the funds to the Cincinnati Recreation Commission to provide funding support for various programming activities for youth and families in need, including swim lessons; social, educational, and summer programming; membership; and trauma sensitive spaces programming; and

WHEREAS, the grant funds will provide \$25,000 in resources for the North Avondale Recreation Center to provide these services; and

WHEREAS, acceptance of the grant requires no matching funds, and there are no FTEs associated with the grant; and

WHEREAS, acceptance of the grant funding is in accordance with the “[c]ollaborate” goal to “[u]nite our community” as described on pages 210-212 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the City Manager is hereby authorized to accept a grant in the amount of \$25,000 from the Cincinnati Recreation Foundation for the purpose of providing funding support for swim lessons; social, educational, and summer programming; memberships; and trauma sensitive spaces programming for Avondale youth and families in need.



Section 2. That the Director of Finance is hereby authorized to deposit the grant funds into Fund No. 323, "Recreation Special Activities" and is further authorized to transfer and appropriate \$14,500 from the unappropriated surplus of Fund No. 323, "Recreation Special Activities," to Recreation's non-personnel operating budget account no. 323x193x7300 and to transfer and appropriate \$10,500 from the unappropriated surplus of Fund No. 323, "Recreation Special Activities," to Recreation's non-personnel operating budget account no. 323x197x7300.

Section 3. That the proper City officials are hereby authorized to do all things necessary and proper to carry out the provisions of Sections 1 and 2 hereof.

Section 4. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

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

\_\_\_\_\_  
Aftab Pureval, Mayor

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

March 7, 2022

To: Budget and Finance Committee 202200592  
From: John P. Curp, Interim City Manager  
Subject: Presentation – Law Department: FY 2023 Budget Update

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Attached is the Law Department FY 2023 Budget Update presentation for the Budget and Finance Committee meeting on March 7, 2022.

cc: William “Billy” Weber, Assistant City Manager  
Andrew Dudas, Budget Director



# Department of Law Budget Presentation

Budget & Finance Committee

March 07, 2022

# Law Department Purpose

The mission of the Law Department is to provide the highest quality legal services to all City of Cincinnati departments and officials in service of the citizens of Cincinnati, to do justice for the community, and to protect and defend the Charter and the Municipal Code.

We do this by prosecuting criminal misdemeanors and implementing innovative crime prevention measures; representing the City in all forms of civil litigation; providing legal advice for the City's administrative and legislative activities; conducting administrative hearings for a wide range of civil offenses; managing the City's real estate holdings; and drafting contracts for all of the City's operations and economic development activities.

# Law Department Operations

## **Civil (Agency 111)**

- General Counsel
  - Government
  - Complex Contracts
- Litigation
- Labor and Employment
  - Employee/Union Grievances
  - Collective Bargaining Negotiations
- Economic and Community Development
- Quality of Life
  - Code Enforcement & Affirmative Lit.
  - Chronic Nuisance
  - Collections
- Land Use and Planning

## **Prosecution, OAH, and Admin Boards (Agency 112)**

- Criminal Prosecution
- Domestic Violence Prosecutor
- Victim Advocate
- Public Vehicle License Denial Appeals
- Training and Legal Counsel for Police Dept
- Office of Administrative Hearings & Parking Violations Bureau
- Ethics & Good Government Office
- Administrative Boards

## **Real Estate/Property Management (Agency 113)**

**Utilities Attorneys (funded via Enterprise Funds at GCWW and MSD)**

# Law Department

## FY 2022 Key Performance Indicators

**Estimated Number of Requests for FY 2022 Legal Services (RLSs): 1,480**

- Ordinances/Resolutions **(402)**
- Legal opinions **(151)**
- Contracts (review/drafting) **(440)**
- Public Records Requests **(487)**

**Number of active City litigation cases to date (includes affirmative litigation and arbitration matters): 197**

**Number of estimated FY 2022 Municipal prosecution cases: 21,991**

# Law Department Budget History

## General Fund Operating Budget FY 2018 – FY 2022

	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
Personnel Compensation	\$4,863,190	\$5,115,120	\$4,976,990	\$4,870,100	\$ 5,922,350
Fringe Benefits	\$1,522,778	\$1,763,520	\$1,684,510	\$1,662,680	\$ 2,162,410
Non-Personnel Expenses	\$ 750,457	\$ 640,070	\$ 708,160	\$ 637,510	\$ 654,670
<b>Total</b>	<b>\$7,136,425</b>	<b>\$7,518,710</b>	<b>\$7,369,660</b>	<b>\$7,170,290</b>	<b>\$ 8,739,430</b>

# Law Department Budget History

## Restricted Funds\* Operating Budget FY 2018 – FY 2022

	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
Personnel Compensation	\$ 717,395	\$ 758,660	\$ 898,460	\$1,085,790	\$ 906,270
Fringe Benefits	\$ 139,874	\$ 205,400	\$ 257,040	\$ 340,550	\$ 269,410
Non-Personnel Expenses	\$ 213,190	\$ 217,440	\$ 221,900	\$ 293,700	\$ 296,580
<b>Total</b>	<b>\$1,070,459</b>	<b>\$1,181,500</b>	<b>\$1,377,400</b>	<b>\$1,720,040</b>	<b>\$ 1,472,260</b>

Includes Property Management Fund 209, Income Tax-Infrastructure Fund 302, Streetcar Operations Fund 455, and Income Tax-Transit Fund 759 (FY 2018 to FY 2021).



# Law Department Revenue Generation

## Estimated FY 2022 Collections Revenue

- Total collections: \$3,419,800
  - Collected by City attorneys (82%)
    - Includes \$1,010,000 collected by Quality of Life (QoL) via affirmative litigation awards
  - Collected by outside counsel (18%)

## FY 2021 Collections Revenue

- Total collections: \$3,680,030
  - Collected by City attorneys (78%)
  - Collected by outside counsel (22%)

## Law Department Revenue Generation (cont.)

### **Estimated FY 2022 Parking Ticket Revenue**

- Total collections: \$3,116,803

### **FY 2021 Parking Ticket Revenue**

- Total: \$2,629,809

### **Estimated FY 2022 OAH Civil Fine Revenue**

- Total: \$502,420

### **FY 2021 OAH Civil Fine Revenue**

- Total: \$377,498

# Law Department Budget History

## Significant organizational changes/transfers impacting the Law Department budget between FY 2018 and present:

- In FY 2019, Law moved its labor contract negotiations in house, adding one FTE attorney but providing significant overall City savings. (1.0 FTE)
- In FY 2020, Council authorized relocation of the Parking Violations Bureau (PVB) from the County to the City's Law Department, payable from parking revenues. (4.0 FTEs)
- In FY 2020, Council added a streetcar attorney advising on day-to-day in-house streetcar operations. (Fund 455 – 1 FTE)

# Law Department Budget History (cont)

- In FY 2021, Council added the Office of Ethics and Good Government (3.0 FTEs)
- In FY 2021, Council added an FTE to dedicate an assistant city solicitor to work full-time onsite at the U.S. Attorney's Office to combat gun violence in Cincinnati. (1.0 FTE)
- In FY 2021, Council added a dedicated Domestic Violence prosecutor in Municipal Court (1.0 FTE, 3-years of YMCA/WHW grant funding)
- In FY 2021, Council added an expungement attorney (coordinates City efforts to identify persons eligible for expungement and implement methods to expunge misdemeanor drug offenses for eligible individuals in Cincinnati) (1.0 FTE)
- Other major shift since 2015: Quality of Life (QoL) attorneys/affirmative litigation and code enforcement programs (support City's inspection efforts to improve neighborhood safety and livability) (approx. 5.0 FTEs)

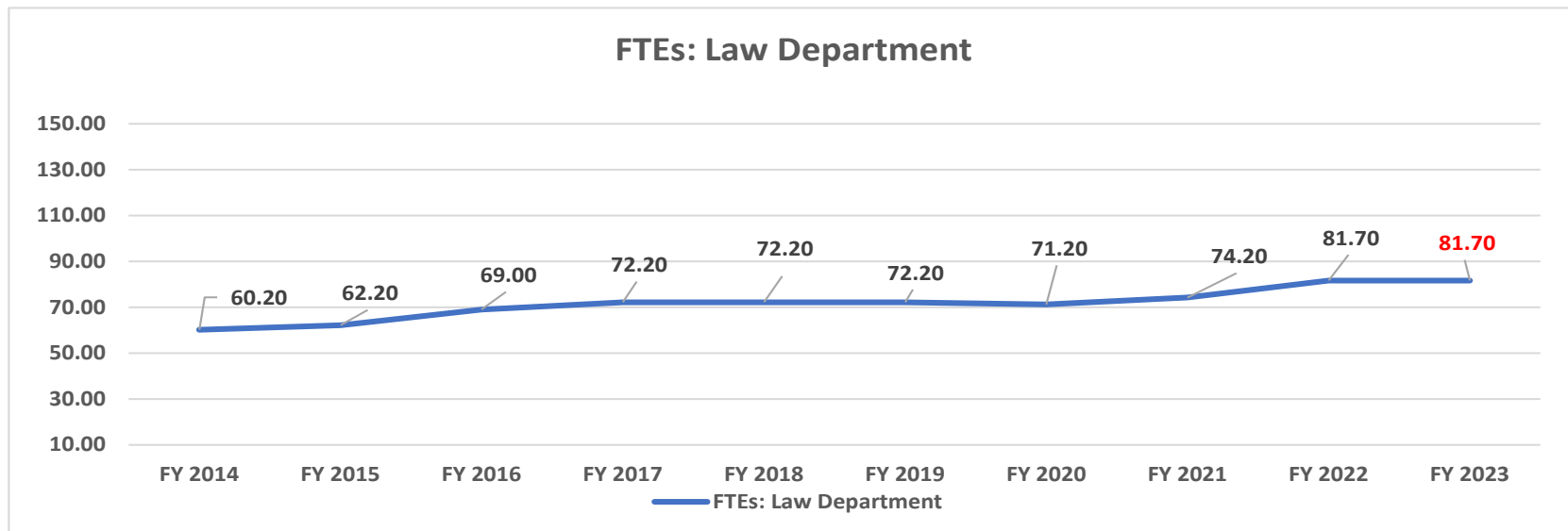
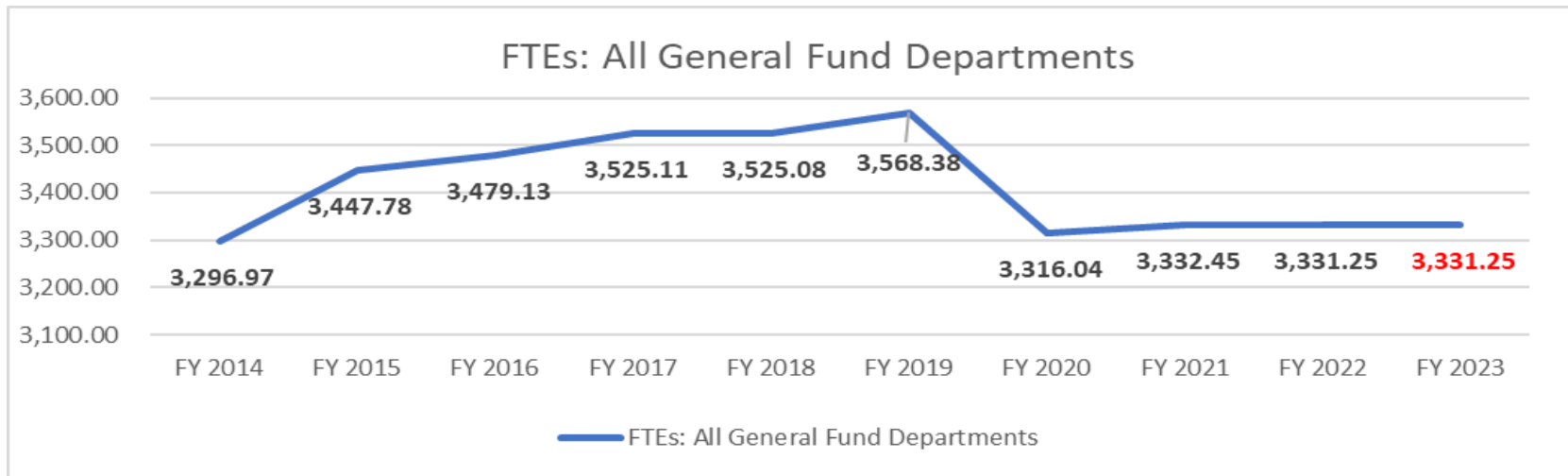
# Law Department FTE History

All Funds Operating Budget  
FY 2018 – FY 2022

FTEs	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
General Fund	72.20	72.20	71.20	74.20	81.70
Restricted Funds	9.00	10.00	11.00	14.00	11.00
<b>Total</b>	<b>81.20</b>	<b>82.20</b>	<b>82.20</b>	<b>88.20</b>	<b>92.70</b>

Restricted Funds include Property Management Fund 209, Income Tax-Infrastructure Fund 302, Streetcar Operations Fund 455, and Income Tax-Transit Fund 759 (FY 2018 to FY 2021).

# General Fund and Law Department FTE History: FY 2014 – FY 2023



# Law Department

## Significant Budget Issues – Operating

- **Staffing needs** to address **consistently expanding duties and responsibilities** (attorneys and support staff)
- **Retention** of legal staff and provision of appropriate training opportunities (**competition for experienced attorneys with private firms and other public entities**)
- **Identifying sufficient funds for Continuing Legal Education (CLE)** and other professional development opportunities for attorneys

# Law Department

## Significant Budget Issues – Capital

- Software/technology upgrades, particularly related to replacement of obsolete ACCESS databases in critical areas
- Procuring Real Estate management system per recommendations of City's Internal Audit Division
- Enhancing RLS tracking and client interface to provide improved City-wide coordination and KPI data (including for opinions, legislation, contracts, and advice generally)



## Law Department's Diversity and Inclusion Efforts

- Sending letter from Solicitor to all outside counsel, asking that firms' invoices for legal services include billing percentages accrued by minority, female, and LGBTQIA+ counsel
- Participation in Greater Cincinnati Minority Counsel Program (GCMCP) to enhance D&I efforts and outcomes in the Cincinnati legal profession
- Invest in minority clerkship and fellowship opportunities
- Law Department staff
  - All staff:                      Male (33%)      Female (67%)
  - All attorneys:              Male (42%)      Female (58%)
  - Law supervisors:          Male (40%)      Female (60%)

QUESTIONS?