

City of Cincinnati

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An Ordinance No. _____

- 2021

AUTHORIZING the City Manager to execute a *Property Sale and Development Agreement* with The Acanthus Group, LLC for the sale of City-owned real property located at 127 Green Street in the Over-the-Rhine neighborhood.

WHEREAS, the City owns certain real property located at 127 Green Street in the Over-the-Rhine neighborhood, as more particularly described and depicted in the *Property Sale and Development Agreement* attached to this ordinance as Attachment A and incorporated herein by reference (the “Property”), which Property is under the management of the City’s Department of Community and Economic Development (“DCED”); and

WHEREAS, The Acanthus Group, LLC, an Ohio limited liability company (“Developer”), submitted a proposal in response to a Request for Proposals issued by the City to solicit offers to develop the Property, which proposal the City Manager, in consultation with DCED, determined to be the most advantageous to the City and involves a capital investment of approximately \$604,284.70 to construct a new multi-unit residential structure (the “Project”); and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-1, the City may sell real property that is not needed for municipal purposes; and

WHEREAS, the City Manager, being the officer having the custody and control of the Property, and upon consultation with DCED, has determined that the Property is not needed for any municipal purpose; and

WHEREAS, the City’s Real Estate Services Division has determined, by professional appraisal, that the approximate fair market value of the Property is \$54,000, however, the City has agreed to convey the Property for \$20,000 because the City anticipates that it will receive a combination of economic and non-economic benefits from the Project that will equal or exceed the fair market value of the Property and because the Project will create additional housing and additional jobs and stimulate other economic development in the Over-the-Rhine neighborhood; and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-5, Council may authorize the sale of City-owned real property without competitive bidding in those cases in which it determines that it is in the best interest of the City; and

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

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

WHEREAS, the City Manager 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

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Property at its meeting on December 3, 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* with The Acanthus Group, LLC, an Ohio limited liability company (“Developer”), in substantially the form attached to this ordinance as Attachment A and incorporated herein by reference, pursuant to which the City of Cincinnati will sell to Developer certain real property located at 127 Green Street in the Over-the-Rhine neighborhood, as more particularly described on Attachment A and incorporated herein by reference (the “Property”), for Developer to construct a new multi-unit residential structure involving a capital investment of approximately \$604,284.70 (the “Project”).

Section 2. That the Property is not needed for any municipal purpose.

Section 3. That the City’s Real Estate Services Division has determined, by professional appraisal, that the approximate fair market value of the Property is \$54,000, however, the City has agreed to convey the Property for \$20,000 because the City anticipates that it will receive a

combination of economic and non-economic benefits from the Project that will equal or exceed the fair market value of the Property and because the Project will create additional housing and additional jobs and stimulate other economic development in the Over-the-Rhine neighborhood.

Section 4. That eliminating competitive bidding in connection with the City's sale of the Property is in the best interest of the City because, following the issuance of a Request for Proposals, the City Manager, in consultation with the Department of Community and Economic Development, determined Developer's proposal to be the most advantageous to the City.

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

Section 6. That the City's Finance Director is authorized to transfer and appropriate such excess funds from the unappropriated surplus of Miscellaneous Permanent Improvement Fund 757 to capital improvement program project account no. 980x162x211641, "DCED Property Improvements."

Section 7. That the City Manager and other City officials are hereby authorized to take all necessary and proper actions to carry out the provisions of this ordinance, including, without limitation, executing any and all ancillary agreements, deeds, plats, and other documents to facilitate all transactions contemplated by the *Property Sale and Development Agreement*.

Section 8. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

ATTACHMENT A

Contract No. _____

Property: 127 Green Street

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 for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202 (the "**City**") and **THE ACANTHUS GROUP, LLC**, an Ohio Limited Liability Company, whose tax mailing address is 14 West 15th Street, Cincinnati, Ohio 45202 ("**Developer**").

Recitals:

A. The City owns certain real property located at 127 Green Street, Cincinnati, Ohio 45202 in Over-the-Rhine, designated as Hamilton County, Ohio Auditor's Parcel ID No.: 094-0008-0016-00, and more particularly described on Exhibit A (Legal Description- Property) hereto (the "**Sale Property**"). The Sale Property is under the management of the City's Department of Community and Economic Development ("**DCED**").

B. The Property is vacant land, and the City desires to sell it to be redeveloped into a more productive use. Developer submitted a proposal in response to a Request for Proposals issued by the City to solicit offers to develop the Sale Property, which proposal the City determined is the most advantageous to the City. Developer proposes to construct a new two-unit residential building to be marketed to prospective home buyers, involving a private equity investment of approximately \$604,284.70, projecting the creation of approximately seven temporary construction jobs and 0 permanent jobs, as detailed on Exhibit B (Scope of Work; Preliminary Budget; Source of Funds) hereto (the "**Project**").

C. 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.

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

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

F. The City Manager, in consultation with DCED, has determined that the Sale Property is not needed for any municipal purpose.

G. The City's Real Estate Services Division has determined, by a professional appraisal, that the fair market value of the Sale Property is \$54,000; however, the City has agreed to convey the Sale Property for \$20,000 because the City will receive a combination of economic and non-economic benefits from the Project that will equal or exceed the fair market value of the Sale Property because the Project will create additional housing and additional jobs and stimulate other economic development in Over-the-Rhine.

H. The City has determined that eliminating competitive bidding in connection with the City's sale of the Sale Property is appropriate and in the best interest of the City because the City selected Developer's proposal following a Request for Proposals, which proposal the City has determined to be the most advantageous to the City.

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I. The 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 to Developer at its meeting on December 3, 2021.

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

1. Due Diligence.

(A) Due Diligence Materials. Developer shall conduct due diligence investigations for the Sale Property and Project and, in connection therewith, shall obtain and, as they are received, shall deliver to the City, at no cost to the City, the following items (collectively the "**Due Diligence Materials**"):

- (i) Plans and Specifications: plans and specifications for the Project;
- (ii) Building Permit: evidence that Developer has obtained (or if the same cannot be obtained prior to the Closing, evidence that Developer is likely to obtain) a building permit issued by the City's Department of Buildings and Inspections for the Project (including a Certificate of Appropriateness by the Historic Conservation Board and, if required, a Certificate of Compliance by the Urban Conservator);
- (iii) Construction Schedule: the proposed construction schedule for the Project;
- (iv) Financing: evidence that all financing necessary for the Project has been or will be obtained;
- (v) Other Information: such other information and documents pertaining to Developer or the Project as the City may reasonably require.

The City may, in its sole and absolute discretion, waive the requirement for delivery of any of the Due Diligence Materials or may permit that any of the Due Diligence Materials be delivered following the Closing (as defined below).

(B) Due Diligence Expenses; Copies of Due Diligence Materials and Reports to be Provided to City. Developer shall be responsible for all expenses incurred by it relating to due diligence investigations of the Sale Property and the Project, and the City shall have no obligation to reimburse or otherwise pay for any such expenses. Prior to Closing and as such reports and materials are obtained by Developer, Developer, at no cost to the City, shall provide DCED with copies of the Due Diligence Materials and, upon the request of DCED, any other inspection, engineering, and environmental report, title report, surveys, and other materials prepared by third party professionals obtained by Developer that pertain to the Project. Unless otherwise directed by the DCED Director or the terms of this Agreement, Developer shall deliver all Due Diligence Materials and other reports to be provided by Developer to the City under this Agreement to the DCED Director (for review by DCED and other City departments as deemed necessary or appropriate by DCED) and shall generally coordinate all aspects of the Project (as they relate to the City) through DCED. All reports and the like obtained by Developer from third parties and delivered to the City shall be recent (i.e., prepared or updated, as the case may be, within 12 months from the date that the item is delivered to the City or such longer period of time as the City may, in its sole discretion, deem reasonable) and each report and the like has been or shall be prepared by properly licensed and qualified companies or individuals acceptable to the City. In addition to the above due diligence items, Developer and the City may conduct whatever other investigations concerning the Project as they deem necessary.

(C) Right to Terminate. If prior to Closing, either party determines that the Project is not feasible for any reason, then, notwithstanding anything in this Agreement to the contrary, such party may terminate this Agreement by giving the other party written notice thereof, whereupon this Agreement shall

terminate and neither party shall thereafter have any rights or obligations hereunder. Upon Closing, the termination rights of the parties under this Section shall automatically terminate. Discretionary approvals discussed herein are not affected by this provision.

2. Real Estate Closing.

(A) 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 \$20,000 (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.

(B) Closing Date. Subject to the terms and conditions herein, the purchase of the Sale Property by Developer and the sale and conveyance of the Sale Property by the City to Developer (the "**Closing**") shall take place (i) 60 days from the date that Council authorized the execution of this Agreement, or (ii) on such earlier or later date as the parties may agree upon, though no later than **June 30, 2022**, once both parties agree that the Closing Conditions (as defined below) are reasonably satisfied (the "**Closing Date**").

(C) Closing Conditions. The Closing shall not occur unless and until the following conditions have been satisfied (the "**Closing Conditions**"); *provided, however*, that if the City, in its sole discretion, determines that one or more of the Closing Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City's Quitclaim Deed to Developer 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. The City, in its sole discretion, may waive one or more of the Closing Conditions.

- (i) Due Diligence Materials: Each party must be satisfied with the various Due Diligence Materials and other reports related to the Project, as described in Section 1 above;
- (ii) Inspections: Developer's approval (or waiver) of inspections of the Sale Property, to the extent Developer, at its option, elects to obtain such inspections, and Developer shall be satisfactorily coordinating and complying with applicable requirements with respect to all matters pertaining to utility service for the Sale Property;
- (iii) 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;
- (iv) Continued Compliance: Developer is in compliance with all obligations under this Agreement and that all representations made by Developer, as applicable, under this Agreement continue to be true and accurate.
- (v) Coordinated Report Conditions (CR #68-2021 rerun of #29-2019):
 - (a) Department of Buildings and Inspections:
 - (1) Purchaser understands that fire rated walls are required and no openings on the east or west side walls will be permitted if the final design as 0 ft side yard setbacks. The prohibition of openings includes windows, doors, vents, piping, etc.

(2) Purchaser understands that the current design may not meet building code requirements as Bedroom 2 of the Upstairs Unit does not appear to have an emergency egress from the building to the public right of way, as there is no side yard available with the 0 ft setbacks proposed and the rear property line has a building upon it. Purchaser may have to redesign the project or provide a permanent easement across neighboring properties to complete the project as proposed. Further review of the project with the Building Dept prior to the purchase is strongly encouraged.

(b) GCWW: The petitioner is advised that the subject property does not have any water service. During the construction process, the certified plumber for the project must make application for water service with GCWW.

GCWW understands that the petitioner does not intend to split the lots at the time of purchase. Should the petitioner subdivide the property and create an air lot, the petitioner will be required to provide a recorded easement and a GCWW Air Lot Covenant prior to any sale of service branch.

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

(d) Parks Department: There are two public trees in the ROW that will require tree work permits prior to work within 15 ft the trees.

(D) Right to Terminate. If the Closing Conditions have not been satisfied or waived and the Closing has not occurred by **June 30, 2022**, then the City or Developer shall have the right to terminate this Agreement by giving written notice thereof to the other, whereupon this Agreement and all rights and obligations of the parties hereunder shall immediately terminate.

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

3. Project Commencement; Reconveyance of Sale Property to City Upon Failure to Timely Commence Construction.

(A) Construction Commencement & Completion Dates. Developer shall commence on-site construction of the Project no later than **October 31, 2022** (the "**Construction Commencement Date**"). Developer shall complete construction of the Project (as evidenced by a certificate of occupancy for the Project) in accordance with the Final Plans and all other City approvals ("**Construction Completion**") no later than **October 31, 2023** (the "**Completion Deadline**").

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

(C) Construction. Following the Closing, Developer shall commence and complete the Project. Developer shall not transfer title to the Sale Property to a third party prior to Construction Completion, and any attempt to do so shall constitute a default under this Agreement.

(D) Applicable Laws. Developer shall obtain all necessary 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 D (Additional Requirements) hereto, to the extent applicable. The City makes no representations or other assurances to Developer that Developer will be able to obtain whatever permits and other approvals from the Department of City Planning and Engagement, the Department of Buildings and Inspections, the Department of Transportation and Engineering, Metropolitan Sewer District, Greater Cincinnati Water Works, Storm Water Management Unit, other City departments, City Planning Commission, or Cincinnati City Council that may be required in connection with the Project.

(E) Reports and Inspections during Construction. During construction, 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 Project 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.

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

4. Insurance; Indemnity.

(A) Insurance during Construction. During 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/\$1,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of one hundred percent (100%) of the value of the improvements constructed, (iii) automobile liability insurance in the amount of \$1,000,000 per occurrence, naming the City as an additional insured, (iv) worker's compensation insurance in such amount as required by law, (v) all insurance as may be required by Developer's lender(s) for the Project, and (vi) such other insurance as may be reasonably required by the City. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City.

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

(C) **General 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 its request in connection with each such Project.

5. **Casualty.** If the Sale Property is damaged or destroyed by fire or other casualty during construction, Developer shall cause the damage to be repaired, as expeditiously as possible, and to the extent practicable, to substantially the same condition that existed immediately prior to such occurrence. If the insurance 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 reconstruction in accordance with the applicable requirements set forth herein. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the damage is being repaired.

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 any obligation under this Agreement, and failure to correct such failure within thirty (30) days after their receipt of written notice thereof from the City; *provided, however*, that if the nature of the default is such that it cannot reasonably be cured within 30 days, Developer shall not be in default so long as Developer commences to cure the default within such 30-day 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. The foregoing notwithstanding, if Developer's failure to perform or observe any obligation, duty, or responsibility under this Agreement creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Developer fails to take corrective action immediately upon discovering such dangerous condition or emergency; or

(ii) The 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 Developer's property, that, in each such event, is not released within 60 days after the filing thereof.

(B) **Remedies.** Upon the occurrence of an event of default under this Agreement, the City shall be entitled to: (i) terminate this Agreement by giving Developer written notice thereof and, without limitation of its other rights and remedies, (ii) demand immediate repayment of all previously disbursed funds if this Agreement provides for City funding, (iii) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Developer, and (iv) exercise any and all other rights and remedies under this Agreement or available at law or in equity. 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, delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. regular or certified mail, addressed to the parties at their respective addresses set forth in the introductory paragraph of this Agreement. 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

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to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, OH 45202. Notices shall be deemed given on the date of receipt.

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

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

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

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

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

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

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

(vii) Developer does not 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, 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 three (3) years after the completion of the Project.

(B) City's Right to Inspect and Audit. During the Project and for a reasonable period of time thereafter, 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 their rights or obligations under this Agreement without the prior written consent of the City, which may be withheld in the City's sole 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. This Agreement may be amended 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 agree that venue in such court is proper. Developer hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

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

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

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

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

(I) Brokers. Developer shall be responsible for payment of any and all commissions and fees payable to brokers and agents who have assisted Developer in their acquisition of the Property.

(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 the parties of their respective 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 the Project, and Developer shall take appropriate steps to assure compliance.

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

(P) Counterparts; E-Signature. This Agreement may be executed via electronic signature and in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute but one and the same instrument.

12. Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A - *Legal Description*
Exhibit B - *Scope of Work, Preliminary Budget, and Source of Funds*
Exhibit C - *Quitclaim Deed*
Exhibit D - *Additional Requirements*

[*Signature Pages Follow*]

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

THE ACANTHUS GROUP, LLC,
an Ohio limited liability company

By: _____

Printed Name: _____

Title: _____

Date: _____, 2021

[City signatures on the following page]

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

Date: _____, 2021

Recommended by:

Markiea L. Carter, Director
Department of Community and Economic Development

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
Legal Description - Property

Auditor's Parcel ID No.: 098-0008-0016-00
Address: 127 Green Street

Situate in the City of Cincinnati, County of Hamilton and State of Ohio, to-wit:

All that certain lot of ground being part of Lot 31 and 32 of Block "E" of Findlay and Garrard's Subdivision, and described and bounded as follows:

Beginning at a point in the Southern line of Green Street, 40 feet East of Elm Street and running South 60 feet on a line parallel to Elm Street and at right angles to Green Street; thence East 20 feet on a line at right angles to Elm Street and parallel to Green Street; thence North 60 feet on a line parallel to Elm Street and at right angles to Green Street; thence West 20 feet on the South line of Green Street to the place of beginning.

Being also known as 127 Green Street, Cincinnati, Ohio.

EXHIBIT B
to Property Sale and Development Agreement

Scope of Work; Preliminary Budget; Source of Funds

Project Overview:

Acanthus Group, LLC will construct a new 2-unit residential building. The first-floor unit will contain one bedroom and in-unit washer and dryer. The upper unit will contain two-bedrooms, in-unit washer and dryer, walk-in closet, attic loft, storage area, and roof deck. The building will be LEED certified and conform to the guidelines of the Historic Conservation Board. Acanthus plans to finance the project with traditional bank financing and owner equity.

Project Budget:

USES	
Acquisition	\$ 20,000.00
New Construction	\$ 374,253.66
Site Work	\$ 14,634.15
Architect/Engineer	\$ 15,000.00
LEED	\$ 9,100.00
Deck	\$ 30,000.00
Landscaping	\$ 10,829.27
Contingency	\$ 49,480.43
Contractor Overhead	\$ 50,000.00
Permits	\$ 11,120.12
Tap Fees and Utilities	\$ 17,867.07
Insurance	\$ 2,000.00
TOTAL	\$ 604,284.70
SOURCES	
Loan - Zipfel Capital	\$ 560,000.00
Developer Equity	\$ 44,284.70
TOTAL	\$ 604,284.70

EXHIBIT C
to Property Sale and Development Agreement
Form of Quitclaim Deed

[SEE ATTACHED]

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

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), for valuable consideration paid, hereby grants and conveys to **THE ACANTHUS GROUP, LLC**, an Ohio limited liability company, whose tax mailing address is 14 West 15th Street, Cincinnati, Ohio 45202 ("**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:	127 Green Street, Cincinnati, OH 45202
Auditor's Parcel ID Nos.:	094-0008-0016-00
Legal Description:	See <u>Exhibit A</u>
Prior instrument reference:	O.R. 8708, Pg. 3671, Hamilton County, Ohio Records.

This conveyance was authorized by Ordinance No. []-2021, passed by Cincinnati City Council on [], 2021.

Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A - *Legal Description*

[SIGNATURE PAGE FOLLOWS]

{00351604-5}

Executed on _____, 2021.

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

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

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

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

Exhibit A
to Quitclaim Deed
Legal Description

Auditor's Parcel ID No.: 098-0008-0016-00
Address: 127 Green Street

Situate in the City of Cincinnati, County of Hamilton and State of Ohio, to-wit:

All that certain lot of ground being part of Lot 31 and 32 of Block "E" of Findlay and Garrard's Subdivision, and described and bounded as follows:

Beginning at a point in the Southern line of Green Street, 40 feet East of Elm Street and running South 60 feet on a line parallel to Elm Street and at right angles to Green Street; thence East 20 feet on a line at right angles to Elm Street and parallel to Green Street; thence North 60 feet on a line parallel to Elm Street and at right angles to Green Street; thence West 20 feet on the South line of Green Street to the place of beginning.

Being also known as 127 Green Street, Cincinnati, Ohio.

EXHIBIT D
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's, 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 Developer's, contractors and subcontractors regularly face in constructing projects or doing business with the City. To the extent a Developer is legally required to comply with a Government Requirement, failure to comply with such a Government Requirement is a violation of the Agreement.

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

(A) Construction Workforce.

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

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

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

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Conferring with Trade Unions.

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

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

confer activity, Developer shall provide to the City, in writing, a summary of Developer and/or its general contractor's meet and confer activity.

(ii) Contracts and Subcontracts; Competitive Bidding.

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

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

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

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

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

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

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

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

(4) "Public Notification" means (a) advertisement of an invitation to bid with ACI (Allied Construction Industries) and the Dodge Report, and (b) dissemination of the advertisement (either by mail or electronically) to the South Central Ohio Minority Business Council, Greater Cincinnati Northern Kentucky African-American Chamber of Commerce, and the Hispanic Chamber of Commerce. The advertisement shall include a description of the "scope of work" and any other information reasonably necessary for the

preparation of a bid, and it shall be published and disseminated no less than fourteen days prior to the deadline for submission of bids stated in the invitation to bid.

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

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

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

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

(F) Small Business Enterprise Program.

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

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

(1) Including qualified SBEs on solicitation lists.

(2) Assuring that SBEs are solicited whenever they are potential sources. Contractor must advertise, on at least two separate occasions, both in local minority publications and in

other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials or to bid on construction contracts for the Project. Contractor is encouraged to use the internet and similar types of advertising to reach a broader audience, but these additional types of advertising cannot be used as substitutes for the above.

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

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

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

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

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

(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

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

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

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

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

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

(M) Wage Enforcement.

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

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

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

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

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

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

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

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

(N) Americans With Disabilities Act; Accessibility.

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

(ii) Requirement. In furtherance of the policy objectives set forth in the Accessibility Motion, (A) the Project shall comply with the ADA, and (B) if (i) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a "place of public accommodation" or another category of structure to which the ADA is applicable) and (ii) such building(s) is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the

ADA, applicable building code requirements, or by any other legal requirement, then Developer shall cause such building(s) to comply with the Contractual Minimum Accessibility Requirements in addition to any requirements pursuant to the ADA and the applicable building code or legal requirement. As used herein, "**Contractual Minimum Accessibility Requirements**" means that a building shall, at a minimum, include (1) at least one point of entry (as used in the ADA), accessible from a public right of way, with respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (2) if such accessible point of entry is not a building's primary point of entry, conspicuous signage directing persons to such accessible point of entry.

(O) Electric Vehicle Charging Stations in Garages.

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

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

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