



City of Cincinnati

801 Plum Street
Cincinnati, OH 45202

Agenda - Final

Budget and Finance Committee

Chairperson David Mann
Vice Chair Chris Seelbach
Councilmember Steve Goodin
Councilmember Jan-Michele Kearney
Councilmember Liz Keating
Councilmember Greg Landsman
Councilmember Betsy Sundermann
Councilmember Wendell Young

Monday, May 24, 2021

1:00 PM

Council Chambers, Room 300

ROLL CALL

PRESENTATIONS

CROWN - Ohio River Trail

AGENDA

1. [202101885](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 5/19/2021, AUTHORIZING a payment of \$10,000 from the Other City Obligations contractual services operating budget account no. 050x959x1000x7289 to Living Arrangements for the Developmentally Disabled, Inc. as a moral obligation of the City for payment of charges owed for the City's sponsorship of the Over-The-Rhine International Film Festival in 2018 and 2019.

Sponsors: City Manager

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

2. [202101889](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 5/19/2021, AUTHORIZING the payment of \$34,837 from the Audit and Examiner's Fees non-departmental, non-personnel operating budget account no. 050x941x0000x7289 as a moral obligation to Clark Schaefer Hackett for consulting and preparation assistance with the Comprehensive Annual Financial Report for the City of Cincinnati.

Sponsors: City Manager

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

3. [202101890](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 5/19/2021, AUTHORIZING the payment of \$11,287.12 from the Health Department's Cincinnati Health District Fund non-personnel operating budget account no. 416x264x7110x7289 as a moral obligation to the Applied Policy Research Institute at Wright State University for the 2020 Community Health Assessment update.

Sponsors: City Manager

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

4. [202101886](#) ORDINANCE submitted by Paula Boggs Muething, City Manager, on 5/19/2021, AUTHORIZING the City Manager to accept in-kind donations from the Cincinnati Parks Foundation of park supplies, contract services, and pickle ball equipment valued at approximately \$2,893.63, to benefit and improve various City parks.

Sponsors: City Manager

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

5. [202101887](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 5/19/2021, AUTHORIZING the City Manager to apply for, accept, and appropriate a grant in the amount of \$175,000 from the United States Conference of Mayors and the Target Corporation, FY21 Police Reform and Racial Justice Grant Program, for the purpose of assisting with expansion of existing Mobile Crisis Response Services for the Cincinnati Police Department; and AUTHORIZING the Director of Finance to deposit the grant funds into revenue account no. 050x8579.

Sponsors: City Manager

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

6. [202101888](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 5/19/2021, ESTABLISHING new capital improvement program project account no. 980x199x211917, "ODNR LeBlond Walking Trail Grant," for the purpose of providing grant resources for the engineering, design, and construction of a 0.25 mile long trail connecting the LeBlond Playground to the St. Rose Soccer Field; and AUTHORIZING the City Manager to apply for, accept, and appropriate a grant in an amount up to \$120,000 from the NatureWorks grant program awarded by the State of Ohio, Ohio Department of Natural Resources to newly established capital improvement program project account no. 980x199x211917, "ODNR LeBlond Walking Trail Grant," for the purpose of assisting the Cincinnati Recreation Commission with the construction of a walking trail at the LeBlond Recreation Center.

Sponsors: City Manager

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

7. [202101893](#) RESOLUTION (LEGISLATIVE) submitted by Paula Boggs Muething, City Manager, on 5/19/2021, DELCARING the need for emergency repairs that have been made to sidewalks, sidewalk areas, curbs, or gutters at a variety of locations in the City and the need for levying assessments for the cost of such repairs on the abutting properties in accordance with Cincinnati Municipal Code Sections 721-149 through 721-169.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Legislative Resolution](#)
[Attachment](#)

8. [202101901](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 5/19/2021, APPROVING AND AUTHORIZING the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement with Pendleton Housing Partners, L.P., thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 210 E. 13th Street, 402-404 E. 13th Street, 409-415 E. 13th Street (415 E. 13th Street a/k/a 1207 Spring Street), 421 E. 13th Street, 430 E. 12th Street, 511-513 E. 12th Street, 557-563 E. 13th Street (a/k/a 610-612 Reading Road), 1210 Spring Street, 1320 Pendleton Street, 1336-1338 Broadway Street, 1347 Broadway Street, 500-502 E. 12th Street, and 500 E. 13th Street, in the Pendleton neighborhood of Cincinnati, in connection with the remodeling of existing buildings into approximately 81,048 square feet of residential space consisting of 78 residential units, at a total construction cost of approximately \$10,000,000.

Sponsors: City Manager

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

9. [202101963](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 5/19/2021, ESTABLISHING certain policies and conditions regarding the application of residential Community Reinvestment Area real property tax abatements at 2800 Robertson Avenue in the Oakley neighborhood of Cincinnati, notwithstanding Ordinance Nos. 276-2017 and 370-2020.

Sponsors: City Manager

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

10. [202101964](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 5/19/2021, AUTHORIZING the City Manager to execute a Development Agreement with Oakley Yards Land, LLC, an affiliate of Neyer Properties, Inc., pertaining to the redevelopment of property located at 2800 Robertson Avenue in the Oakley neighborhood of Cincinnati, pursuant to which the City will assign service payments in lieu of taxes received by the City of Cincinnati to the Port of Greater Cincinnati Development Authority to facilitate the mixed-use project.

Sponsors: City Manager

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

11. [202101966](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 5/19/2021, APPROVING AND AUTHORIZING the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement with Oakley Yards Land, LLC, thereby authorizing a 15-year tax exemption for 90% of the value of improvements made to real property located at 2800 Robertson Avenue in the Oakley neighborhood of Cincinnati, in connection with the construction of 393 apartment units, at a total construction cost of approximately \$54,000,000.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)
[Ordinance](#)
[Exhibit A](#)
12. [202101968](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 5/19/2021, APPROVING AND AUTHORIZING the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement with Oakley Yards Land, LLC, thereby authorizing a 15-year tax exemption for 45% of the value of improvements made to real property located at 2800 Robertson Avenue in the Oakley neighborhood of Cincinnati, in connection with the construction of 150 to 200 units of senior housing, at a total construction cost of approximately \$35,000,000.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)
[Ordinance](#)
[Exhibit A](#)
13. [202102028](#) ORDINANCE (EMERGENCY), dated 12/21/2021, submitted by Councilmember Jan-Michele Lemon Kearney, from Andrew W. Garth, City Solicitor, AUTHORIZING the transfer of \$125,000 from the General Fund balance sheet reserve account no. 050x2580, "Reserve for Weather Related Events, Other Emergency and One-Time Needs," to the unappropriated surplus of General Fund 050; AUTHORIZING the transfer and appropriation of \$125,000 from the unappropriated surplus of General Fund 050 to City Manager's Office non-personnel operating budget account no. 050x101x7200 for the purpose of providing funds to restore the Black Lives Matter mural on Plum Street between Eight Street and Ninth Street and to install a historical plaque explaining the mural's background.
- Sponsors:** Kearney
- Attachments:** [Transmittal](#)
[Emergency Ordinance](#)

14. [202102031](#) ORDINANCE, (EMERGENCY), dated 02/21/2021, from Andrew Garth, City Solicitor, AUTHORIZING the establishment of American Rescue Plan grant project account no. 469x101xARP053, "Hazard Pay," for the purpose of providing additional compensation to employees during the COVID-19 pandemic; and AUTHORIZING the appropriation of the sum of \$2,800,000 from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly established American Rescue Plan grant project account no. 469x101xARP053, "Hazard Pay," for the purpose of providing additional compensation to employees during the COVID-19 pandemic; and DECLARING expenditures from American Rescue Plan grant project account no. 469x101xARP053, "Hazard Pay," to be for the public purpose.

Sponsors: City Manager

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

15. [202101951](#) MOTION, submitted by Councilmember Keating, WE MOVE that the Administration apply for a \$6,000,000 Surface Transportation Block Grant or Congestion Mitigation / Air Quality Grant from OKI Regional Council of Governments for the Ohio River Trail from Lunken Airport to Theodore M. Berry International Friendship Park along the Oasis rail line, due June 4, 2021. (STATEMENT ATTACHED)

Sponsors: Keating

Attachments: [Motion](#)

ADJOURNMENT

May 19, 2021

To: Mayor and Members of City Council

From: Paula Boggs Muething, City Manager

202101885

Subject: Emergency Ordinance – Moral Obligation Payments to Living Arrangements for the Developmentally Disabled (LADD), Inc.

Attached is an Emergency Ordinance captioned:

AUTHORIZING a payment of \$10,000 from the Other City Obligations contractual services operating budget account no. 050x959x1000x7289 to Living Arrangements for the Developmentally Disabled, Inc. as a moral obligation of the City for payment of charges owed for the City's sponsorship of the Over-The-Rhine International Film Festival in 2018 and 2019.

This Emergency Ordinance authorizes the payment of \$10,000 from the Other City Obligations non-departmental contractual services operating budget account no. 050x959x1000x7289 to Living Arrangements for the Development Disabled (LADD), Inc. as a moral obligation to the City for payment of charges owed for the City's sponsorship of the Over-The-Rhine International Film Festival in 2018 and 2019.

Resources for these payments were not encumbered in prior-fiscal years, which necessitates a moral obligation payment. Sufficient resources are available in the Other City Obligations contractual services operating budget account to pay for the sponsorship.

The reason for the emergency is the immediate need for the City to pay LADD, Inc. for the Over-The-Rhine International Film Festival sponsorship from prior years in a timely manner.

The Administration recommends passage of this Emergency Ordinance.

cc: Christopher A. Bigham, Assistant City Manager
Karen Alder, Finance Director

Attachment

EMERGENCY

City of Cincinnati

KMB

AWG

An Ordinance No. _____

- 2021

AUTHORIZING a payment of \$10,000 from the Other City Obligations contractual services operating budget account no. 050x959x1000x7289 to Living Arrangements for the Developmentally Disabled, Inc. as a moral obligation of the City for payment of charges owed for the City's sponsorship of the Over-The-Rhine International Film Festival in 2018 and 2019.

WHEREAS, the City was a sponsor of the Over-The-Rhine International Film Festival in 2018 and 2019; and

WHEREAS, resources for these payments were not encumbered in prior fiscal years; and

WHEREAS, sufficient funds are available from the Other City Obligations contractual services operating budget account no. 050x959x1000x7289 to pay for the sponsorship; and

WHEREAS, City Council desires to provide payment to Living Arrangements for the Developmentally Disabled, Inc. for such sponsorship in a total amount of \$10,000; now, therefore,

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

Section 1. That the Finance Director is authorized to make a payment of \$10,000 from the Other City Obligations contractual services operating budget account no. 050x959x1000x7289 to Living Arrangements for the Developmentally Disabled, Inc. ("LADD") as a moral obligation of the City for payment of charges owed for the City's sponsorship of the Over-The-Rhine International Film Festival in 2018 and 2019.

Section 2. That the proper City officials are authorized to do all things necessary and proper to carry out the provisions of Section 1 hereof.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is

the immediate need for the City to pay LADD, Inc. for the Over-The-Rhine International Film Festival sponsorship from prior years in a timely manner.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

May 19, 2021

To: Mayor and Members of City Council 202101889
From: Paula Boggs Muething, City Manager
Subject: Emergency Ordinance – Clark Schaefer Hackett Moral Obligation

Attached is an Emergency Ordinance captioned:

AUTHORIZING the payment of \$34,837 from the Audit and Examiner’s Fees non-departmental, non-personnel operating budget account no. 050x941x0000x7289 as a moral obligation to Clark Schaefer Hackett for consulting and preparation assistance with the Comprehensive Annual Financial Report for the City of Cincinnati.

Approval of this Emergency Ordinance authorizes the payment of \$34,837 as a moral obligation to Clark Schaefer Hackett for consulting and preparation assistance with the Comprehensive Annual Financial Report (CAFR) for the City of Cincinnati. Due to COVID-19 and working remotely, two invoices inadvertently went unpaid while Clark Schaefer Hackett was still under contract with the City, which necessitates a moral obligation payment.

This Emergency Ordinance also authorizes the Finance Director to make a payment of \$34,837 from the Audit and Examiner’s Fees non-departmental, non-personnel operating budget account no. 050x941x0000x7289, to Clark Schaefer Hackett as a moral obligation of the City of Cincinnati, for consulting and preparation assistance with the Comprehensive Annual Financial Report for the City of Cincinnati. Sufficient funds are available for this expense.

The reason for the emergency is the immediate need for the Finance Department to timely pay Clark Schaefer Hackett for consulting and preparation assistance with the Comprehensive Annual Financial Report.

The Administration recommends passage of this Emergency Ordinance.

cc: Christopher A. Bigham, Assistant City Manager
Karen Alder, Finance Director

Attachment

EMERGENCY

City of Cincinnati

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An Ordinance No. _____

-2021

AUTHORIZING the payment of \$34,837 from the Audit and Examiner’s Fees non-departmental, non-personnel operating budget account no. 050x941x0000x7289 as a moral obligation to Clark Schaefer Hackett for consulting and preparation assistance with the Comprehensive Annual Financial Report for the City of Cincinnati.

WHEREAS, in 2020, the City of Cincinnati Finance Department engaged Clark Schaefer Hackett to consult and assist in the preparation of the Comprehensive Annual Financial Report for the City of Cincinnati; and

WHEREAS, due to COVID-19 and working remotely, two invoices inadvertently went unpaid while Clark Schaefer Hackett was still under contract with the City; and

WHEREAS, when this oversight was discovered, the proper amount of funds was not certified to the contract with Clark Schaefer Hackett; and

WHEREAS, sufficient funds are available from the Audit and Examiner’s Fees non-departmental, non-personnel operating budget account no. 050x941x0000x7289 to pay for the services provided by Clark Schaefer Hackett; and

WHEREAS, City Council desires to provide payment for such services in the amount of \$34,837; now, therefore,

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

Section 1. That the Finance Director is authorized to make a payment of \$34,837 from the Audit and Examiner’s Fees non-departmental, non-personnel operating budget account no. 050x941x0000x7289 as a moral obligation to Clark Schaefer Hackett for payment of charges owed for consulting and preparation assistance with the Comprehensive Annual Financial Report for the City of Cincinnati.

Section 2. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Section 1 hereof.

Section 3. That this ordinance shall be an emergency measure necessary for the preparation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need for the Finance Department to timely pay Clark Schaefer Hackett for consulting and preparation assistance with the Comprehensive Annual Financial Report.

Passed: _____, 2021

Mayor John Cranley

Attest: _____
Clerk

May 19, 2021

To: Mayor and Members of City Council 202101890
From: Paula Boggs Muething, City Manager
Subject: **Emergency Ordinance – Moral Obligation Payment to the Applied Policy Research Institute**

Attached is an Emergency Ordinance captioned:

AUTHORIZING the payment of \$11,287.12 from the Health Department's Cincinnati Health District Fund non-personnel operating budget account no. 416x264x7110x7289 as a moral obligation to the Applied Policy Research Institute at Wright State University for the 2020 Community Health Assessment update.

This Emergency Ordinance will authorize the payment of \$11,287.12 from the Cincinnati Health Department as a moral obligation to the Applied Policy Research Institute at Wright State University for the 2020 Community Health Assessment update. This moral obligation payment is necessary due to requesting and receiving services without a contract. The Emergency Ordinance will also authorize the Director of Finance to make a payment from the Health Department's non-personnel operating budget account no. 416x264x7110x7289.

The reason for the emergency is the immediate need for the Health Department to make a payment to the Applied Policy Research Institute in a timely manner for services related to the 2020 Community Health Assessment update.

cc: Christopher A. Bigham, Assistant City Manager
Karen Alder, Finance Director

Attachment

EMERGENCY

City of Cincinnati

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AWB

An Ordinance No. _____

- 2021

AUTHORIZING the payment of \$11,287.12 from the Health Department’s Cincinnati Health District Fund non-personnel operating budget account no. 416x264x7110x7289 as a moral obligation to the Applied Policy Research Institute at Wright State University for the 2020 Community Health Assessment update.

WHEREAS, the City of Cincinnati Health Department engaged the Applied Policy Research Institute at Wright State University (“Institute”) to complete the 2020 Community Health Assessment update; and

WHEREAS, the contract expired but the Institute continued to provide necessary services to the City; and

WHEREAS, sufficient funds are available from the Health Department’s Cincinnati Health District Fund non-personnel operating budget account no. 416x264x7110x7289 to pay for the services provided by the Institute; and

WHEREAS, City Council desires to provide payment for such services in the amount of \$11,287.12; now, therefore,

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

Section 1. That the Finance Director is authorized to make a payment of \$11,287.12 from the Health Department’s Cincinnati Health District Fund non-personnel operating budget account no. 416x264x7110x7289 as a moral obligation to the Applied Policy Research Institute at Wright State University for the 2020 Community Health Assessment update.

Section 2. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Section 1 hereof.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is

the immediate need for the Health Department to make a payment to the Applied Policy Research Institute in a timely manner for services related to the 2020 Community Health Assessment update.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

May 19, 2021

To: Mayor and Members of City Council 202101886
From: Paula Boggs Muething, City Manager
Subject: Ordinance – In-Kind Donations from the Cincinnati Parks Foundation

Attached is an Ordinance captioned:

AUTHORIZING the City Manager to accept in-kind donations from the Cincinnati Parks Foundation of park supplies, contract services, and pickle ball equipment valued at approximately \$2,893.63, to benefit and improve various City parks.

This Ordinance authorizes the City Manager to accept in-kind donations from the Cincinnati Parks Foundation of parks supplies, contract services, and pickle ball equipment valued at approximately \$2,893.63, to benefit and improve various City parks. A list of in-kind contributions is shown in the table below:

| Donated Items | Value |
|---------------------------------------------|-------------------|
| Park Supplies | \$1,332.76 |
| Contract Services | \$1,100.00 |
| Pickle Ball Equipment for Sawyer Point Park | \$460.87 |
| Total | \$2,893.63 |

Accepting these donations does not require new FTEs or matching resources.

This Ordinance is in accordance with the “Sustain” goal to “Preserve our natural and built environment,” and the strategy to “Protect our natural resources,” as set forth on pages 194-196 of Plan Cincinnati (2012).

The Administration recommends passage of this Ordinance.

cc: Christopher A. Bigham, Assistant City Manager
 Karen Alder, Finance Director

Attachment





City of Cincinnati

LES

AWB

An Ordinance No. _____

- 2021

AUTHORIZING the City Manager to accept in-kind donations from the Cincinnati Parks Foundation of park supplies, contract services, and pickle ball equipment valued at approximately \$2,893.63, to benefit and improve various City parks.

WHEREAS, the Cincinnati Parks Foundation intends to donate park supplies, pickle ball equipment, and contract services to the City of Cincinnati to benefit and improve various City parks; and

WHEREAS, the value of the donation is approximately \$2,893.63; and

WHEREAS, there are no FTEs associated with acceptance of this donation; and

WHEREAS, this ordinance is in accordance with the “Sustain” goal to “Preserve our natural and built environment,” and the strategy to “Protect our natural resources,” as set forth on pages 194-196 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 in-kind donations from the Cincinnati Parks Foundation of park supplies, pickle ball equipment, and contract services valued at approximately \$2,893.63, to benefit and improve various City parks.

Section 2. That the proper City officials are authorized to do all things necessary and proper 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: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

May 19, 2021

To: Mayor and Members of City Council 202101887

From: Paula Boggs Muething, City Manager

Subject: **Emergency Ordinance – FY 2021 Police Reform and Racial Justice Grant Program**

Attached is an Emergency Ordinance captioned:

AUTHORIZING the City Manager to apply for, accept, and appropriate a grant in the amount of \$175,000 from the United States Conference of Mayors and the Target Corporation, FY21 Police Reform and Racial Justice Grant Program, for the purpose of assisting with expansion of existing Mobile Crisis Response Services for the Cincinnati Police Department; and **AUTHORIZING** the Director of Finance to deposit the grant funds into revenue account no. 050x8579.

This Emergency Ordinance would authorize the City Manager to apply for, accept, and appropriate a grant for up to the amount of \$175,000 in FY21 Police Reform and Racial Justice Grant Program funds from the United States Conference of Mayors and the Target Corporation for assistance with expansion of current mental health response efforts.

The grant funds would be used to fund a contract position in partnership with Hamilton County, for which a Memorandum of Understanding (MOU) would be established. This Emergency Ordinance should also authorize the Finance Director to deposit the grant funds into revenue account no. 050x8579.

This Emergency Ordinance is in accordance with the Live goal to “Create a more livable community” as described on page 156 of Plan Cincinnati (2012).

The reason for the emergency is the need to ensure timely acceptance of grant funds.

The Administration recommends passage of this Emergency Ordinance.

cc: Christopher A. Bigham, Assistant City Manager
Karen Alder, Finance Director

Attachment





EMERGENCY

City of Cincinnati

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AWL

An Ordinance No. _____

- 2021

AUTHORIZING the City Manager to apply for, accept, and appropriate a grant in the amount of \$175,000 from the United States Conference of Mayors and the Target Corporation, FY21 Police Reform and Racial Justice Grant Program, for the purpose of assisting with expansion of existing Mobile Crisis Response Services for the Cincinnati Police Department; and **AUTHORIZING** the Director of Finance to deposit the grant funds into revenue account no. 050x8579.

WHEREAS, on January 1, 2021, the Hamilton County Mental Health and Recovery Services Board (“Hamilton County”) entered into a Purchase of Service contract with Central Clinic – Outpatient Services (“CCOS”) for the provision of mental health, addiction, and prevention services including Mobile Crisis Response Services; and

WHEREAS, in accordance with the terms of the CCOS contract, certain Mobile Crisis Response Services are designated for the Cincinnati Police Department (“CPD”) and paid for by Hamilton County, utilizing its funding sources; and

WHEREAS, the City has requested that Hamilton County amend the CCOS contract to expand the Mobile Crisis Response Services under the CCOS contract; and

WHEREAS, to support the expansion of the Mobile Crisis Response Services for CPD, the City entered into a Memorandum of Understanding (“MOU”) with Hamilton County to provide funding which would allow Hamilton County to amend the CCOS contract to provide the additional Mobile Crisis Response Services to CPD; and

WHEREAS, a grant in the amount of \$175,000 is available from the United States Conference of Mayors and the Target Corporation, FY21 Police Reform and Racial Justice Grant Program, which will allow the City to provide funds for the expansion of Mobile Crisis Response Services; and

WHEREAS, there are no City employee FTEs associated with this grant, however the grant funds will be used to satisfy the City’s obligations under the MOU, which include the hiring of a Mobile Crisis Team social worker in order to expand the Mobile Crisis Response Services for CPD; and

WHEREAS, the grant application deadline is June 15, 2021, and the City Manager intends to apply by this date, but funding will not be accepted without authorization by City Council; and

WHEREAS, acceptance of the grant will not require matching funds from the City; and

WHEREAS, this ordinance is in accordance with the “Live” goal to “Create a more livable community” as described on page 156 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 authorized to apply for, accept, and appropriate a grant in the amount of \$175,000 from the United States Conference of Mayors and the Target Corporation, FY21 Police Reform and Racial Justice Grant Program, for the purpose of assisting with expansion of existing Mobile Crisis Response Services for the Cincinnati Police Department.

Section 2. That the Finance Director is authorized to deposit the grant funds into revenue account no. 050x8579.

Section 3. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 and 2 hereof.

Section 4. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the need to ensure timely acceptance of grant funds.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

May 19, 2021

To: Mayor and Members of City Council 202101888

From: Paula Boggs Muething, City Manager

Subject: Emergency Ordinance – LeBlond Recreation Center Walking Trail Grant

Attached is an Emergency Ordinance captioned:

ESTABLISHING new capital improvement program project account no. 980x199x211917, “ODNR LeBlond Walking Trail Grant,” for the purpose of providing grant resources for the engineering, design, and construction of a 0.25 mile long trail connecting the LeBlond Playground to the St. Rose Soccer Field; and **AUTHORIZING** the City Manager to apply for, accept, and appropriate a grant in an amount up to \$120,000 from the NatureWorks grant program awarded by the State of Ohio, Ohio Department of Natural Resources to newly established capital improvement program project account no. 980x199x211917, “ODNR LeBlond Walking Trail Grant,” for the purpose of assisting the Cincinnati Recreation Commission with the construction of a walking trail at the LeBlond Recreation Center.

This Emergency Ordinance authorizes the City Manager to establish capital improvement program project account no. 980x199x211917, “ODNR LeBlond Walking Trail Grant,” for the purpose of providing grant resources for the engineering and design work required for the construction of a 0.25 mile long trail that would connect the LeBlond Playground to the St. Rose Soccer Field and will also authorize the City Manager to apply for, accept, and appropriate a grant in the amount of up to \$120,000 from the State of Ohio, Ohio Department of Natural Resources (ODNR) NatureWorks grant program to newly established capital improvement program project account no. 980x199x211917, “ODNR LeBlond Walking Trail Grant,” to assist with the construction of a walking trail at the LeBlond Recreation Center located at 2335 Riverside Drive. This trail is a total of 0.25 miles long and would connect the LeBlond Playground to the St. Rose Soccer Field. The City property along Riverside Drive was previously swapped with property along the river so this trail could be installed. Construction will include the engineering and design work required.

NatureWorks is funded through the Ohio Parks and Natural Resources Bond Issue. The NatureWorks grant program provides up to 75% project funding. The required 25% match of \$40,000 will be partially offset by Cincinnati Recreation Commission (CRC) providing engineering and design services and in-kind labor contributed by department staff. The remaining need for the local match will come from resources available in Outdoor Facilities Renovation capital improvement program project accounts. The department will have submitted the grant application prior to City Council authorization of this ordinance in order to meet the application deadline of June 1, 2021. No resources will be accepted without authorization from the City Council. There are no new FTE's associated with this grant.

This Emergency Ordinance is in accordance with the “Live” goal to “Create a more livable community,” as described on page 156 of Plan Cincinnati (2012).

The reason for the emergency is the immediate need to apply for, accept, and appropriate the grant resources in a timely manner.

The Administration recommends passage of this Emergency Ordinance.

cc: Christopher A. Bigham, Assistant City Manager
Karen Alder, Finance Director



Attachment



EMERGENCY

City of Cincinnati

LES

AWB

An Ordinance No. _____

- 2021

ESTABLISHING new capital improvement program project account no. 980x199x211917, “ODNR LeBlond Walking Trail Grant,” for the purpose of providing grant resources for the engineering, design, and construction of a 0.25 mile long trail connecting the LeBlond Playground to the St. Rose Soccer Field; and **AUTHORIZING** the City Manager to apply for, accept, and appropriate a grant in an amount up to \$120,000 from the NatureWorks grant program awarded by the State of Ohio, Ohio Department of Natural Resources to newly established capital improvement program project account no. 980x199x211917, “ODNR LeBlond Walking Trail Grant,” for the purpose of assisting the Cincinnati Recreation Commission with the construction of a walking trail at the LeBlond Recreation Center.

WHEREAS, the Cincinnati Recreation Commission plans to build a walking trail to connect the LeBlond Playground to the St. Rose Soccer Field (“LeBlond Walking Trail”) that will be 0.25 miles long; and

WHEREAS, the LeBlond Walking Trail is eligible for the NatureWorks grant program, which is funded through the Ohio Parks and Natural Resources Bond Issue and will provide up to 75% project funding and require a 25% match; and

WHEREAS, the required match of \$40,000 will be partially offset by Cincinnati Recreation Commission (“CRC”) staff providing engineering and design services as in-kind labor, and the remaining local match amount will come from resources available in capital improvement program project account no. 980x199x211900, “Outdoor Facilities Renovation”; and

WHEREAS, there are no new FTEs associated with the grant; and

WHEREAS, the application deadline for these grant resources is June 1, 2021, and CRC intends to apply by this date, but funding will not be accepted without authorization by City Council; and

WHEREAS, the LeBlond Walking Trail is in accordance with the Plan Cincinnati goal to “Develop an efficient multi-modal transportation system that supports neighborhood livability” as well as the strategies to “Expand options for non-automotive travel,” and “Plan, design, and implement a safe and sustainable transportation system,” as described on pages 129-138 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the Director of Finance is authorized to establish new capital improvement program project account no. 980x199x211917, "ODNR LeBlond Walking Trail Grant," for the purpose of providing resources for the engineering, design, and construction of a 0.25 mile trail connecting the LeBlond Playground to the St. Rose Soccer Field.

Section 2. That the City Manager is hereby authorized to apply for, accept, and appropriate a grant in an amount up to \$120,000 from the State of Ohio, Ohio Department of Natural Resources NatureWorks grant program to newly established capital improvement program project account no. 980x199x211917, "ODNR LeBlond Walking Trail Grant," for the purpose of assisting the Cincinnati Recreation Commission with the construction of a walking trail at the LeBlond Recreation Center.

Section 3. That the proper City officials are authorized to do all things necessary and proper to carry out of the provisions of Sections 1 and 2 hereof.

Section 4. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to apply for, accept, and appropriate the grant resources in a timely manner.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

Date: May 19, 2021

To: Mayor and Members of City Council 202101893
From: Paula Boggs Muething, City Manager
Subject: LEGISLATIVE RESOLUTION – 2020 SIDEWALK SAFETY PROGRAM – EMERGENCY
SIDEWALK REPAIRS AT A VARIETY OF LOCATIONS

Attached is a legislative resolution captioned as follows:

DECLARING the need for emergency repairs that have been made to sidewalks, sidewalk areas, curbs, or gutters at a variety of locations in the City and the need for levying assessments for the cost of such repairs on the abutting properties in accordance with Cincinnati Municipal Code Sections 721-149 through 721-169.

This resolution will declare the necessity of special assessments upon certain property bounding and abutting streets within the City of Cincinnati for the purpose of paying the cost and expense of repairing, reconstructing, and constructing concrete sidewalks, driveways, and curbs as per attached Exhibit A.

The property owners were notified of the need for repairs. In lieu of making the repairs themselves, these property owners notified the City in writing to have the City contractor make the necessary repairs.

Ultimately, unpaid assessments will be certified to the County Auditor for collection by the County Treasurer, in the same manner as real estate taxes.

The Administration recommends passage of the attached legislative resolution.

Attachment I – Exhibit A, Locations of Sidewalk Repairs

cc: John S. Brazina, Director, Transportation and Engineering John B.

Legislative Resolution

JRS *AWB*

RESOLUTION NO. _____ - 2021

DECLARING the need for emergency repairs that have been made to sidewalks, sidewalk areas, curbs, and/or gutters at a variety of locations in the City and the need for levying assessments for the cost of such repairs on the abutting properties in accordance with Cincinnati Municipal Code Sections 721-149 to 721-169.

WHEREAS, Chapter 721 of the Cincinnati Municipal Code requires property owners to keep the sidewalks, sidewalk area, curbs, and gutters abutting their properties safe and in good repair; and

WHEREAS, City inspectors have documented the need for emergency sidewalk repairs adjacent to each of the properties listed in Exhibit A attached hereto and incorporated herein by reference (the "Properties"); and

WHEREAS, Cincinnati Municipal Code Section 721-165 authorizes the City to make emergency repairs without prior notice to the abutting property owner if necessary to provide for public safety and also to bill the owner for the cost of the work; and

WHEREAS, for the Properties, the City provided prior written notice of the emergency sidewalk conditions and the need for repairs to each property owner, which included notice that failure by an owner to permanently repair an emergency condition would result in the City performing the repair at the property owner's cost; and

WHEREAS, under Cincinnati Municipal Code Section 721-169, if a property owner fails to pay the City's bill for the cost of the work within 30 days, the City may levy an assessment on the abutting property for the cost of the work, which shall be collected by the County Treasurer in the same manner as real estate taxes; and

WHEREAS, by this resolution the City declares the need for emergency repairs to sidewalks, sidewalk areas, curbs, or gutters abutting the Properties and the need for the levying of an assessment, by subsequent ordinance, for the cost of the work against each such property if the property owner fails to pay the City's bill within 30 days; now, therefore,

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

Section 1. That the making of emergency repairs to the sidewalks, sidewalk areas, curbs and/or gutters abutting certain properties at certain miscellaneous locations within the City, as

identified in Exhibit A attached hereto and incorporated herein by reference, is hereby declared necessary for public safety in accordance with Cincinnati Municipal Code Sections 721-149 through 721-169.

Section 2. That the work performed by the City shall be accomplished in accordance with plans and specifications on file in the Clerk of Council's office which are hereby approved.

Section 3. That Council finds that the City shall be responsible for two percent of the cost of the work and that the balance of the cost of the work shall be charged to the abutting property owners in the amounts shown in Exhibit A hereto.

Section 4. That a property owner who fails to pay the City's bill within 30 days shall, by subsequent ordinance, have an assessment levied upon such property for the cost of the work which shall be collected by the County Treasurer.

Section 5. That if a property owner does not pay the assessment in cash and, prior to the billing statement due date, does not indicate to the Director of the City's Department of Transportation and Engineering the property owner's election to pay the assessment over three, five, ten, or twenty years, the City shall assess the property for a period of three years. The interest rate charged shall correspond to the City-adopted rates in effect at the time Council passes the assessing ordinance for the respective property. The 2021 rates are 3.16% for three years, 3.36% for five years, 3.93% for ten years, and 4.46% for twenty years. Assessments not timely paid shall be certified to the County Auditor for collection by the County Treasurer in the same manner as real estate taxes are collected.

Section 6. That notice of the passage of this resolution shall be given pursuant to Chapter 729 of the Ohio Revised Code and Section 721.153 of the Cincinnati Municipal Code.

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

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

EXHIBIT A

2020 SSP Emergency Locations

Total Construction Cost: \$29,870.49

| | |
|--------------------------------|-------------|
| 2020 Dist 2 (Fall) Emergency | \$3,725.28 |
| 2020 Dist 2 (Summer) Emergency | \$11,668.02 |
| 2020 Dist 3 (Summer) Emergency | \$6,993.09 |
| 2020 Dist 4 (Fall) Emergency | \$6,669.00 |
| 2020 Dist 5 (Summer) Emergency | \$815.10 |

Group Name: 2020 Dist 2 (Fall) Emergency

| | Location: | Parcel: | Construction Cost: |
|----------|----------------------------|-----------------------|---------------------------|
| 1 | 6420 GRAND VISTA Av | 0124-0003-0029 | \$1,697.28 |
| 2 | 6814 HURD Av | 0037-0003-0381 | \$2,028.00 |

Group Name: 2020 Dist 2 (Summer) Emergency

| | Location: | Parcel: | Construction Cost: |
|---|--------------------|----------------|--------------------|
| 3 | 221 CONGRESS Av | 0028-0003-0130 | \$838.50 |
| 4 | 223 CONGRESS Av | 0028-0003-0129 | \$1,155.96 |
| 5 | 6561 KNOTTYPINE Dr | 0001-0004-0147 | \$1,185.60 |
| 6 | 1730 MADISON Rd | 0055-0006-0069 | \$1,230.06 |
| 7 | 3546 PEMBROKE Av | 0038-0A03-0100 | \$2,558.40 |
| 8 | 3548 PEMBROKE Av | 0038-0A03-0101 | \$1,111.50 |
| 9 | 2514 RITCHIE Av | 0047-0001-0043 | \$3,588.00 |

Group Name: 2020 Dist 3 (Summer) Emergency

| | Location: | Parcel: | Construction Cost: |
|----|------------------|----------------|---------------------------|
| 10 | 488 CRESTLINE Av | 0177-0034-0036 | \$296.40 |
| 11 | 3036 JUNIETTA Av | 0210-0074-0054 | \$4,334.85 |
| 12 | 2910 MONTANA Av | 0210-0076-0007 | \$2,361.84 |

Group Name: 2020 Dist 4 (Fall) Emergency

| | Location: | Parcel: | Construction Cost: |
|----|-------------------|----------------|---------------------------|
| 13 | 4064 BEECHWOOD Av | 0115-0006-0018 | \$6,372.60 |
| 14 | 7236 READING Rd | 0117-0009-0316 | \$296.40 |

Group Name: 2020 Dist 5 (Summer) Emergency

| | Location: | Parcel: | Construction Cost: |
|----|------------------|----------------|---------------------------|
| 15 | 2803 Clifton Av | 0101-0006-0114 | \$815.10 |

May 19, 2020

To: Mayor and Members of City Council 202101901
From: Paula Boggs Muething, City Manager
Subject: **LEED CRA TAX EXEMPTION FOR PENDLETON HOUSING PARTNERS, LP**

Attached is an Emergency Ordinance captioned as follows:

APPROVING AND AUTHORIZING the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement with Pendleton Housing Partners, L.P., thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 210 E. 13th Street, 402-404 E. 13th Street, 409-415 E. 13th Street (415 E. 13th Street a/k/a 1207 Spring Street), 421 E. 13th Street, 430 E. 12th Street, 511-513 E. 12th Street, 557-563 E. 13th Street (a/k/a 610-612 Reading Road), 1210 Spring Street, 1320 Pendleton Street, 1336-1338 Broadway Street, 1347 Broadway Street, 500-502 E. 12th Street, and 500 E. 13th Street, in the Pendleton neighborhood of Cincinnati, in connection with the remodeling of existing buildings into approximately 81,048 square feet of residential space consisting of 78 residential units, at a total construction cost of approximately \$10,000,000.

BACKGROUND/CURRENT CONDITIONS

Pendleton Housing Partners, Limited Partnership owns and intends to renovate Seventy-eight (78) affordable apartment units located in eighteen (18) historic buildings scattered across the Pendleton neighborhood of Cincinnati. The occupied eighteen (18) buildings range from 2 to 4 stories. Over the last 36 years, the units have been operated as one community and covered by a single Section 8 Housing Assistance Payment (HAP) contract. In the fall of 2020, the Developer was awarded 4% Low-Income Housing Tax Credits (LIHTC) by the Ohio Housing Finance Agency (OHFA) to renovate these buildings.

DEVELOPER INFORMATION

Pendleton Apartments L.P. is a partnership between Pendleton Housing Management, LLC (the "General Partner") and Stephen R. Whyte (the "Limited Partner"). Pendleton Housing Management, LLC is owned by Vitus Development IV,

LLC, a Delaware limited liability company. Stephen R. Whyte is also the President of Vitus.

In the past 25 years, Vitus has developed over 100 affordable properties in 26 states consisting of over 10,000 units and over \$1.2 Billion in total investment. Their portfolio includes a combination of LIHTC and Section 8 communities in both urban and rural settings.

PROJECT DESCRIPTION

The Pendleton III Apartments project will consist of the substantial rehabilitation of the eighteen (18) scattered historic apartment buildings in the Pendleton neighborhood of Cincinnati. The two to four-story residential structures contain seventy-eight (78) units currently affordable and will remain affordable to families earning sixty percent (60%) of the area median. In addition to preserving low-income housing within the City of Cincinnati, all buildings associated with the development fall within and contribute to the Over-The-Rhine Historic District. The rehabilitation involved with this project will preserve a valuable asset in our urban city center and help bring the quality of the buildings back to market levels.

The seventy-eight (78) units will include eleven (11) studios, twelve (12) one-bedrooms, twenty-four (24) two-bedrooms, twenty-one (21) three-bedrooms, eight (8) four-bedrooms, and two (2) five-bedroom. These larger unit sizes will allow a full spectrum of small to large families to live together in quality housing that does not create financial hardship. Total rents are projected at \$1,015 for studio, \$1,240 for one-bedrooms, \$1,690 for two-bedrooms, and \$2,115 for three-bedrooms, \$2,440 for four-bedrooms, and \$2,865 for five-bedrooms. All units' rents will be subsidized by the Department of Housing and Urban Development so that tenants will pay no more than 30% of their household income on housing costs.

Total project cost is projected at \$23.4 million, with construction cost at approximately \$10 million. Pendleton III Apartments will attract \$6.5 million in LIHTC equity, \$1.7 Million in historic tax credits, a \$2.4 Million Deferred Developer fee, and approximately \$640,000 in developer equity with no cash subsidy from the City.

Construction will be completed in 12 months and will support the creation of 42 temporary construction jobs with a total annual payroll of \$753,604 million. The project will retain at least three (3) part-time permanent on-site jobs in case management and facilities management generating \$172,488 in annual payroll.

Pendleton III Apartments achieves Plan Cincinnati's Live Goal 3 (pages 164-178) by providing a full spectrum of housing options and improving housing quality and affordability. Additionally, the project accomplishes Plan Cincinnati's Sustain Goal 2 (pages 192-197) of preserving our natural and built environment by preserving historic buildings in the Pendleton neighborhood.

PROPOSED INCENTIVE

DCED is recommending a 15-year, net 52% CRA tax exemption. The exemption applies only to the increase in improvement value attributed to the renovation.

Pursuant to the Commercial CRA policy established by City Council, this project is located in the Pendleton neighborhood's Streetcar VTICA Area. The project is a historic renovation and will not seek LEED certification or any comparable certification. Therefore, the project is subject to financial gap analysis. The project merits a fifteen-year (15 years) net 52% CRA Tax Abatement based on the following criteria.

- Due to the deep affordability requirements set by non-competitive LIHTC and the existing HAP contracts on all units.
- Without the CRA tax abatement, cash flow will be significantly reduced, and the project would not support the debt service required to complete the historic rehabilitation.

| SUMMARY | |
|-----------------------------------------------------------|----------------------|
| Forgone Public Benefit if Project Does not Proceed | |
| CPS PILOT (Forgone New Revenue) | (\$919,199) |
| VTICA (Forgone New Revenue) | (\$417,818) |
| Income Tax (Forgone New Revenue) | (\$70,159) |
| Total Public Benefit Lost | (\$1,407,177) |
| Incentive Value | |
| Annual Net Incentive to Developer | \$96,562 |
| Total Term Incentive to Developer | \$1,448,435 |
| City's Portion of Property Taxes Forgone | \$359,494 |
| Public Benefit | |
| CPS PILOT | |
| Annual CPS Pilot | \$61,280 |
| Total Term CPS PILOT | \$919,199 |
| VTICA | |
| Annual VTICA | \$27,855 |
| Total Term VTICA | \$417,818 |
| Income Tax (Max) | \$70,159 |
| Total Public Benefit (CPS PILOT/VTICA /Income Tax) | \$1,407,177 |
| Total Public Benefit ROI* | \$0.97 |
| City's ROI* | \$3.91 |

RECOMMENDATION

The Administration recommends approval of this Emergency Ordinance. This Ordinance is an emergency in nature so that the Developer can adhere to a strict

LEED CRA Tax Exemption
Pendleton Housing Partners, LP
Page 4 of 5

construction timeline, which will allow units to be placed in service by LIHTC deadlines.

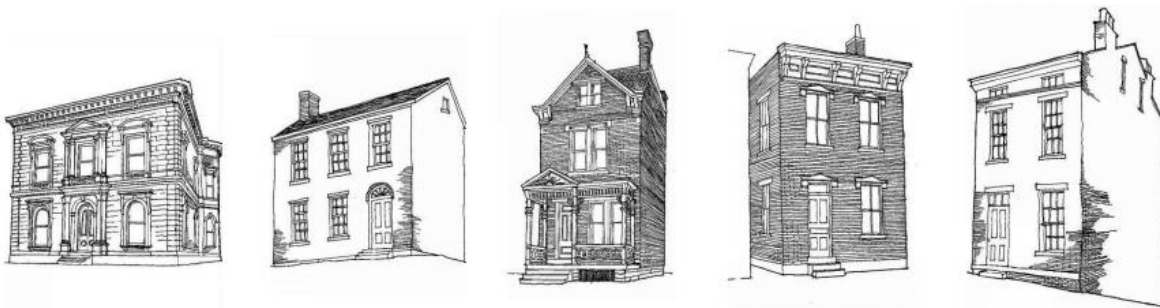
Attachment: A. Property location and development renderings

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

Attachment A: Location and Photographs



*Property Location,
200, 402-404, 409-415, 421, 430, 500, 511-513, & 557-563 East 13th Street, and 1210
Spring Street, and 1320 Pendleton Street, and 1336-1338 & 1347 Broadway Street,
and 500-502 East 12th Street.*



Select Development Rendering

EMERGENCY

City of Cincinnati

JML

AWB

An Ordinance No. _____

- 2021

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with Pendleton Housing Partners, L.P., thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 210 E. 13th Street, 402-404 E. 13th Street, 409-415 E. 13th Street (415 E. 13th Street a/k/a 1207 Spring Street), 421 E. 13th Street, 430 E. 12th Street, 511-513 E. 12th Street, 557-563 E. 13th Street (a/k/a 610-612 Reading Road), 1210 Spring Street, 1320 Pendleton Street, 1336-1338 Broadway Street, 1347 Broadway Street, 500-502 E. 12th Street, and 500 E. 13th Street, in the Pendleton neighborhood of Cincinnati, in connection with the remodeling of existing buildings into approximately 81,048 square feet of residential space consisting of 78 residential units, at a total construction cost of approximately \$10,000,000.

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, Pendleton Housing Partners, L.P. (the “Company”) desires to remodel existing buildings located on real property at 210 E. 13th Street, 402-404 E. 13th Street, 409-415 E. 13th Street (415 E. 13th Street a/k/a 1207 Spring Street), 421 E. 13th Street, 430 E. 12th Street, 511-513 E. 12th Street, 557-563 E. 13th Street (a/k/a 610-612 Reading Road), 1210 Spring Street, 1320 Pendleton Street, 1336-1338 Broadway Street, 1347 Broadway Street, 500-502 E. 12th Street, and 500 E. 13th Street, located within the corporate boundaries of the City of Cincinnati, into approximately 81,048 square feet of residential space consisting of 78 residential units (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 pay for streetcar operations that specially benefit the property; 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 Pendleton Housing Partners, L.P. (the “Agreement”), thereby authorizing a 15-year tax exemption for 100% of the assessed value of improvements to be made to real property located at 210 E. 13th Street, 402-404 E. 13th Street, 409-415 E. 13th Street (415 E. 13th Street a/k/a 1207 Spring Street), 421 E. 13th Street, 430 E. 12th Street, 511-513 E. 12th Street, 557-563 E. 13th Street (a/k/a 610-612 Reading Road), 1210 Spring Street, 1320 Pendleton Street, 1336-1338 Broadway Street, 1347 Broadway Street, 500-502 E. 12th Street, and 500 E. 13th Street in Cincinnati, as calculated by the Hamilton County Auditor, in connection with the remodeling of existing buildings into approximately 81,048 square feet of residential space consisting of 78 residential units, to be completed at a total construction cost of approximately \$10,000,000.

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 be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to allow the remodeling described in this ordinance and the corresponding revitalization of the City of Cincinnati and the benefits to the City's economic welfare to begin at the earliest possible time.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____

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 PENDLETON HOUSING PARTNERS, L.P., an Ohio limited partnership (the "Company").

Recitals:

- A. 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").
- B. 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.
- C. 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.
- D. The Company is the sole owner of certain real property within the City, located at 210 E. 13th Street, 402-404 E. 13th Street, 409-415 E. 13th Street (415 E. 13th Street a/k/a 1207 Spring Street), 421 E. 13th Street, 430 E. 12th Street, 511-513 E. 12th Street, 557-563 E. 13th Street (a/k/a 610-612 Reading Road), 1210 Spring Street, 1320 Pendleton Street, 1336-1338 Broadway Street, 1347 Broadway Street, 500-502 E. 12th Street, 500 E. 13th Street, Cincinnati, Ohio 45202 (collectively 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.
- E. The Company has proposed to remodel 18 multifamily homes 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.
- F. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing four 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.
- G. 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.

- H. 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.
- I. 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.
- J. 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.
- K. 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").
- L. 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").
- M. 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.
- N. 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.
- O. City Council passed (i) Motion No. 201401368 on November 19, 2014, establishing a tax incentive policy that incentivizes each applicant for a real property tax abatement in the neighborhoods of Downtown and OTR to enter into a voluntary tax incentive contribution agreement with a third-party organization ("VTICA") for an amount equal to a percentage of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the "VTICA Contribution"), which funds shall be committed by a third-party organization to pay for streetcar operations that specially benefit the abated property, and (ii) Motion No. 201501592 on December 16, 2015, which established that the VTICA Contribution to be recognized by the Director of the Department of Community and Economic Development is 15% of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement. The Commercial Policy Ordinance confirmed that such motions have not been superseded and remain the will of Council.
- P. The Company acknowledges that Streetcar operations in the Central Business District and Over-the-Rhine will specially benefit the Project due to (a) the Streetcar's enhancement of public transit options in such neighborhoods and (b) the anticipated increase in property values attributable to public investment in Streetcar infrastructure.

- Q. The Company represents and warrants to the City that the Company has entered or will enter into a VTICA and shall pay the VTICA Contribution each year for the full term of the abatement.
- R. This Agreement has been authorized by Ordinance No. _____-2021, passed by Cincinnati City Council on _____, 2021.
- S. 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 remodel existing buildings on the Property to include approximately 81,048 square feet of residential space consisting of 78 residential units (the "Improvements") at an estimated aggregate cost of \$10,000,000.00 to commence after the execution of this Agreement and to be completed no later than June 30, 2022; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in their 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 remodeling 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 one hundred percent (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 fifteen (15) 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 remodeling, (B) the cost of remodeling, (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

remodeling 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 2022 nor extend beyond the earlier of (i) tax year 2036 or (ii) the end of the fifteenth (15th) 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.¹

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.

(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

¹ 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.

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 three (3) existing full-time permanent employees at the Property with an annual payroll of \$172,488 (the "**Retained Jobs**") and no other existing employment in the State of Ohio or the City of Cincinnati.

Section 13. Job Creation and Retention.

A. Jobs to be Retained by Company. The Company agrees to use its best efforts to retain the Retained Jobs at the Property in connection with the Project.

B. Jobs to be Created by Company. The Company agrees to use its best efforts to create 42 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 remodeling, and in the case of the permanent jobs described herein, the job creation period shall begin upon completion of remodeling and shall end three (3) years thereafter.

C. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately \$753,604 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

D. 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.

E. 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, 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 in order to support streetcar operations. 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:

Pendleton Housing Partners, L.P.
Attention: Brooke Shorett, Director, Development Manager
415 1st Avenue N # 19240
Seattle, Washington 98109

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

By: _____
Paula Boggs Muething, City Manager

Date: _____, 2021

PENDLETON HOUSING PARTNERS, L.P.,
an Ohio limited partnership

By: Pendleton Housing Management, LLC, an
Ohio limited liability company, its General
Partner

By: Vitus Development IV, LLC, a
Delaware limited liability company,
its Sole Member and Manager

By: _____

Printed Name: _____

Title: _____

Date: _____, 2021

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

EXHIBIT "A"

PARCEL A:

210 East 13TH STREET

Auditor's Parcel Nos. 75-4-44

Situate in Section 18, Town 4, Fractional Range 1, Stars Township, City of Cincinnati, Hamilton County, Ohio, and being part of Out Lot 21 as recorded in Deed Book E2 at Page 66 of the Hamilton County Recorder's Office and being more particularly described as follows:

Beginning at a point 118.00 feet East of the Northeast corner of Main Street and East 13th Street;

Thence from said place of beginning North 15 deg. 40' West, 100.07 feet (100' more or less Deed) South line of Bland Alley;

Thence North 74 deg. 20' East, 18.00 feet along the South line of Bland Alley;

Thence South 15 deg. 40' East, 100.07 feet (100 feet more or less Deed) to the North line of East 13th Street;

Thence South 74 deg. 20' West, 18.00 feet along the North line of East 13th Street; to the place of beginning.

Containing 0.0414 acres of land and being subject to all easements of record.

PARCEL B AND C:

402-404 East 13TH STREET

Auditor's Parcel Nos. 75-2-37 and 75-2-38

Situated in the City of Cincinnati, County of Hamilton and State of Ohio:

And being more particularly described as follows:

Being Lots #2 and #3 in the Subdivision of that certain tract of land bounded on the East by Spring Street, South by Woodward Street, West by Broadway and North by a line running parallel with Woodward Street, said Lots #2 and #3 being each 22 feet and fronting on the North side of Woodward Street by a uniform depth of 55 feet and 9 inches.

Containing 0.0563 acres of land and being subject to all legal easements of record.

Also being more certainly known as Lots 2 and 3 of Dewey Subdivision, Stars Township, Section 18, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, Ohio.

PARCEL D:

409 East 13TH STREET

Auditor's Parcel No. 75-3-9

Exhibit "A" continued

Situated in Section 18, Town 4, Fractional Range 1, in the City of Cincinnati, County of Hamilton, State of Ohio, and described as follows:

All of Lot #10 as designated in Subdivision of lots situated between Broadway, Woodward and Pendleton Streets and the Cincinnati, Lebanon and Springfield Turnpike, the plat of which is recorded in Book 128, Pages 592 and 593, Hamilton County, Ohio Records, said lot fronting 23 feet and 1 inch on the South side of East 13th (formerly Woodward) Street, and running Southwardly 88 feet 6 inches, the Southwest corner of said Lot forming an angle so that the West line of said lot measures only 84 1/2 feet.

Containing 0.0468 acres of land and being subject to all legal highways and easements of record.

PARCEL E, F AND G.

411-413-415 East 13TH STREET (415 East 13th Street a/k/a/ 1207 Spring Street)

Auditor's Parcel Nos. 75-3-10; 75-3-11 and 75-3-12

Situate in Section 18, Town 4, Fractional Range 1, Starns Township, City of Cincinnati, Hamilton County, Ohio, and being lots 11, 12 and 13 of Joseph Ferneding's Subdivision as recorded in Deed Book 128, Page 592 and being more particularly described as follows:

Beginning at the Southwest corner of Spring Street and East 13th Street;

Thence from said place of beginning, South 15 deg. 59' 30" East along the West line of Spring Street, 88.50 feet;

Thence 74 deg. 03' West, 63.14 feet (63.10 feet plat);

Thence South 15 deg. 59' 30" East, 88.50 feet to a point in the South line of East 13th Street;

Thence North 74 deg. 03' East along the South line of East 13th Street, 63.14 (63.10 Plat) to the place of beginning.

Containing 0.1282 acres of land and being subject to all legal highways and easements of record.

Subject to a Party Wall Agreement, set forth in Deed Book 179, Page 18, Hamilton County, Ohio, Recorder's Office.

PARCEL H:

421 East 13TH STREET

Auditor's Parcel No. 75-3-57

Situated in Section 30, Town 4, Fractional Range 1, Starns Township, City of Cincinnati, Hamilton County, Ohio, and being Lot 16 of Joseph Ferneding's Subdivision as recorded in Plat Book 1, Page 216 of the Hamilton County, Ohio Records and being more particularly described as follows:

Beginning at the Intersection of the Easterly line of Spring Street and the Southerly line of East 13th Street;

Exhibit "A" continued

Thence North 74 deg. 04' 30" East, 45.14 feet (45.00 Plat) to the Northwest corner of said lot 16 and the real place of beginning;

Thence along East 13th Street, North 74 deg. 04' 30" East, 20.06 feet (20.00 feet plat);

Thence South 15 deg. 59' 30" East, 88.50 feet to the Northerly line of Levering Alley; having a right of way 10.00 feet;

Thence along said Northerly line South 74 deg. 04' 30" West, 20.06 (20.00 feet plat);

Thence North 15 deg. 59' 30" West, 88.50 feet to the place of beginning.

Containing 0.0408 acres of land and subject to all legal highways and easements of record.

PARCEL I:

430 East 12TH STREET

Auditor's Parcel No. 75-3-70

Situated in Section 30, Town 4, Fractional Range 1, Storms Township, City of Cincinnati, Hamilton County, Ohio, and being all of Lot 25 of Joseph Ferneding's Subdivision as recorded in Plat Book 1, Page 216 of the Hamilton County, Ohio Records and being more particularly described as follows:

Beginning at the intersection of the Westerly line of Pendleton Street and the Northerly line of East 12th Street;

Thence South 74 deg. 04' 30" West, 41.72 feet (41.40' Plat) to the Southeast corner of said Lot 25 and the real place of beginning;

Thence along East 12th Street, South 74 deg. 04' 30" West, 20.06 feet (20.00 feet plat);

Thence North 15 deg. 59' 30" West, 88.85 feet (88.50 Plat) to the Southerly line of Bolivar Alley, having a right of way of 10.00 feet;

Thence along said Southerly line North 74 deg. 04' 30" East, 20.06 feet (20.00 feet plat);

Thence South 15 deg. 59' 30" East, 88.85 feet (88.50 Plat) to the place of beginning.

Containing 0.049 acres of land and subject to all legal highways and easements of record.

PARCEL J AND K:

511-513 East 12TH STREET

Auditor's Parcel Nos. 75-3-143 and 75-3-144

Situated in Section 18, Town 4, Fractional Range 1, Storms Township, in the City of Cincinnati, County of Hamilton and being more particularly described as follows:

Beginning at a point 120.00 feet East of the Northeast corner of Pendleton Street and East 12th Street;

Exhibit "A" continued

Thence from said point of beginning, North 73 deg. 58' East 50.03 feet along the South line of East 12th Street;

Thence South 15 deg. 58' East, 104.66 feet;

Thence South 54 deg. 37' West, 53.05 feet;

Thence North 15 deg. 58' West, 122.23 feet to the South line of East 12th Street and the place of beginning.

Containing 0.1303 acres of land and being subject to all legal highways and easements of record.

PARCEL L:

557-563 East 13TH STREET (a/k/a 610-612 Reading Road)

Auditor's Parcel No. 75-3-119

Situate in Section 18, Town 4, Fractional Range 1, Storms Township, City of Cincinnati, Hamilton County, Ohio, being more particularly described as follows:

Beginning at a point in the South side of 13th Street, formerly Woodward Street, North 73 deg. 58' East, 700.84 feet East of Pendleton Street;

Thence South on a line parallel with Pendleton Street South 16 deg. 12' 30" East, 85.15 feet to a 10 foot alley, known as Bolivar Alley, formerly Anna Alley;

Thence East along the North side of said alley, North 73 deg. 58' East, 30.74 feet to the West side of Reading Road, formerly Hunt Street;

Thence Northwardly along the West side of Reading Road, North 22 deg. 06' 30" East, 108.26 feet, to the Southwest corner of Reading Road and 13th Street;

Thence West along the South side of 13th Street, South 73 deg. 58' West, 97.87 feet to the place of beginning.

PARCEL M:

1210 SPRING STREET

Auditor's Parcel No. 75-3-55

Situated in Section 30, Town 4, Fractional Range 1, Storms Township, City of Cincinnati, Hamilton County, Ohio and being all of Lot 14 of Joseph Farneding's Subdivision and being more particularly described as follows.

Beginning at the Intersection of the Easterly line of Spring Street and the Southerly line of East 13th Street, said point being the Northwest corner of said Lot 14;

Thence along the Southerly line of East 13th Street, North 74 deg. 04' 30" East, 25.08 feet (25.00 feet Plat);

Exhibit "A" continued

Thence South 15 deg. 59' 30" East, 88.50 feet to the Northerly line of Levering Alley, having a right of way of 10.00 feet;

Thence along said Northerly line, South 74 deg. 04' 30" West, 25.08 feet (25.00 feet Plat) to the Easterly line of Spring Street;

Thence along said Easterly line, North 15 deg. 59' 30" West, 88.50 feet to the place of beginning.

Containing 0.0510 acres of land and being subject to all legal highways and easements of record.

PARCEL N:

1320 PENDLETON STREET

Auditor's Parcel No. 75-2-126

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

Beginning at a point on the East side of Pendleton Street 25 feet North of the Northeast corner of Pendleton and Dandridge Street;

Thence running East on a line parallel with the North line of Dandridge Street, 100 feet;

Thence running North on a line parallel with Pendleton Street, 25 feet;

Thence running West on a line parallel with the North line of Dandridge Street, 100 feet to the East line of Pendleton Street;

Thence running South along the East line of Pendleton Street, 25 feet to the place of beginning.

Containing 0.0574 acres of land and being subject to all easements of record.

PARCEL O:

1336-38 BROADWAY STREET

Auditor's Parcel No. 75-2-13 (75-2-14 consolidated)

Situates lying, and being in the City of Cincinnati, Hamilton County, Ohio, to-wit:

Beginning at a point in the East line of Broadway, 278 1/2 feet South of original line of Liberty Street;

Thence running along the said East line of Broadway 40 feet to a point and from said two points running back Eastwardly, between parallel lines (168.10 more or less (Deed) feet to the West line of Spring Street, and being the same premises conveyed to the grantor herein by Deed recorded in Deed Book 1840, Page 471 of the Deed Records of Hamilton County, Ohio.

Containing 0.1544 acres of land and being subject to all easements of record.

PARCEL P:

Exhibit "A" continued

1347 BROADWAY STREET

Auditor's Parcel No. 75-1-139

Situated in Section 18, Town 4, Fractional Range 1, Storms Township, City of Cincinnati, Hamilton County, Ohio and being known as Lot 4 of Abigail Lewis Subdivision as recorded in Plat Book 2, Page 75 of the Hamilton County Recorder's Office and being more particularly described as follows:

Beginning at a point in the West line of Broadway Avenue, 75.10 feet (75 feet Plat) North of the Northwest corner of Broadway Street and East 14th Street;

Thence from said place of beginning, North 76 deg. 00' West, 90.55 feet (90 feet Plat) to a point in the East line of Bunker Alley;

Thence along the East line of Bunker Alley North 14 deg. 06' East 25.03 feet (25.00 Plat);

Thence South 76 deg. 00' East, 90.55 (90.00 feet Plat) to a point in the West line of Broadway Street;

Thence along the West line of Broadway Street, 25.03 feet (25.00 feet Plat) to the place of beginning.

Containing 0.0520 acres of land and being subject to all legal easements of record.

PARCEL Q:

500-502 East 12TH STREET

Auditor's Parcel No. 75-3-120

Situated in Section 18, Town 4, Fractional Range 1, Storms Township, City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Beginning at the intersection of the Northerly line of East 12th Street and the Easterly line of Pendleton Street;

Thence North 16 deg. 12' 30" West, 85.15 feet along the Easterly line of Pendleton Street to the Southerly line of Bolivar Alley, having a right of way of 10.00 feet;

Thence along the Southerly line of said alley North 73 deg. 58' East, 39.84 feet;

Thence South 16 deg. 12' 30" East, 85.15 feet to the Northerly line of East 12th Street;

Thence along said Northerly line South 73 deg. 58' West, 39.84 feet to the place of beginning.

PARCEL R:

500 East 13TH STREET

Auditor's Parcel No. 75-2-173

Exhibit "A" continued

Situated In the City of Cincinnati, County of Hamilton and State of Ohio:

And being more particularly described as follows:

Beginning at the Northeast corner of East 13th and Pendleton Street; running,

Thence Eastwardly with the North line of East 13th Street and 25 feet to a point;

Thence Northwardly parallel with Pendleton Street 92 1/2 feet to a 15 foot alley;

Thence Westwardly with the South line of said alley 25 feet to Pendleton Street;

Thence Southwardly along the East line of Pendleton Street to the place of beginning.

Exhibit B to CRA Agreement
APPLICATION FOR TAX EXEMPTION

[To be attached]

May 19, 2021

To: Mayor and Members of City Council 202101963
From: Paula Boggs Muething, City Manager
Subject: **NOTWITHSTANDING ORDINANCE FOR THREE OAKS
DEVELOPMENT**

Attached is an Emergency Ordinance captioned as follows:

ESTABLISHING certain policies and conditions regarding the application of residential Community Reinvestment Area real property tax abatements at 2800 Robertson Avenue in the Oakley neighborhood of Cincinnati, notwithstanding Ordinance Nos. 276-2017 and 370-2020.

BACKGROUND/CURRENT CONDITIONS

The Developer is proposing to redevelop the former Kenner Toy Factory site in Oakley into a mixed-use phased development that will include approximately 350 to 400 market-rate residential apartment units, 150 to 200 units of senior housing, 105 single-family homes and necessary public infrastructure improvements to support the overall development. Total project cost is expected to be \$165 million. Previously, pursuant to Council Ordinance 493-2019, effective December 11, 2019, the City established a project-based tax increment financing exemption on the Project Site pursuant to Ohio Revised Code 5709.40(B).

DEVELOPER INFORMATION

The Developer, Oakley Yards Land, LLC, is an affiliate of Neyer Properties, Inc. of Cincinnati. Neyer Properties, formed in 1995, is a fully integrated real estate company headquartered in the Evanston neighborhood of Cincinnati. Recent projects completed by Neyer include the Baldwin building renovation in Walnut Hills and the Keystone Park development in Evanston.

PROJECT DESCRIPTION

Developer will redevelop the former Kenner Toy Factory site into a walkable mixed-use residential development. The project will consist of the Developer's design and construction of approximately 350 to 400 market-rate residential apartment units, 150 to 200 units of senior housing and 105 single-family homes. The project will also

consist of various public infrastructure improvements, such as demolition of former industrial buildings, environmental remediation, and design and construction of public right of way, public roads, public pedestrian path, park space, stormwater management, utilities, and sitework. The project will cost an estimated \$165 million and expected to be completed in its entirety by December 2026.

The Developer estimates that the project will support the creation of 500 full-time equivalent temporary jobs with an annual payroll of approximately \$30,000,000; and 80 full-time equivalents at an annual payroll of approximately \$3,000,000 following completion of construction.

The development is supported by the Oakley Community Council and is also consistent with the Plan Cincinnati's Compete Initiative Area, particularly within the Goal to "Focus development on the existing centers of activity by developing compact walkable mixed-use districts and better connect them to residential areas" (Plan Cincinnati, page 116).

City Planning and the Developer conducted a public engagement meeting with Clifton Heights Stakeholders following the City Manager's Community Engagement Policy on Thursday, April 15th at 4pm. A written summary of the engagement session can be found here: <https://www.cincinnati-oh.gov/planning/community-engagement-meetings/>

PROPOSED INCENTIVE

The City and the Developer anticipate that the eligible public infrastructure improvements will be financed by the Port Authority. The Port will issue bonds in a principal amount not to exceed \$16,000,000. Net proceeds from the bonds will be made available to the Developer to pay for construction of the public improvements associated with the project. The City will use the project TIF revenue it receives from the Hamilton County Treasurer to (a) first, pay any fees charged by the Auditor or any other government entity, (b) second, satisfy the City's obligation to the School Board, (c) third, pay any City monitoring and service fees associated with this incentive, and (d) fourth to make payments to the Port Authority in the amount necessary to pay down the bond debt over the 30-year term of the TIF exemption.

This Notwithstanding Ordinance will limit the percentage of real property tax abatement for the single-family portion of the Three Oaks development (labeled Tract A in the Attached Site Plan) site to 50% of the increase in assessed value attributable to the single-family homes for any residential Community Reinvestment Area tax abatements applied for on the single-family portion of the Development. The 50%

limit on the percentage of the real property tax abatement is required so that the debt issued to pay for certain public improvements related to the Three Oaks project can be serviced by the Project TIF revenues. Without the 50% limit, Project TIF revenues would be insufficient to service the Port bonds and therefore the project would not be financially feasible.

RECOMMENDATION

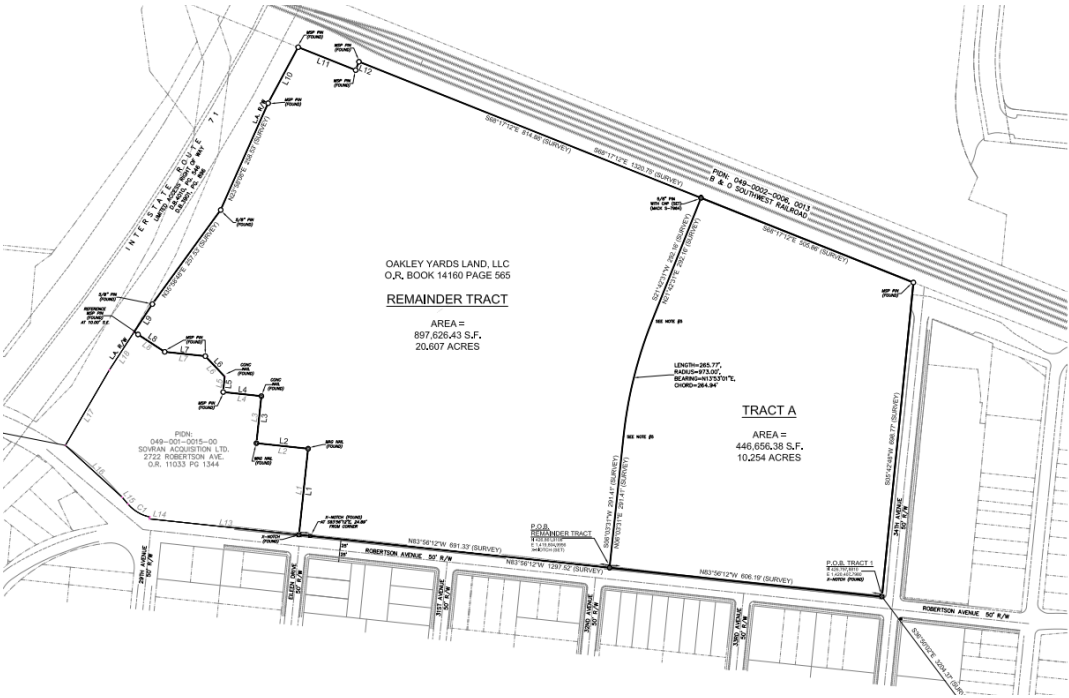
The Administration recommends approval of this Emergency Ordinance. The emergency clause is needed so that the project can meet its construction commencement deadlines.

Attachment: A. Property location and photographs

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

Attachment A: Location and Concept Plan

Single-Family Tract A



Concept Plan



EMERGENCY

KMG



- 2021

ESTABLISHING certain policies and conditions regarding the application of residential Community Reinvestment Area real property tax abatements at 2800 Robertson Avenue in the Oakley neighborhood of Cincinnati, notwithstanding Ordinance Nos. 276-2017 and 370-2020.

WHEREAS, Ordinance No. 274-2017, passed by this Council on September 27, 2017, as amended by Ordinance No. 166-2018, passed by this Council on June 27, 2018, designated the area within the corporate boundaries of the City of Cincinnati as a “Community Reinvestment Area” (“CRA”) pursuant to Ohio Revised Code (“ORC”) Sections 3735.65 through 3735.70 (the “Statute”); 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, Ordinance No. 276-2017, passed by this Council on September 27, 2017, sets forth certain additional policies, conditions, and limitations regarding newly constructed or remodeled residential structures in the CRA; and

WHEREAS, Ordinance No. 370-2020, passed by this Council on November 12, 2020, amends Ordinance No. 276-2017 to (i) expand the definition of residential properties to include structures containing four dwelling units, and (ii) create additional caps on residential real property tax abatements and make certain other changes (as amended, the “Residential Policy Ordinance”); and

WHEREAS, pursuant to the Statute, Council specified a percentage of up to 100% of the assessed value of residential property within the City of Cincinnati to be exempted from real property taxes, provided that the applicant satisfy the terms and conditions of the Residential Policy Ordinance; and

WHEREAS, Oakley Yards Land, LLC (“Developer”), desires to develop the property it owns at 2800 Robertson Avenue in Cincinnati (the “Property”) to include (i) approximately 350 to 400 market-rate residential apartments, (ii) approximately 150 to 200 units of senior housing, (iii) approximately 105 single-family homes (the “Single-Family Project”), and (iv) certain eligible public infrastructure improvements; and

WHEREAS, the portion of the Property attributable to the Single-Family Project is described on Attachment A to this ordinance (the “Single-Family Property”); and

WHEREAS, pursuant to Ordinance No. 493-2019, passed by this Council on December 11, 2019, Council created a so-called project-based TIF for the Property under ORC Section 5709.40(B), declaring the Improvement (as defined in ORC Section 5709.40) to the Property to be a public purpose and exempt from real property taxation for a period of 30 years (the “TIF”); and

WHEREAS, Developer requests that this Council limit the percentage of residential CRA real property tax abatements to 50% of the increase in assessed value attributable to the single-family homes on the Single-Family Property, so that the property taxes paid in excess of that amount are available pursuant to the TIF to repay bonds associated with the public infrastructure improvements to be constructed at the Property; and

WHEREAS, Council desires to limit the percentage of abatement for residential CRA real property tax abatements at the Single-Family Property to 50% of the increase in assessed value attributable to the single-family homes on such property; now, therefore,

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

Section 1. That this Council limits the percentage of real property tax abatement for the property described on Attachment A of this ordinance (the “Single-Family Property”) to 50% of the increase in assessed value attributable to the single-family homes for any residential Community Reinvestment Area tax abatements applied for on the Single-Family Property.

Section 2. That this Council establishes such limit as set forth in Section 1 of this ordinance notwithstanding Ordinance Nos. 276-2017 and 370-2020 (collectively, the “Residential CRA Ordinances”).

Section 3. That the proper City officials are authorized to do all things necessary and proper to comply with the provisions of Sections 1 through 2 herein.

Section 4. That all other provisions of the Residential CRA Ordinances, except as expressly stated in Sections 1 and 2 of this ordinance, remain in full force and effect with respect to the Single-Family Property.

Section 5. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the

terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to enable the construction on the Single-Family Property to commence promptly, thereby creating additional housing, jobs, and other significant benefits to the City at the earliest possible time.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

Attachment A
to Ordinance

Legal Description

TRACT "A"

The following parcel of land, being situated in Section 28, Town 4, Fractional Range 2, Columbia Township, City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Beginning at the intersection of the north right of way line of Robertson Avenue (50' right-of-way) and the west right-of-way line of Thirty Fourth Avenue (50' right-of-way), said point being located at Ohio State Plane Coordinates (South Zone) (N 426,797.8810, E 1,420,407.7980), and said point being a being a cross notch (found) in a concrete sidewalk;

Thence with said north right-of-way line of Robertson Avenue, North 83°56'12" West, for a distance of 606.19 feet to a cross notch (set);

Thence leaving the said right-of-way and continuing with a new division line, North 06°03'31" East for a distance of 291.41 feet to a point;

Thence continuing with said new division line, along a circular curve to the right having a radius of 973.00 feet, and arc length = 265.77 feet, and a chord bearing of North 13°53'01" East for a chord distance of 264.94 feet to a point;

Thence continuing with said new division line, North 21°42'31" East for a distance of 292.16 feet to a point in the in the southerly right-of-way line of Baltimore & Ohio Southwest Railroad, being a 5/8" pin with cap (set);

Thence continuing with said southerly railroad right-of-way line, South 68°17'12" East for a distance of 505.86 feet to a 5/8" iron pin (MSP)(found) in the said west right-of-way line of Thirty Fourth Street;

Thence with said westerly right-of-way line, South 05°42'48" West for a distance of 698.77 feet to the said Point of Beginning.

The above described parcel of land contains 10.254 acres (446,656.38 sq.ft.).

All iron pins set are 5/8" diameter with plastic cap stamped (MACK, S-7964). All existing monuments found, were in good condition.

Basis of Bearings: The Bearings in the above referenced deed are tied to the Ohio State Plane Coordinates and Bearing System (South Zone).

May 19, 2021

To: Mayor and Members of City Council 202101964
From: Paula Boggs Muething, City Manager
Subject: **DEVELOPMENT AGREEMENT FOR THREE OAKS
DEVELOPMENT**

Attached is an Emergency Ordinance captioned as follows:

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

BACKGROUND/CURRENT CONDITIONS

The Developer is proposing to redevelop the former Kenner Toy Factory site in Oakley into a mixed-use phased development that will include approximately 350 to 400 market-rate residential apartment units, 150 to 200 units of senior housing, 105 single-family homes and necessary public infrastructure improvements to support the overall development. Total project cost is expected to be \$165 million. Previously, pursuant to Council Ordinance 493-2019, effective December 11, 2019, the City established a project-based tax increment financing exemption on the Project Site pursuant to Ohio Revised Code 5709.40(B).

DEVELOPER INFORMATION

The Developer, Oakley Yards Land, LLC, is an affiliate of Neyer Properties, Inc. of Cincinnati. Neyer Properties, formed in 1995, is a fully integrated real estate company headquartered in the Evanston neighborhood of Cincinnati. Recent projects completed by Neyer include the Baldwin building renovation in Walnut Hills and the Keystone Park development in Evanston.

PROJECT DESCRIPTION

Developer will redevelop the former Kenner Toy Factory site into a walkable mixed-use residential development. The project will consist of the Developer's design and construction of approximately 350 to 400 market-rate residential apartment units, 150 to 200 units of senior housing and 105 single-family homes. The project will also consist of various public infrastructure improvements, such as demolition of former

industrial buildings, environmental remediation, and design and construction of public right of way, public roads, public pedestrian path, park space, stormwater management, utilities, and sitework. The project will cost an estimated \$165 million and expected to be completed in its entirety by December 2026.

The Developer estimates that the project will support the creation of 500 full-time equivalent temporary jobs with an annual payroll of approximately \$30,000,000; and 80 full-time equivalents at an annual payroll of approximately \$3,000,000 following completion of construction.

The development is supported by the Oakley Community Council and is also consistent with the Plan Cincinnati's Compete Initiative Area, particularly within the Goal to "Focus development on the existing centers of activity by developing compact walkable mixed-use districts and better connect them to residential areas" (Plan Cincinnati, page 116).

City Planning and the Developer conducted a public engagement meeting with Clifton Heights Stakeholders following the City Manager's Community Engagement Policy on Thursday, April 15th at 4pm. A written summary of the engagement session can be found here: <https://www.cincinnati-oh.gov/planning/community-engagement-meetings/>

PROPOSED INCENTIVE

The City and the Developer anticipate that the public parking garages and other eligible public infrastructure improvements will be financed by the Port Authority. The Port will issue senior and subordinate bonds with net proceeds from the bonds to be made available to the Developer to pay for construction of eligible public improvements and acquisition associated with the project. The City will use the project TIF revenue it receives from the Hamilton County Treasurer to (a) first, pay any fees charged by the Auditor or any other government entity, (b) second, satisfy the City's obligation to the School Board, (c) third, pay any City monitoring and service fees associated with this incentive, and (d) fourth to make payments to the Port Authority in the amount necessary to pay down the bond debt over the 30-year term of the TIF exemption.

RECOMMENDATION

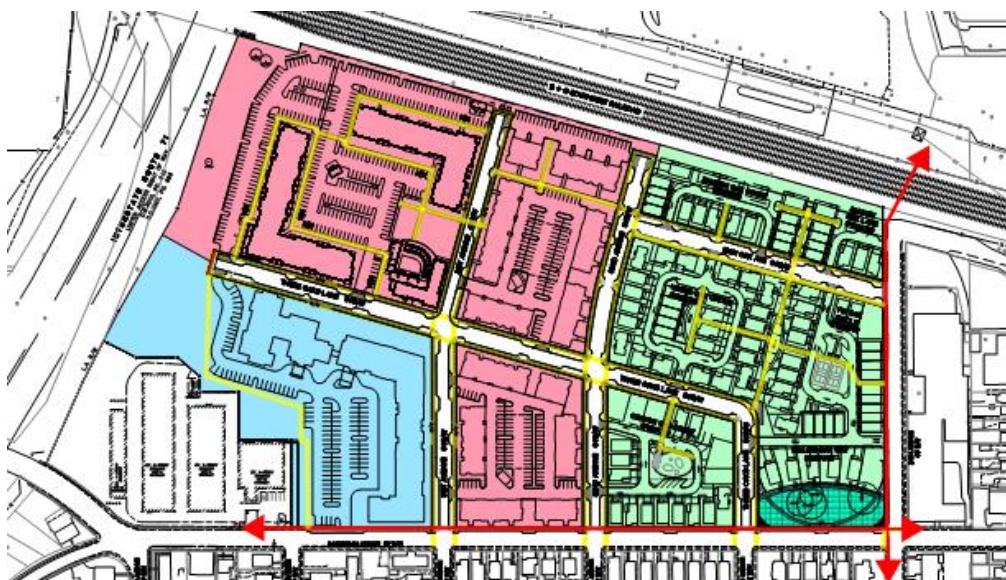
The Administration recommends approval of this Emergency Ordinance. The emergency clause is needed so that the project can meet its construction commencement deadlines.

Attachment: A. Property location and photographs

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

Attachment A: Location and Concept Plan

Property Location & Concept Plan



- LEGEND:
- RESIDENTIAL
 - MULTI FAMILY
 - SENIOR LIVING
 - PUBLIC RIGHT OF WAY
 - 8' BIKE PATH
 - PUBLIC PARK
 - PEDESTRIAN CONNECTIONS
- THREE OAKS

EMERGENCY

City of Cincinnati

KMG

AWB

An Ordinance No. _____

- 2021

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

ATTACHMENT A

Contract No: _____

DEVELOPMENT AGREEMENT

between the

CITY OF CINCINNATI,
an Ohio municipal corporation;

and

OAKLEY YARDS LAND, LLC,
an Ohio limited liability company

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

Dated: _____, 2021

DEVELOPMENT AGREEMENT
(Three Oaks)

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

Recitals:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

N. Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public

purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution and research.

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

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

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

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

1. DUE DILIGENCE INVESTIGATIONS.

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

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

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

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

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

2. PLANS AND CONSTRUCTION.

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

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

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

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

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

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

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

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

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

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

(F) Inspection of Work. During construction, the City, its employees, and agents shall have the right at all reasonable times to enter upon the construction site to examine and inspect the progress of construction to determine whether Developer is complying with the requirements of this Agreement. Notwithstanding anything to the contrary in this paragraph (F) or this Agreement, nothing herein shall in any way limit the inspection rights the City otherwise legally possesses, whether in connection with its police powers, permitting, or otherwise.

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

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

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

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

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

3. CITY'S FINANCIAL ASSISTANCE.

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

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

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

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

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

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

5. **INSURANCE; INDEMNITY.**

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

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

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

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

7. DEFAULT; REMEDIES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. REPORTING REQUIREMENTS.

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

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

11. GENERAL PROVISIONS.

(A) Assignment; Change of Control.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(N) Reserved.

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

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

12. FEES AND EXPENSES.

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

CITY OF CINCINNATI

By: _____
Paula Bogs Muething, City Manager

Date: _____, 2021

OAKLEY YARDS LAND, LLC

By: _____

Printed name: _____

Title: _____

Date: _____, 2021

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

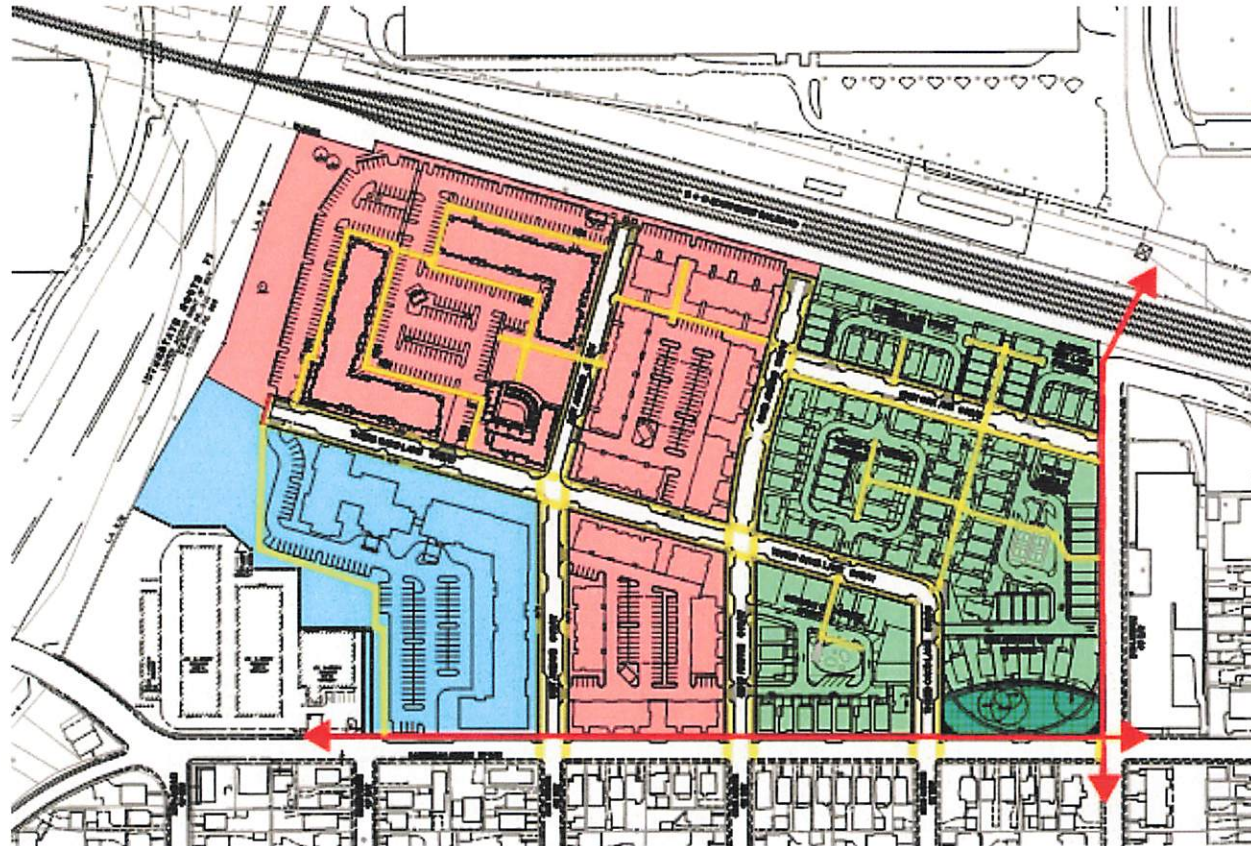
Exhibit A-1
to Development Agreement
(Three Oaks)

Site Plan

SEE ATTACHED

EXHIBIT A-1 SITE PLAN

SCALE: 1"=100'



LEGEND:

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

THREE OAKS

2800 ROBERTSON AVENUE
COLUMBIANA, OHIO 43084

**DEVELOPMENT
AGREEMENT EXHIBIT**

Project No:

19102

EXHIBIT

1

Exhibit A-2
to Development Agreement
(Three Oaks)

Concept Plan

SEE ATTACHED

EXHIBIT A-2
CONCEPT SITE PLAN



Exhibit B
to Development Agreement
(Three Oaks)

Legal Description

[insert]

Exhibit C-1
to Development Agreement
(Three Oaks)

Description of Private Improvements

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

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

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

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

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

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

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

Exhibit C-2
to Development Agreement
(Three Oaks)

Description of Public Infrastructure Improvements

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

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

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

Exhibit D-1
to Development Agreement
(Three Oaks)

Preliminary Budget – Private Improvements

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

Exhibit D-2
to Development Agreement
(Three Oaks)

Preliminary Budget – Public Infrastructure Improvements

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

Exhibit E-1
to Development Agreement
(Three Oaks)

Sources of Funds – Private Improvements

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

Exhibit E-2
to Development Agreement
(Three Oaks)

Sources of Funds – Public Infrastructure Improvements

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

Exhibit F
to Development Agreement
(Three Oaks)

Construction Schedule

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

Exhibit G
to Development Agreement
(Three Oaks)

Form of Service Agreement

SEE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE]

Contract No: _____

SERVICE AGREEMENT

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

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

Recitals:

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

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

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

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

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

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

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

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

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

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

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

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

2. OBLIGATION TO MAKE SERVICE PAYMENTS.

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

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

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

C. Amount of Statutory Service Payments. Each semi-annual Statutory Service Payment shall be paid to the Hamilton County Treasurer in an amount equal to one-half (½) of the annual amount that would have been payable in that year as real property taxes with respect to the Exempt Improvements had an exemption not been granted. (However, if after the first semi-annual Statutory Service Payment has been determined and paid, the total annual amount for that year is adjusted by the taxing authorities, the amount of the second semi-annual Statutory Service Payment shall be adjusted accordingly.) The Statutory Service Payments shall vary as the assessed value of the Exempt Improvements and the applicable tax rate vary from time to time.

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

E. Minimum Service Payments. There is hereby established the “**Total Service Payment Amount**” as shown on Exhibit B (*Schedule of Total Service Payment Amounts*) hereto, which amount is calculated based upon the anticipated amount of real property taxes that would have been payable with respect to the Exempt Improvements, as fully constructed, had an exemption not been granted. If and to the extent that a Statutory Service Payment (net of (1) any fees charged with respect to the Statutory Service Payments by Hamilton County and the City, and (2) the School District Compensation) on any Service Payment Date is less than one-half (½) of the applicable Total Service Payment Amount, Owner shall pay directly to the trustee for the Bonds (the “**Bond Trustee**”), no later than the applicable Service Payment Date (or on such earlier date as may be reflected on Exhibit B hereto), an amount equal to the

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

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

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

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

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

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

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

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

5. PAYMENT OF TAXES; TAX CONTESTS.

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

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

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

7. INSURANCE COVERAGE AND PROCEEDS.

² Actual Service Agreements will also reference relevant CRA.
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A. **Coverage.** Owner shall provide and maintain, or cause to be provided and maintained, special form (formerly known as "all risk") full replacement cost property insurance on the Improvements and other improvements on the Property or any replacements or substitutions therefor (to the extent the same are owned by Owner, or by the Port Authority and leased by Owner) from an insurer that is financially responsible, of recognized standing, and authorized to write insurance in the State. Such insurance policy shall be in such form and with such provisions as are generally considered reasonable and appropriate for the type of insurance involved and shall prohibit cancellation or modification by the insurer without at least thirty days' prior written notice to the City and Owner.

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

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

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

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

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

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

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

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

14. GENERAL PROVISIONS.

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

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

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

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

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

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

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

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

[*Signature and Notary Pages Follow*]

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

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, City Manager

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

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

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

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

Exhibit A
to Service Agreement

Legal Description

[TO BE ATTACHED TO EXECUTION VERSION]

Exhibit B
to Service Agreement

Schedule of Total Service Payment Amounts

[TO BE ATTACHED TO EXECUTION VERSION]

Exhibit H
to Development Agreement
(Three Oaks)

Form of Completion Guaranty

SEE ATTACHED

COMPLETION GUARANTY

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

Recitals:

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

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

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

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

1. Guaranty.

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

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

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

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

2. Liability of Guarantor.

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

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

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

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

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

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

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

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

6. General Provisions.

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

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

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

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

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

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

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

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

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

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

[Signature Page Follows]

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

GUARANTOR:

NEYER PROPERTIES, INC.

By: _____

Printed: Name: _____

Title: _____

Approved as to Form:

Assistant City Solicitor

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

Exhibit I
to Development Agreement
(Three Oaks)

Form of Release of Easements and Restrictions

SEE ATTACHED

Property: storm sewer easements in Enyart Ave

RELEASE OF EASEMENTS AND RESTRICTIONS

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

Recitals:

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

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

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

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

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

[Signature Page Follows]

Executed on the date of acknowledgment indicated below.

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, City Manager

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

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

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

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

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

EXHIBIT A

SURVEY DRAWINGS
(2 pages)

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

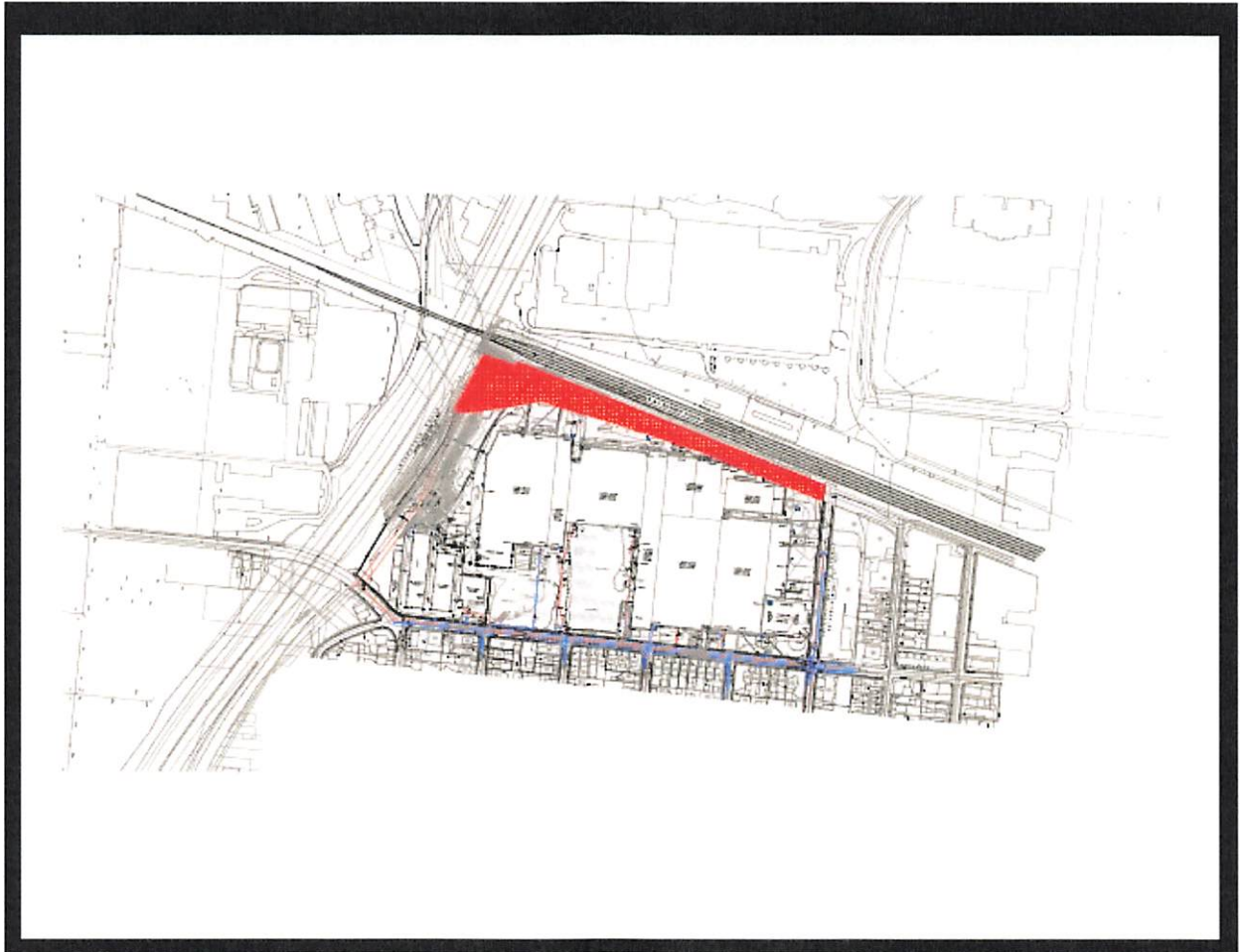


Exhibit A, cont'd

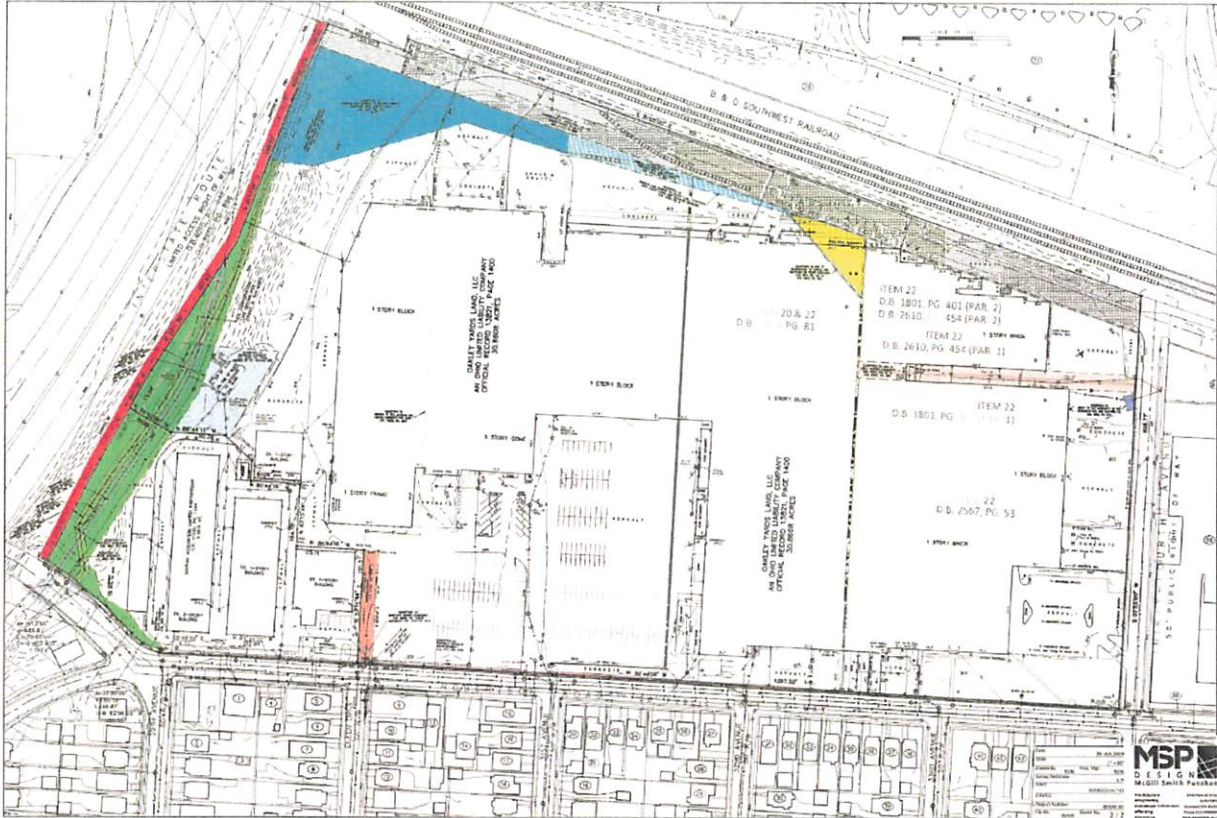


EXHIBIT B

COPY OF DEED
(4 pages)

SEE ATTACHED

Exhibit B, cont'd

SNS/1w . MS

En. [unclear] 2-8

F42005

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JL-9: 44937 -- 11 05

KNOW ALL MEN BY THESE PRESENTS: That,

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

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

PARCEL "A"

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

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

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

Examined & Corrected with Dec. 18, 1979

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

4162 686 TAX 5.00

127 320 P 2:39

CU-49-2-18

Exhibit B, cont'd

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

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

2

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

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

3

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

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

HW4162: 688

Exhibit B, cont'd

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

WITNESSES:

CITY OF CINCINNATI

Ann Pike

By Wm. V. Donaldson

Edward M. Volk

STATE OF OHIO, COUNTY OF HAMILTON, SS:

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

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

Ann Pike
Notary Public, State of Ohio.

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

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

APPROVED:

Stephen J. Murphy
Assistant City Solicitor

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

NO
RECORDED
19 JUL 9 10 22 AM '79
RECORDS & COMM. DEPT.
CITY OF CINCINNATI

Exhibit J
to Development Agreement
(Three Oaks)

Form of Park Covenant

SEE ATTACHED

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

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

RESTRICTIVE COVENANT

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

Recitals:

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

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

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

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

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

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

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

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

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

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

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

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

[]

By: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

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

Notary Public
My commission expires: _____

ACKNOWLEDGED AND ACCEPTED BY:

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, City Manager

Date: _____, 2021

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

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

Exhibit A
to Restrictive Covenant

Legal Description

[to be provided]

Exhibit K
to Development Agreement
(Three Oaks)

Additional Requirements

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

This Exhibit serves two functions:

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

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

(A) Construction Workforce.

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

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

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

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering with Trade Unions.

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

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

(ii) Contracts and Subcontracts; Competitive Bidding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) Small Business Enterprise Program.³

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

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

(1) Including qualified SBEs on solicitation lists.

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

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

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

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

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

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

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

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

(G) Equal Employment Opportunity.

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

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

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

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

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

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

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

(M) Wage Enforcement.

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

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

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

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

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

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

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

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

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

(N) Americans With Disabilities Act; Accessibility.

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

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

(O) Electric Vehicle Charging Stations in Garages.

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

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

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

Addendum I
to
Additional Requirements Exhibit

City's Prevailing Wage Determination

SEE ATTACHED

REQUEST FOR PROJECT WAGE DETERMINATION

DATE RECEIVED: 03/19/2021

ORIGINAL ASSIGNED NUMBER:

DEI USE ONLY

Fillout and Circle all that Apply Below:

REQUESTING AGENCY OR DEPT:

Community and Economic Development

FUNDING GUIDELINES:

(State or Federal)

CONTACT PERSON AND PHONE

NUMBER:

Giovanni Rocco; 513-352-1960

RATES THAT APPLY:

(Building, Heavy, Highway, Residential)

Prevailing wage does not apply.

DECISION NUMBER: N/A

Requested Date: 03/18/2021

Estimated Advertising Date: 04/18/2021

Estimated Bid Opening Date: 04/19/2021

Estimated Starting Date: 05/01/2021

MODIFICATIONS: N/A

DECISION DATE: N/A

SOURCE AND FUND NUMBER

EXPIRATION DATE: N/A

CITY FUND

STATE FUND

SUPERSEDES DECISION NUMBER: N/A

COUNTY FUND

FEDERAL FUND

DETERMINATION BY:

Name: Trisa Wilkens Hoane

Title: Interim Deputy Director

PROJECT ACCOUNT NUMBER:

Date: 03/19/2021

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

APPROVED BY:

TOTAL PROJECT DOLLARS: \$127,000,000


 Jennifer B. Mackenzie, Interim Director

NAME OF PROJECT

DEPARTMENT OF ECONOMIC INCLUSION

Three Oaks/ Oakley Yards

COMMENTS:

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

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

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

TYPE OF WORK

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

PROJECT LOCATION

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

PROJECT FUNDING SOURCE

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

PROJECT SCOPE OF WORK AND BUDGET

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

DEI 217 Form
REV: 6/12/2017

Contract No: _____

DEVELOPMENT AGREEMENT

between the

CITY OF CINCINNATI,
an Ohio municipal corporation;

and

OAKLEY YARDS LAND, LLC,
an Ohio limited liability company

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

Dated: _____, 2021

DEVELOPMENT AGREEMENT (Three Oaks)

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

Recitals:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

N. Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public

purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution and research.

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

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

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

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

1. **DUE DILIGENCE INVESTIGATIONS.**

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

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

(B) Copies of Due Diligence Items to Be Provided to City. Without limitation of Developer's other obligations under this Agreement, prior to the issuance of the Bonds, and as such Due Diligence Items are obtained by Developer, Developer, at no cost to the City, shall provide DCED with copies of the inspection, engineering, and environmental {00334590-4}

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

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

2. PLANS AND CONSTRUCTION.

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

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

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

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

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

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

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

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

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

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

(F) Inspection of Work. During construction, the City, its employees, and agents shall have the right at all reasonable times to enter upon the construction site to examine and inspect the progress of construction to determine whether Developer is complying with the requirements of this Agreement. Notwithstanding anything to the contrary in this paragraph (F) or this Agreement, nothing herein shall in any way limit the inspection rights the City otherwise legally possesses, whether in connection with its police powers, permitting, or otherwise.

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

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

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

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

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

3. CITY'S FINANCIAL ASSISTANCE.

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

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

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

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

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

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

5. INSURANCE; INDEMNITY.

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

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

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

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

7. DEFAULT; REMEDIES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. REPORTING REQUIREMENTS.

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

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

11. GENERAL PROVISIONS.

(A) Assignment; Change of Control.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(N) Reserved.

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

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

12. FEES AND EXPENSES.

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

CITY OF CINCINNATI

By: _____
Paula Bogs Muething, City Manager

Date: _____, 2021

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

OAKLEY YARDS LAND, LLC

By: _____

Printed name: _____

Title: _____

Date: _____, 2021

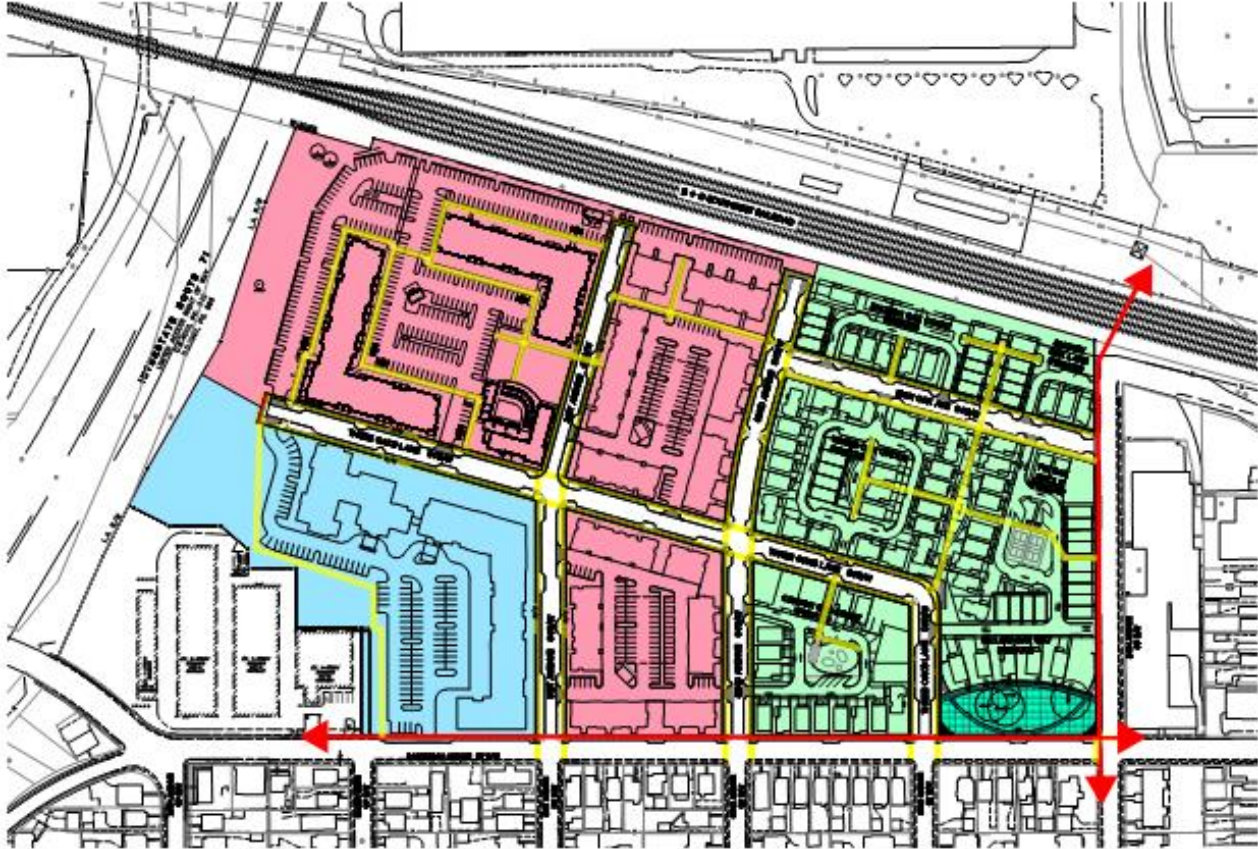
Exhibit A-1
to Development Agreement
(Three Oaks)

Site Plan

SEE ATTACHED

EXHIBIT A-1 SITE PLAN

SCALE: 1"=100'



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

THREE OAKS

3800 BOBERG AVENUE
CINCINNATI, OHIO 45209

**DEVELOPMENT
AGREEMENT EXHIBIT**

| | |
|-------------|----------------------|
| Project No. | EXHIBIT 1 |
| 19102 | |

Exhibit A-2
to Development Agreement
(Three Oaks)

Concept Plan

SEE ATTACHED

EXHIBIT A-2
CONCEPT SITE PLAN



Exhibit B
to Development Agreement
(Three Oaks)

Legal Description

[insert]

Exhibit C-1
to Development Agreement
(Three Oaks)

Description of Private Improvements

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

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

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

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

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

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

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

Exhibit C-2
to Development Agreement
(Three Oaks)

Description of Public Infrastructure Improvements

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

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

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

Exhibit D-1
to Development Agreement
(Three Oaks)

Preliminary Budget – Private Improvements

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

Exhibit D-2
to Development Agreement
(Three Oaks)

Preliminary Budget – Public Infrastructure Improvements

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

Exhibit E-1
to Development Agreement
(Three Oaks)

Sources of Funds – Private Improvements

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

Exhibit E-2
to Development Agreement
(Three Oaks)

Sources of Funds – Public Infrastructure Improvements

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

Exhibit F
to Development Agreement
(Three Oaks)

Construction Schedule

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

Exhibit G
to Development Agreement
(Three Oaks)

Form of Service Agreement

SEE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE]

Contract No: _____

SERVICE AGREEMENT

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

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

Recitals:

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

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

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

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

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

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

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

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

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

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

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

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

2. OBLIGATION TO MAKE SERVICE PAYMENTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. PAYMENT OF TAXES; TAX CONTESTS.

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

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

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

7. INSURANCE COVERAGE AND PROCEEDS.

² Actual Service Agreements will also reference relevant CRA.
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A. Coverage. Owner shall provide and maintain, or cause to be provided and maintained, special form (formerly known as “all risk”) full replacement cost property insurance on the Improvements and other improvements on the Property or any replacements or substitutions therefor (to the extent the same are owned by Owner, or by the Port Authority and leased by Owner) from an insurer that is financially responsible, of recognized standing, and authorized to write insurance in the State. Such insurance policy shall be in such form and with such provisions as are generally considered reasonable and appropriate for the type of insurance involved and shall prohibit cancellation or modification by the insurer without at least thirty days’ prior written notice to the City and Owner.

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

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

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

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

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

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

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

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

14. GENERAL PROVISIONS.

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

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

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

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

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

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

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

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

[Signature and Notary Pages Follow]

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

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, City Manager

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

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

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

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

Exhibit A
to Service Agreement

Legal Description

[TO BE ATTACHED TO EXECUTION VERSION]

Exhibit B
to Service Agreement

Schedule of Total Service Payment Amounts

[TO BE ATTACHED TO EXECUTION VERSION]

Exhibit H
to Development Agreement
(Three Oaks)

Form of Completion Guaranty

SEE ATTACHED

COMPLETION GUARANTY

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

Recitals:

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

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

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

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

1. Guaranty.

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

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

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

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

2. Liability of Guarantor.

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

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

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

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

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

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

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

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

6. General Provisions.

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

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

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

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

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

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

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

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

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

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

[Signature Page Follows]

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

GUARANTOR:

NEYER PROPERTIES, INC.

By: _____

Printed: Name: _____

Title: _____

Approved as to Form:

Assistant City Solicitor

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

Exhibit I
to Development Agreement
(Three Oaks)

Form of Release of Easements and Restrictions

SEE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE]

Property: storm sewer easements in Enyart Ave

RELEASE OF EASEMENTS AND RESTRICTIONS

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

Recitals:

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

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

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

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

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

[Signature Page Follows]

Executed on the date of acknowledgment indicated below.

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, City Manager

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

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

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

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

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

EXHIBIT A

SURVEY DRAWINGS
(2 pages)

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



Exhibit A, cont'd

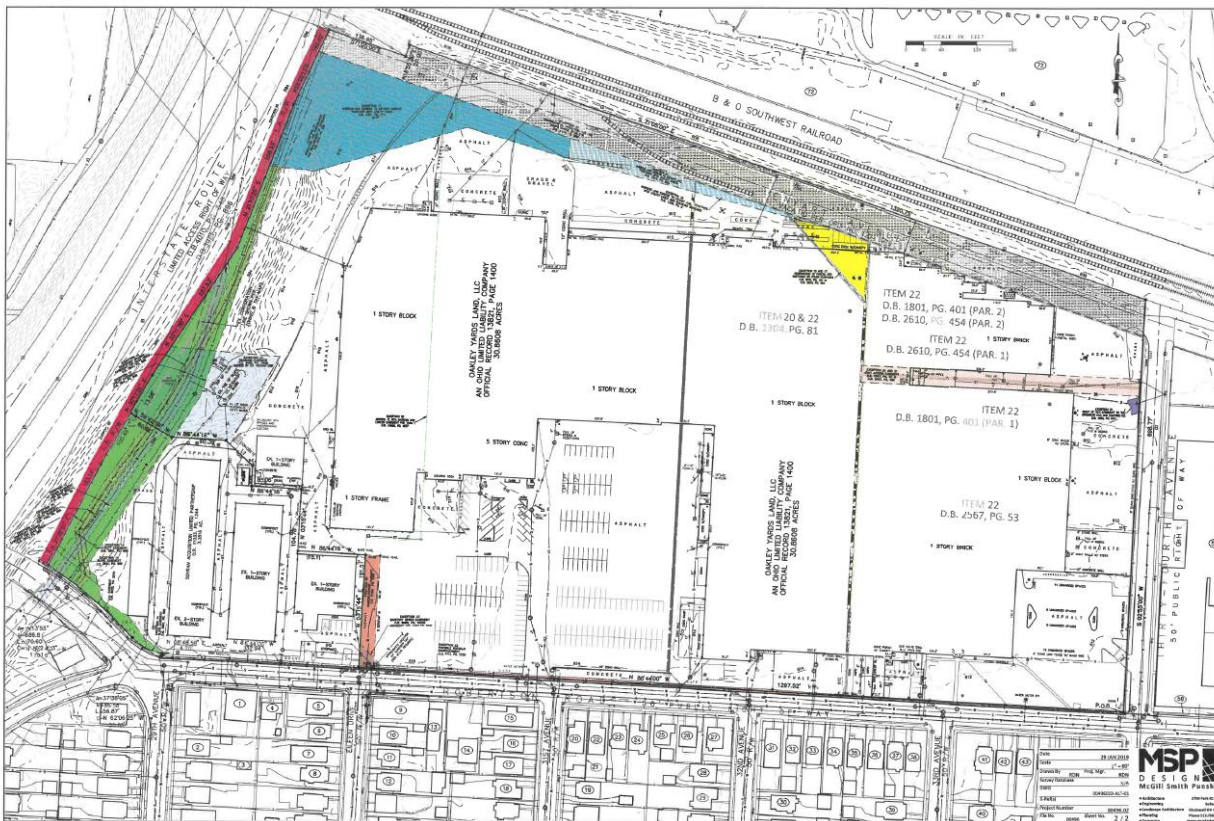


EXHIBIT B

COPY OF DEED
(4 pages)

SEE ATTACHED

Exhibit B, cont'd

SWS/lw - MS

329627 DEED JUL-9 44937 --00--11 007

KNOW ALL MEN BY THESE PRESENTS: That,

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

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

PARCEL "A"

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

124
320B

11 P: 39

BEGINNING at the intersection of the westerly line of 34th Street (a 50-foot Street) and the southerly line of Enyart Avenue (a 60-foot Street): thence along said southerly line of Enyart Avenue North 71° 05' West, 552.87 feet to the intersection of the southerly line of the City of Cincinnati Rapid Transit property, said southerly line being also the northerly line of the property conveyed to Pullman, Incorporated, by deed recorded in Deed Book 3265, pages 443 and 444, Hamilton County Records; thence along said southerly line of said Rapid Transit property North 75° 12' West, 406.12 feet to the westerly line of said Pullman, Incorporated Property; thence along a northwardly prolongation of said westerly line North 5° 06' East, 91.81 feet to the northerly line of Enyart Avenue; thence along said northerly line of Enyart Avenue South 71° 05' East, 962.66 feet to the northwardly prolongation of the westerly line of 34th Street; thence along said prolongation of 34th Street South 2° 55' East, 62.42 feet to the southerly line of Enyart Avenue and the Place of Beginning and containing 63,844 square feet, more or less.

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

Estimated & Received with Sec. 319.232 R.O.

7306536
JOS. L. DE COURCY, JR., AUDITOR
HAMILTON COUNTY, OHIO

4162 686 TAX 5.00

70

CU-99-2-18
Wm. V. Donaldson
City Manager

Exhibit B, cont'd

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

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

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

PARCEL "B"

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

From the intersection of the westerly line of 34th Street (a 50-foot Street) and the southerly line of Enyart Avenue (a 60-foot Street) measure along said southerly line of Enyart Avenue North 71° 05' West, 552.87 feet to the intersection of the southerly line of the City of Cincinnati Rapid Transit property, said southerly line being also the northerly line of the property conveyed to Pullman, Incorporated by deed recorded in Deed Book 3265, pages 443 and 444, Hamilton County Records: thence measure along said southerly line of said City Rapid Transit property north 75° 12' West, 406.12 feet to the westerly line of said Pullman, Incorporated property for the PLACE OF BEGINNING: thence continuing along the southerly line of said City Rapid Transit property North 75° 12' West, 62.99 feet to an angle: thence along said southerly line, North 75° 00' 30" West, 180.00 feet to an angle: thence along said southerly line, South 75° 10' 30" West, 264.65 feet to an angle: thence along said southerly line, North 83° 44' 12" West, 65.26 feet to the easterly right of way line of the Northeast Expressway IIA-71-6.14: thence along said easterly line of the Northeast Expressway North 19° 41' 27" East, 108.10 feet to an angle: thence continuing along said easterly line, north 23° 56' 20" East, 139.74 feet to the northerly line of Enyart Avenue: thence along said northerly line of Enyart Avenue South 71° 05' East, 132.44 feet to an offset: thence along said offset North 18° 55' East, 20.00 feet: thence continuing along said northerly line of Enyart Avenue South 71° 05' East, 358.09 feet to a point in said northerly line of Enyart Avenue where intersected by the northwardly prolongation of the westerly property line of said Pullman, Incorporated property: thence along said prolongation of property of said property line South 5° 06' West, 91.81 feet to the said southerly line of said City Rapid Transit property and the Place of Beginning and containing 74,705 square feet, more or less.

Being part of the premises conveyed to the City of Cincinnati

1

12-E
32B

51-89-1-5
28-49-2-10
New Entry 45-1-13
at 1:00 p.m. 4. Dec. A. S. Davis 1902. C. S. 2. 117

Exhibit B, cont'd

by deed recorded in Deed Book 1341, page 172, Hamilton County Records and being part of Enyart Avenue as dedicated in 1860 and recorded in Plat Book 3, pages 108 and 109, Hamilton County Records.

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

2
From the intersection of the westerly line of 34th Street (a 50-foot Street) and the southerly line of Enyart Avenue (a 60-foot Street) measure along said southerly line of Enyart Avenue North 71° 05' West, 965.11 feet to a point on said southerly line of Enyart Avenue where intersected by the northwardly prolongation of the westerly property line of the property conveyed to Pullman, Incorporated by deed recorded in Deed Book 3265, pages 443 and 444, Hamilton County Records, for the PLACE OF BEGINNING: thence continuing along said southerly line of Enyart Avenue South 71° 05' East, 508.80 feet to the easterly right of way line of the Northeast Expressway, HAM-71-6.14; thence along said easterly line of the Northeast Expressway North 23° 56' 20" East, 40.15 feet to the northerly line of Enyart Avenue; thence along said northerly line of Enyart Avenue, South 71° 05' East, 132.44 feet to an offset: thence along said offset, North 18° 55' East, 20.00 feet: thence continuing along said northerly line of Enyart Avenue South 71° 05' East, 354.09 feet to a point in said northerly line of Enyart Avenue where intersected by the said northwardly prolongation of the westerly property line of said Pullman, Incorporated property: thence along said prolongation of said property line South 5° 06' West, 61.79 feet to the said southerly line of Enyart Avenue and the Place of Beginning and containing 27,294 square feet, more or less.

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

3
From the intersection of the westerly line of 34th Street (a 50-foot Street) and the southerly line of Enyart Avenue (a 60-foot Street) measure along said southerly line of Enyart Avenue, North 71° 05' West, 552.87 feet to the intersection of the southerly line of the City of Cincinnati Rapid Transit property, said southerly line being also the northerly line of the property conveyed to Pullman, Incorporated, by deed recorded in Deed Book 3265, page 443 and 444, Hamilton County Records: thence measure along said southerly line North 75° 12' West, 469.11 feet to an angle; thence measure along said southerly line North 75° 00' 30" West, 180.90 feet to an angle; thence measure along said southerly line South, 75° 10' 30" West, 264.65 feet to an angle; thence measure along said southerly line North 83° 44' 12" West, 39.56 feet for the PLACE OF BEGINNING: thence continuing along the southerly line, North 83° 44' 12" West, 25.70 feet to the easterly right of way line of the Northeast Expressway, HAM-71-6.14: thence along said easterly right of way line of the Northeast Expressway, North 19° 41' 27" East, 108.10 feet to an angle; thence North 23° 56' 20" East, 20.00 feet; thence South 66° 03' 40" East, 25.00 feet: thence South 23° 56' 20" West, 19.07 feet; thence South 19° 41' 27" West, 191.20 feet to the southerly line of said City Rapid Transit property and the Place of Beginning and containing 3,105 square feet, more or less.

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

Exhibit B, cont'd

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

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

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

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

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

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

North 19° 41' 27" East, 108.10 feet:

North 23° 56' 20" East, 139.74 feet.

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

(4)

IN WITNESS WHEREOF, the City of Cincinnati, by and through _____
Sam V. Donaldson, City Manager, (duly authorized by said Ordinance No. 192-1976 and amended by Ordinance No. 120-1979) Grantor, has

Exhibit B, cont'd

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

WITNESSES:

CITY OF CINCINNATI

Ann Pike

By Wm. V. Donaldson

Allen M. Volk

STATE OF OHIO, COUNTY OF HAMILTON, SS:

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

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

Ann Pike
Notary Public, State of Ohio.
ANN PIKE
Notary Public, Hamilton County, Ohio
My Commission Expires June 2, 1982

CITY PLANNING COMMISSION
CINCINNATI, OHIO
APPROVED
NO PLAT REQUIRED
Robert D. Stevens
DIRECTOR OF PLANNING
4-23-79 BY A. H. McComb

APPROVED:

John J. ...
Assistant City Solicitor

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

NO
RECORDED
Pg
BK
79 JUL 9 P 2:28
HAMILTON COUNTY RECORDS
DEPARTMENT OF LAW
CINCINNATI, OHIO

Exhibit J
to Development Agreement
(Three Oaks)

Form of Park Covenant

SEE ATTACHED

RESTRICTIVE COVENANT

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

Recitals:

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

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

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

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

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

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

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

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

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

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

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

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

[_____]

By: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

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

Notary Public
My commission expires: _____

ACKNOWLEDGED AND ACCEPTED BY:

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, City Manager

Date: _____, 2021

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

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

Exhibit A
to Restrictive Covenant

Legal Description

[to be provided]

Exhibit K
to Development Agreement
(Three Oaks)

Additional Requirements

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

This Exhibit serves two functions:

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

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

(A) Construction Workforce.

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

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

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

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and 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

{00334590-4}

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

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

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

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

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

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

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

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

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

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

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

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

(F) Small Business Enterprise Program.³

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

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

(1) Including qualified SBEs on solicitation lists.

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

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

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

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

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

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

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

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

(G) Equal Employment Opportunity.

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

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

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

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

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

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

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

(M) Wage Enforcement.

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

{00334590-4}

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

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

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

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

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

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

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

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

(N) Americans With Disabilities Act: Accessibility.

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

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

(O) Electric Vehicle Charging Stations in Garages.

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

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

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

Addendum I
to
Additional Requirements Exhibit

City's Prevailing Wage Determination

SEE ATTACHED

REQUEST FOR PROJECT WAGE DETERMINATION

DATE RECEIVED: 03/19/2021

ORIGINAL ASSIGNED NUMBER:

DEI USE ONLY

Fillout and Circle all that Apply Below:

REQUESTING AGENCY OR DEPT:

Community and Economic Development

FUNDING GUIDELINES:

(State or Federal)

CONTACT PERSON AND PHONE

NUMBER:

Giovanni Rocco; 513-352-1960

RATES THAT APPLY:

(Building, Heavy, Highway, Residential)

Prevailing wage does not apply.

DECISION NUMBER: N/A

Requested Date: 03/18/2021

Estimated Advertising Date: 04/18/2021

Estimated Bid Opening Date: 04/19/2021

Estimated Starting Date: 05/01/2021

MODIFICATIONS: N/A

DECISION DATE: N/A

SOURCE AND FUND NUMBER

EXPIRATION DATE: N/A

CITY FUND

SUPERSEDES DECISION NUMBER: N/A

STATE FUND

COUNTY FUND

DETERMINATION BY:

Name: Trisa Wilkens Hoane

FEDERAL FUND

Title: Interim Deputy Director

PROJECT ACCOUNT NUMBER:

Date: 03/19/2021

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

APPROVED BY:

TOTAL PROJECT DOLLARS: \$127,000,000


Jennifer B. Mackenzie, Interim Director

NAME OF PROJECT

DEPARTMENT OF ECONOMIC INCLUSION

Three Oaks/ Oakley Yards

COMMENTS:

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

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

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

TYPE OF WORK

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

PROJECT LOCATION

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

PROJECT FUNDING SOURCE

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

PROJECT SCOPE OF WORK AND BUDGET

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

DEI 217 Form
REV: 6/12/2017

May 19, 2021

To: Mayor and Members of City Council 202101966

From: Paula Boggs Muething, City Manager

Subject: **CRA ABATEMENT AGREEMENT FOR THREE OAKS
MULTIFAMILY**

Attached is an Emergency Ordinance captioned as follows:

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with Oakley Yards Land, LLC, thereby authorizing a 15-year tax exemption for 90% of the value of improvements made to real property located at 2800 Robertson Avenue in the Oakley neighborhood of Cincinnati, in connection with the construction of 393 apartment units, at a total construction cost of approximately \$54,000,000.

BACKGROUND/CURRENT CONDITIONS

The Developer is proposing to redevelop the former Kenner Toy Factory site in Oakley into a mixed-use phased development that will include approximately 350 to 400 market-rate residential apartment units, 150 to 200 units of senior housing, 105 single-family homes and necessary public infrastructure improvements to support the overall development. Total project cost is expected to be \$165 million. Previously, pursuant to Council Ordinance 493-2019, effective December 11, 2019, the City established a project-based tax increment financing exemption on the Project Site pursuant to Ohio Revised Code 5709.40(B).

DEVELOPER INFORMATION

The Developer, Oakley Yards Land, LLC, is an affiliate of Neyer Properties, Inc. of Cincinnati. Neyer Properties, formed in 1995, is a fully integrated real estate company headquartered in the Evanston neighborhood of Cincinnati. Recent projects completed by Neyer include the Baldwin building renovation in Walnut Hills and the Keystone Park development in Evanston.

PROJECT DESCRIPTION

Developer will redevelop the former Kenner Toy Factory site into a walkable mixed-use residential development. The project will consist of the Developer's design and

construction of approximately 350 to 400 market-rate residential apartment units, 150 to 200 units of senior housing and 105 single-family homes. The project will also consist of various public infrastructure improvements, such as demolition of former industrial buildings, environmental remediation, and design and construction of public right of way, public roads, public pedestrian path, park space, stormwater management, utilities, and sitework. The multifamily project will cost an estimated \$54 million and expected to be completed in its entirety by December 2023.

The Developer estimates that the multifamily project will support the creation of 300 full-time equivalent temporary jobs with an annual payroll of approximately \$18,000,000; and 7 full-time equivalents at an annual payroll of approximately \$455,000 following completion of construction.

The development is supported by the Oakley Community Council and is also consistent with the Plan Cincinnati’s Compete Initiative Area, particularly within the Goal to “Focus development on the existing centers of activity by developing compact walkable mixed-use districts and better connect them to residential areas” (Plan Cincinnati, page 116).

PROPOSED INCENTIVE

The Emergency Ordinance provides for a 90%, 15-year CRA tax exemption for this property. The exemption applies only to the increase in value of the building attributable to the project improvements. Pursuant to the Commercial CRA policy established by City Council, this project scored 3 points on the Neighborhood CRA scorecard as indicated below, which would merit a 5-year, net 40% CRA Tax Abatement:

| | |
|------------------------------------------------------------------------------------------------------------------------|----------|
| “But For” Analysis (0-3 points) * | 3 |
| 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) | 0 |
| TOTAL | 3 |

However, the Administration is recommending a 15-year, 90% CRA abatement, which is inconsistent with the project’s points determination. Under City Council Ordinance 339-2018, the Administration may determine that an Undercapitalized Project warrants an abatement term and/or percentage up to the maximum amounts permitted. The Administration has determined the project would not be financially feasible if limited to a CRA abatement calculated solely using the points determination. The recommended abatement percentage and term is also necessary

to ensure that the debt issued to pay for certain public improvements related to the project can be serviced by the Project TIF revenues.

| SUMMARY | |
|-----------------------------------------------------------|----------------------|
| Forgone Public Benefit if Project Does not Proceed | |
| CPS PILOT (Forgone New Revenue) | (\$7,821,551) |
| VTICA (Forgone New Revenue) | \$0 |
| Income Tax (Forgone New Revenue) | (\$608,850) |
| Total Public Benefit Lost | (\$8,430,401) |
| Incentive Value | |
| Annual Net Incentive to Developer | \$1,058,675 |
| Total Term Incentive to Developer | \$15,880,119 |
| City's Portion of Property Taxes Forgone | \$3,058,965 |
| Public Benefit | |
| CPS PILOT | |
| Annual CPS Pilot | \$521,437 |
| Total Term CPS PILOT | \$7,821,551 |
| VTICA | |
| Annual VTICA | \$0 |
| Total Term VTICA | \$0 |
| Income Tax (Max) | \$608,850 |
| Total Public Benefit (CPS PILOT/VTICA /Income Tax) | \$8,430,401 |
| Total Public Benefit ROI* | \$0.53 |
| City's ROI** | \$0.20 |

RECOMMENDATION

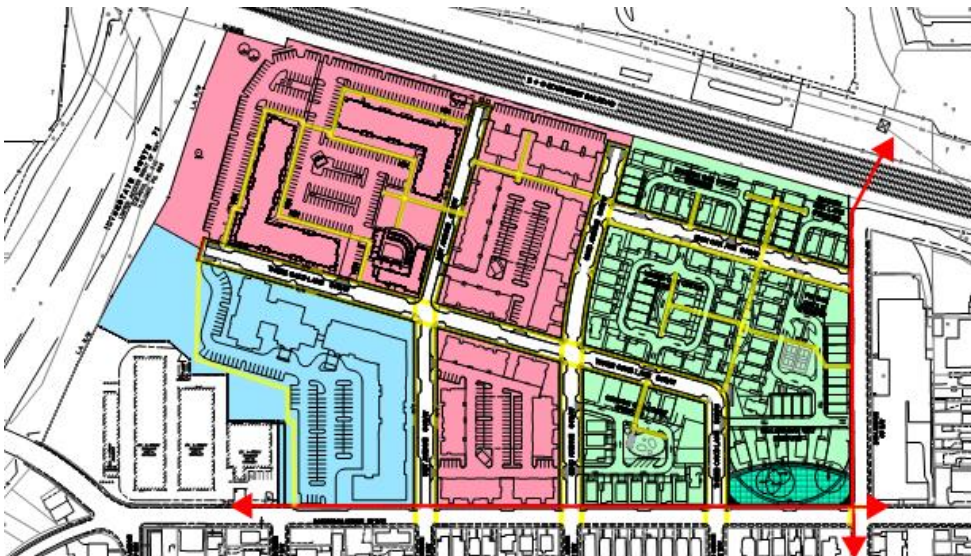
The Administration recommends approval of this Emergency Ordinance. The emergency clause is needed so that the project can meet its construction commencement deadlines.

Attachment: A. Property location and photographs

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

Attachment A: Location and Photographs

Property Location & Concept Plan



- LEGEND:
- RESIDENTIAL
 - MULTI FAMILY
 - SENIOR LIVING
 - PUBLIC RIGHT OF WAY
 - 8' BIKE PATH
 - PUBLIC PARK
 - PEDESTRIAN CONNECTIONS
- THREE OAKS

EMERGENCY

City of Cincinnati

KMG

AWB

An Ordinance No. _____ - 2021

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with Oakley Yards Land, LLC, thereby authorizing a 15-year tax exemption for 90% of the value of improvements made to real property located at 2800 Robertson Avenue in the Oakley neighborhood of Cincinnati, in connection with the construction of 393 apartment units, at a total construction cost of approximately \$54,000,000.

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 Yards Land, LLC (the “Company”) desires to construct 393 apartment units on real property at 2800 Robertson Avenue 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 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 Yards Land, LLC (the "Agreement"), thereby authorizing a 15-year tax exemption for 90% of the assessed value of improvements to be made to real property located at 2800 Robertson Avenue in Cincinnati, as calculated by the Hamilton County Auditor, in connection with the construction of 393 apartment units, to be completed at a total construction cost of approximately \$54,000,000.

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 be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to allow the construction described in this ordinance and the

corresponding revitalization of the City of Cincinnati and the benefits to the City's economic welfare to begin at the earliest possible time.

Passed: _____, 2021

John Cranley, 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 YARDS LAND, LLC, an Ohio limited liability company (the "Company").

Recitals:

- A. The City and Company are parties to a *Development Agreement* dated [____], 2021, pertaining to the development of the Property (the "Development Agreement").
- 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 2800 Robertson Avenue, Cincinnati, Ohio 45209 (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 to construct 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 four 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, nor 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. This Agreement has been authorized by Ordinance No. _____-2021, passed by Cincinnati City Council on _____, 2021.
- Q. 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, 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 approximately 393 market-rate residential apartment units on the Property

(the "Improvements") at an estimated aggregate cost of \$54,000,000 to commence after the execution of this Agreement and to be completed no later than December 31, 2023; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his 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 ninety percent (90%) 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 15 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 remodeling 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 2024 nor extend beyond the earlier of (i) tax year 2038 or (ii) the end of the 15th 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.¹

¹ 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.

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.

(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 or cause to be created (i) 7 full-time permanent jobs and (ii) 300 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 increase in the number of employees employed at the Project will result in approximately (i) \$455,000 of additional annual payroll with respect to the full-time permanent jobs and (ii) \$18,000,000 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 or the Development Agreement (for the avoidance of doubt, (i) if this Agreement is assigned with the consent of the City to another entity that is not party to the Development Agreement or (ii) the Development Agreement is assigned to an entity that is not the Company with the consent of the City, a default pursuant to the Development Agreement does not constitute a default hereunder), 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. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement shall constitute an event of default for purposes of Section 16 (*Default*) and the basis

for revocation under Section 18 (*Revocation*). 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 Yards Land, LLC
Attention: Jeff Chamot and Chris Ziegelmeier
2135 Dana Avenue, Ste 200
Cincinnati, Ohio 45207

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 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. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement 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 YARDS LAND, LLC,
an Ohio limited liability company

By: _____
Paula Boggs Muething, City Manager

By: _____

Date: _____, 2021

Printed Name: _____

Title: _____

Date: _____, 2021

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

PRELIMINARY DEPICTION – FINAL LEGAL DESCRIPTION TO BE ATTACHED

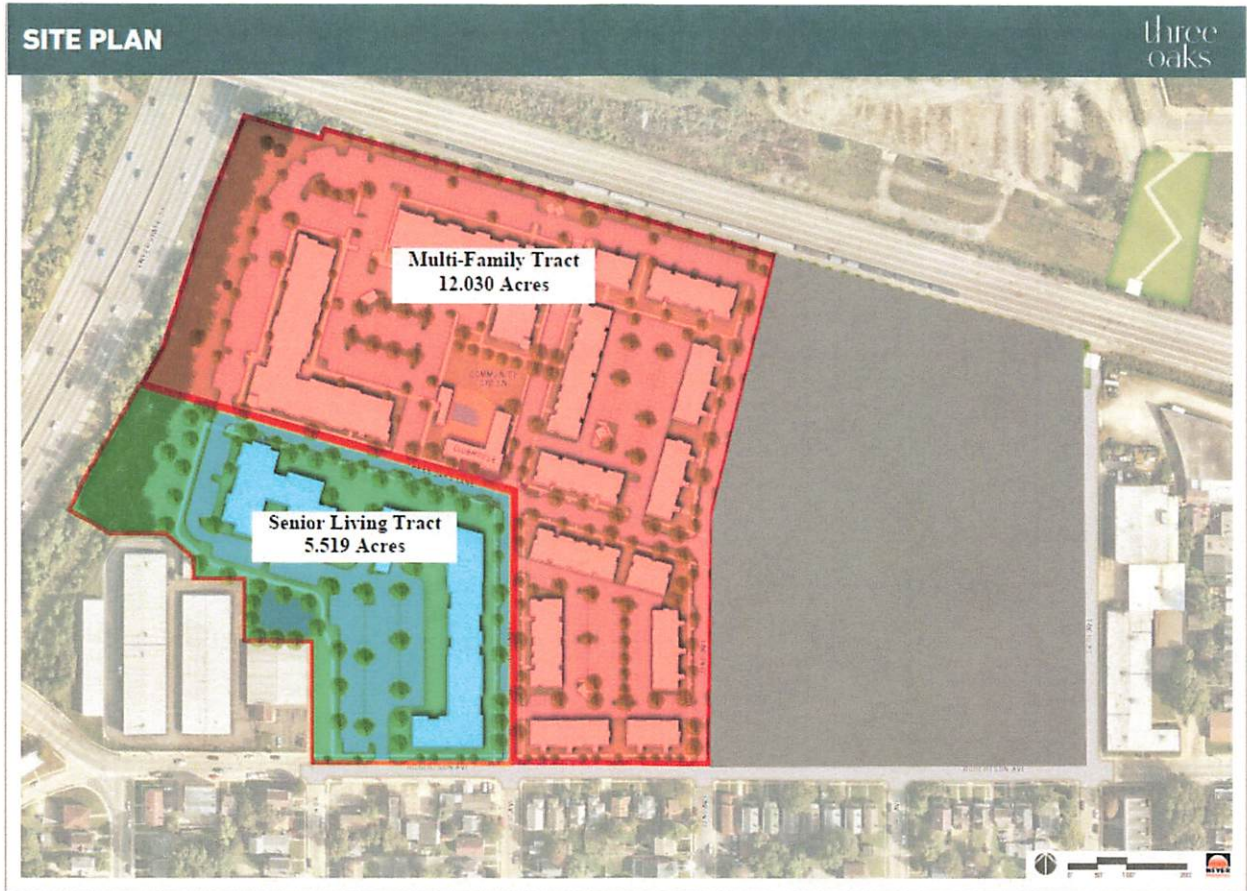


Exhibit B to CRA Agreement
APPLICATION FOR TAX EXEMPTION

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 YARDS LAND, LLC, an Ohio limited liability company (the "Company").

Recitals:

- A. The City and Company are parties to a *Development Agreement* dated [____], 2021, pertaining to the development of the Property (the "Development Agreement").
- 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 2800 Robertson Avenue, Cincinnati, Ohio 45209 (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 to construct 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 four 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, nor 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. This Agreement has been authorized by Ordinance No. _____-2021, passed by Cincinnati City Council on _____, 2021.
- Q. 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, 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 approximately 393 market-rate residential apartment units on the Property

(the “Improvements”) at an estimated aggregate cost of \$54,000,000 to commence after the execution of this Agreement and to be completed no later than December 31, 2023; *provided*, however, that the Director of the Department of Community and Economic Development (the “Housing Officer”) may, in his 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 ninety percent (90%) 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 15 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 remodeling 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 2024 nor extend beyond the earlier of (i) tax year 2038 or (ii) the end of the 15th 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.¹

¹ 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.

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.

(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 or cause to be created (i) 7 full-time permanent jobs and (ii) 300 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 increase in the number of employees employed at the Project will result in approximately (i) \$455,000 of additional annual payroll with respect to the full-time permanent jobs and (ii) \$18,000,000 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 or the Development Agreement (for the avoidance of doubt, (i) if this Agreement is assigned with the consent of the City to another entity that is not party to the Development Agreement or (ii) the Development Agreement is assigned to an entity that is not the Company with the consent of the City, a default pursuant to the Development Agreement does not constitute a default hereunder), 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 this Agreement, 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. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement shall constitute an event of default for purposes of Section 16 (*Default*) and the basis

for revocation under Section 18 (*Revocation*). 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 Yards Land, LLC
Attention: Jeff Chamot and Chris Ziegelmeyer
2135 Dana Avenue, Ste 200
Cincinnati, Ohio 45207

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 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. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement 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 YARDS LAND, LLC,
an Ohio limited liability company

By: _____
Paula Boggs Muething, City Manager

Date: _____, 2021

By: _____

Printed Name: _____

Title: _____

Date: _____, 2021

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

PRELIMINARY DEPICTION – FINAL LEGAL DESCRIPTION TO BE ATTACHED



Exhibit B to CRA Agreement
APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

May 19, 2021

To: Mayor and Members of City Council 202101968
From: Paula Boggs Muething, City Manager
Subject: **CRA ABATEMENT AGREEMENT FOR THREE OAKS SENIOR**

Attached is an Emergency Ordinance captioned as follows:

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with Oakley Yards Land, LLC, thereby authorizing a 15-year tax exemption for 45% of the value of improvements made to real property located at 2800 Robertson Avenue in the Oakley neighborhood of Cincinnati, in connection with the construction of 150 to 200 units of senior housing, at a total construction cost of approximately \$35,000,000.

BACKGROUND/CURRENT CONDITIONS

The Developer is proposing to redevelop the former Kenner Toy Factory site in Oakley into a mixed-use phased development that will include approximately 350 to 400 market-rate residential apartment units, 150 to 200 units of senior housing, 105 single-family homes and necessary public infrastructure improvements to support the overall development. Total project cost is expected to be \$165 million. Previously, pursuant to Council Ordinance 493-2019, effective December 11, 2019, the City established a project-based tax increment financing exemption on the Project Site pursuant to Ohio Revised Code 5709.40(B).

DEVELOPER INFORMATION

The Developer, Oakley Yards Land, LLC, is an affiliate of Neyer Properties, Inc. of Cincinnati. Neyer Properties, formed in 1995, is a fully integrated real estate company headquartered in the Evanston neighborhood of Cincinnati. Recent projects completed by Neyer include the Baldwin building renovation in Walnut Hills and the Keystone Park development in Evanston.

PROJECT DESCRIPTION

Developer will redevelop the former Kenner Toy Factory site into a walkable mixed-use residential development. The project will consist of the Developer's design and construction of approximately 350 to 400 market-rate residential apartment units, 150 to 200 units of senior housing and 105 single-family homes. The project will also consist of various public infrastructure improvements, such as demolition of former

industrial buildings, environmental remediation, and design and construction of public right of way, public roads, public pedestrian path, park space, stormwater management, utilities, and sitework. The senior project will cost an estimated \$35 million and expected to be completed in its entirety by June 2024.

The Developer estimates that the multifamily project will support the creation of 200 full-time equivalent temporary jobs with an annual payroll of approximately \$12,000,000; and 50 full-time equivalents at an annual payroll of approximately \$2,750,000 following completion of construction.

The development is supported by the Oakley Community Council and is also consistent with the Plan Cincinnati’s Compete Initiative Area, particularly within the Goal to “Focus development on the existing centers of activity by developing compact walkable mixed-use districts and better connect them to residential areas” (Plan Cincinnati, page 116).

PROPOSED INCENTIVE

The Emergency Ordinance provides for a 45%, 15-year CRA tax exemption for this property. The exemption applies only to the increase in value of the building attributable to the project improvements. Pursuant to the Commercial CRA policy established by City Council, this project scored 3 points on the Neighborhood CRA scorecard as indicated below, which would merit a 5-year, net 40% CRA Tax Abatement:

| | |
|------------------------------------------------------------------------------------------------------------------------|----------|
| “But For” Analysis (0-3 points) * | 3 |
| 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) | 0 |
| TOTAL | 3 |

However, the Administration is recommending a 15-year, 45% CRA abatement, which is inconsistent with the project’s points determination. Under City Council Ordinance 339-2018, the Administration may determine that an Undercapitalized Project warrants an abatement term and/or percentage up to the maximum amounts permitted. The Administration has determined the project would not be financially feasible if limited to a CRA abatement calculated solely using the points determination. The recommended abatement percentage and term is also necessary to ensure that the debt issued to pay for certain public improvements related to the project can be serviced by the Project TIF revenues.

| SUMMARY | |
|-----------------------------------------------------------|----------------------|
| Forgone Public Benefit if Project Does not Proceed | |
| CPS PILOT (Forgone New Revenue) | (\$2,632,253) |
| VTICA (Forgone New Revenue) | \$0 |
| Income Tax (Forgone New Revenue) | (\$1,066,500) |
| Total Public Benefit Lost | (\$3,698,753) |
| Incentive Value | |
| Annual Net Incentive to Developer | \$356,285 |
| Total Term Incentive to Developer | \$5,344,271 |
| City's Portion of Property Taxes Forgone | \$1,029,459 |
| Public Benefit | |
| CPS PILOT | |
| Annual CPS Pilot | \$175,484 |
| Total Term CPS PILOT | \$2,632,253 |
| VTICA | |
| Annual VTICA | \$0 |
| Total Term VTICA | \$0 |
| Income Tax (Max) | \$1,066,500 |
| Total Public Benefit (CPS PILOT/VTICA /Income Tax) | \$3,698,753 |
| Total Public Benefit ROI* | \$0.69 |
| City's ROI** | \$1.04 |

RECOMMENDATION

The Administration recommends approval of this Emergency Ordinance. The emergency clause is needed so that the project can meet its construction commencement deadlines.

Attachment: A. Property location and photographs

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

Attachment A: Location and Photographs

Property Location & Concept Plan



EMERGENCY

City of Cincinnati

KMG

AWB

An Ordinance No. _____

- 2021

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with Oakley Yards Land, LLC, thereby authorizing a 15-year tax exemption for 45% of the value of improvements made to real property located at 2800 Robertson Avenue in the Oakley neighborhood of Cincinnati, in connection with the construction of 150 to 200 units of senior housing, at a total construction cost of approximately \$35,000,000.

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 Yards Land, LLC (the “Company”) desires to construct 150 to 200 units of senior housing on real property at 2800 Robertson Avenue 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 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 Yards Land, LLC (the "Agreement"), thereby authorizing a 15-year tax exemption for 45% of the assessed value of improvements to be made to real property located at 2800 Robertson Avenue in Cincinnati, as calculated by the Hamilton County Auditor, in connection with the construction of 150 to 200 units of senior housing, to be completed at a total construction cost of approximately \$35,000,000.

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 be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the

emergency is the immediate need to allow the construction described in this ordinance and the corresponding revitalization of the City of Cincinnati and the benefits to the City's economic welfare to begin at the earliest possible time.

Passed: _____, 2021

John Cranley, 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 YARDS LAND, LLC, an Ohio limited liability company (the "Company").

Recitals:

- A. The City and Company are parties to a *Development Agreement* dated [____], 2021, pertaining to the development of the Property (the "Development Agreement").
- 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 2800 Robertson Avenue, Cincinnati, Ohio 45209 (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 to construct 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 four 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, nor 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. This Agreement has been authorized by Ordinance No. _____-2021, passed by Cincinnati City Council on _____, 2021.
- Q. 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, 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 approximately 150 to 200 units of senior housing on the Property (the

"Improvements") at an estimated aggregate cost of \$35,000,000 to commence after the execution of this Agreement and to be completed no later than June 1, 2024; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his 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 forty-five percent (45%) 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 15 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 remodeling 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 2039 or (ii) the end of the 15th 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.¹

¹ 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.

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.

(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 or cause to be created (i) 50 full-time permanent jobs and (ii) 200 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 increase in the number of employees employed at the Project will result in approximately (i) \$2,750,000 of additional annual payroll with respect to the full-time permanent jobs and (ii) \$12,000,000 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 or the Development Agreement (for the avoidance of doubt, (i) if this Agreement is assigned with the consent of the City to another entity that is not party to the Development Agreement or (ii) the Development Agreement is assigned to an entity that is not the Company with the consent of the City, a default pursuant to the Development Agreement does not constitute a default hereunder), 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. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement shall constitute an event of default for purposes of Section 16 (*Default*) and the basis

for revocation under Section 18 (*Revocation*). 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 Yards Land, LLC
Attention: Jeff Chamot and Chris Ziegelmeier
2135 Dana Avenue, Ste 200
Cincinnati, Ohio 45207

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 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. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement 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 YARDS LAND, LLC,
an Ohio limited liability company

By: _____
Paula Boggs Muething, City Manager

By: _____

Date: _____, 2021

Printed Name: _____

Title: _____

Date: _____, 2021

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

PRELIMINARY DEPICTION – FINAL LEGAL DESCRIPTION TO BE ATTACHED



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 YARDS LAND, LLC, an Ohio limited liability company (the "Company").

Recitals:

- A. The City and Company are parties to a *Development Agreement* dated [____], 2021, pertaining to the development of the Property (the "Development Agreement").
- 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 2800 Robertson Avenue, Cincinnati, Ohio 45209 (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 to construct 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 four 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, nor 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. This Agreement has been authorized by Ordinance No. _____-2021, passed by Cincinnati City Council on _____, 2021.
- Q. 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, 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 approximately 150 to 200 units of senior housing on the Property (the

“Improvements”) at an estimated aggregate cost of \$35,000,000 to commence after the execution of this Agreement and to be completed no later than June 1, 2024; *provided*, however, that the Director of the Department of Community and Economic Development (the “Housing Officer”) may, in his 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 forty-five percent (45%) 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 15 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 remodeling 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 2039 or (ii) the end of the 15th 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.¹

¹ 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.

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.

(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 or cause to be created (i) 50 full-time permanent jobs and (ii) 200 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 increase in the number of employees employed at the Project will result in approximately (i) \$2,750,000 of additional annual payroll with respect to the full-time permanent jobs and (ii) \$12,000,000 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 or the Development Agreement (for the avoidance of doubt, (i) if this Agreement is assigned with the consent of the City to another entity that is not party to the Development Agreement or (ii) the Development Agreement is assigned to an entity that is not the Company with the consent of the City, a default pursuant to the Development Agreement does not constitute a default hereunder), 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 this Agreement, 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. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement shall constitute an event of default for purposes of Section 16 (*Default*) and the basis

for revocation under Section 18 (*Revocation*). 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 Yards Land, LLC
Attention: Jeff Chamot and Chris Ziegelmeyer
2135 Dana Avenue, Ste 200
Cincinnati, Ohio 45207

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 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. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement 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 YARDS LAND, LLC,
an Ohio limited liability company

By: _____
Paula Boggs Muething, City Manager

Date: _____, 2021

By: _____

Printed Name: _____

Title: _____

Date: _____, 2021

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

PRELIMINARY DEPICTION – FINAL LEGAL DESCRIPTION TO BE ATTACHED



Exhibit B to CRA Agreement
APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

To: Councilmember Jan-Michele Lemon Kearney
From: Andrew Garth, City Solicitor *AWG*
Subject: **Emergency Ordinance – Black Lives Matter Mural Restoration**

Transmitted herewith is an emergency ordinance captioned as follows:

AUTHORIZING the transfer of \$125,000 from the General Fund balance sheet reserve account no. 050x2580, “Reserve for Weather Related Events, Other Emergency and One-Time Needs,” to the unappropriated surplus of General Fund 050; **AUTHORIZING** the transfer and appropriation of \$125,000 from the unappropriated surplus of General Fund 050 to City Manager’s Office non-personnel operating budget account no. 050x101x7200 for the purpose of providing funds to restore the Black Lives Matter mural on Plum Street between Eighth Street and Ninth Street and to install a historical plaque explaining the mural's background.

AWG/AKS/(lnk)
Attachment
339498



EMERGENCY

City of Cincinnati

KMB

AWB

An Ordinance No. _____

- 2021

AUTHORIZING the transfer of \$125,000 from the General Fund balance sheet reserve account no. 050x2580, “Reserve for Weather Related Events, Other Emergency and One-Time Needs,” to the unappropriated surplus of General Fund 050; **AUTHORIZING** the transfer and appropriation of \$125,000 from the unappropriated surplus of General Fund 050 to City Manager’s Office non-personnel operating budget account no. 050x101x7200 for the purpose of providing funds to restore the Black Lives Matter mural on Plum Street between Eighth Street and Ninth Street and to install a historical plaque explaining the mural's background.

WHEREAS, in June 2020, the City declared the Black Lives Matters movement to be a matter of great public interest, and resolved to raise public awareness of the movement through the installation and maintenance of a conspicuous visual message, namely a street mural on Plum Street between Eighth Street and Ninth Street that would recognize and express the City’s support of the Black Lives Matter movement; and

WHEREAS, the mural has deteriorated over time due to wear and tear from traffic and the elements; and

WHEREAS, funding will be provided to restore the mural and install a historical plaque explaining the mural’s background and the events that precipitated its creation; and

WHEREAS, the restoration of the mural is desired to be completed in time for the upcoming Juneteenth celebration; and

WHEREAS, restoration and maintenance of this street mural is consistent with the “Live” goal to “Create a more livable community” as described on page 156 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the sum of \$125,000 is hereby transferred from the General Fund balance sheet reserve account no. 050x2580, “Reserve for Weather Related Events, Other Emergency and One-Time Needs,” to the unappropriated surplus of General Fund 050.

Section 2. That the sum of \$125,000 is hereby transferred and appropriated from the unappropriated surplus of General Fund 050 to the City Manager’s Office General Fund non-personnel operating budget account no. 050x101x7200 for the purpose of providing funds to

restore the Black Lives Matter mural on Plum Street between Eighth Street and Ninth Street and to install a historical plaque explaining the mural's background.

Section 3. That the appropriate City officers are hereby authorized to do all things necessary and proper to implement the provisions of Sections 1 and 2 herein.

Section 4. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to accomplish the restoration of the mural in time for the upcoming Juneteenth celebration.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

EMERGENCY

City of Cincinnati

LES

AWB

An Ordinance No. _____

- 2021

AUTHORIZING the establishment of American Rescue Plan grant project account no. 469x101xARP053, "Hazard Pay," for the purpose of providing additional compensation to employees during the COVID-19 pandemic; and **AUTHORIZING** the appropriation of the sum of \$2,800,000 from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly established American Rescue Plan grant project account no. 469x101xARP053, "Hazard Pay," for the purpose of providing additional compensation to employees during the COVID-19 pandemic; and **DECLARING** expenditures from American Rescue Plan grant project account no. 469x101xARP053, "Hazard Pay," to be for a public purpose.

WHEREAS, the City is eligible to receive funding from the United States Department of the Treasury pursuant to the American Rescue Plan Act ("ARP") as part of the Coronavirus Local Fiscal Recovery Fund Act; and

WHEREAS, City employees have been negatively impacted by the COVID-19 pandemic; and

WHEREAS, ARP funds will be used to provide additional compensation to City employees who were negatively impacted by the COVID-19 pandemic; now, therefore,

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

Section 1. That the Director of Finance is hereby authorized to establish American Rescue Plan grant project account no. 469x101xARP053, "Hazard Pay," for the purpose of providing additional compensation to City employees during the COVID-19 pandemic.

Section 2. That the sum of \$2,800,000 is hereby appropriated from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly established American Rescue Plan grant project account no. 469x101xARP053, "Hazard Pay," for the purpose of providing additional compensation to City employees during the COVID-19 pandemic.

Section 3. That expenditures from American Rescue Plan grant project account no. 469x101xARP053, "Hazard Pay," are hereby declared to be for a public purpose because providing funds for additional compensation to City employees improves the economic and

general well-being of the employees of the City, which is necessary due to the impacts of the COVID-19 pandemic.

Section 4. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 through 3 hereof.

Section 5. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to implement authorized American Rescue Plan-related support programs.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

202102031

Date: May 21, 2021

To: Clerk of Council

From: Andrew Garth, City Solicitor *AWG*

Subject: **Emergency Ordinance – American Rescue Plan Hazard Pay**

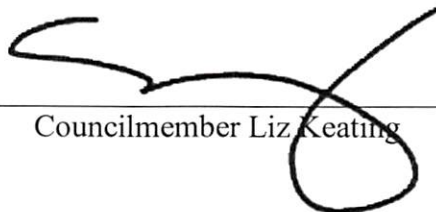
Pursuant to Rule 10.8, the Administration requests this item to be added to the agenda for Council.



Liz Keating
Councilmember

Motion

WE MOVE that the Administration apply for a \$6,000,000 Surface Transportation Block Grant or Congestion Mitigation / Air Quality Grant from OKI Regional Council of Governments for the Ohio River Trail from Lunken Airport to Theodore M. Berry International Friendship Park along the Oasis rail line, due June 4, 2021.



Councilmember Liz Keating

Statement

After over a decade of work, the City of Cincinnati, Great Parks of Hamilton County, Southwest Ohio Regional Transit Authority (SORTA), and Indiana and Ohio Railroad Company recently signed a term sheet to allow for the Ohio River Trail to be built in the Oasis rail corridor from Lunken Airport to Theodore M. Berry International Friendship Park.

The Ohio River Trail is a key corridor in the plan for the CROWN (Cincinnati Riding Or Walking Network), which is a bold vision to create a 34-mile multi-use trail loop around Cincinnati. When complete, the CROWN will connect 356,000 residents within 1 mile of the trail. This gap in the Ohio River Trail is the last 4.5 miles needed connect the 78-mile Little Miami Scenic Trail and 326-mile Ohio to Erie Trail to downtown Cincinnati. Building the trail will spur economic development opportunities, generate local tourism spending, and improve property values. It will also connect neighborhoods, enhance active transportation options, and improve public health.

Federal transportation funding from OKI Regional Council of Governments has been critical to building out other trail corridors in the CROWN, like Wasson Way and the Ohio River Trail West. Both the Surface Transportation Block Grant and Congestion Mitigation / Air Quality programs have funding available this year through OKI. The application deadline is June 4, 2021, and the maximum grant amount is \$6,000,000. CROWN Cincinnati, a partnership between Green Umbrella / Tri-State Trails, Ohio River Way, and Wasson Way has committed to privately fundraising a portion of the local match needed for this grant opportunity.